



**THE REPUBLIC OF UGANDA
REMARKS MADE DURING THE NATIONAL ADR SUMMIT
AT
MESTIL HOTEL AND RESIDENCES**

**ON 26TH JUNE, 2023
BY
PROFESSOR JIM GASH
PRESIDENT, PEPPERDINE UNIVERSITY**

Your Excellency, the Vice President of the Republic of Uganda

My Lord, the Chief Justice

My Lord, the Deputy Chief Justice

The Hon. Minister of Justice and Constitutional Affairs

The Learned Attorney General of Uganda

My Lord, the Principal Judge

My Lords, the Justices, and Judges of Courts of Judicature

Your Excellences the Ambassadors

The Hon. Members of Parliament present.

The Inspector General of Government

The Chairpersons of Constitutional Commissions

The Members of the Judicial Service Commission

The Members of the Judiciary Council

The Heads of the Administration of Justice Programme Institutions

The Permanent Secretaries present.

My colleagues at Pepperdine University: Vice President Danny DeWalt;

Professors Jack Coe, Selina Schultz, and Andrew Khaukha

Your Worship, the Chief Registrar

Your Worships the Registrars

Ladies and Gentlemen.

I would like to thank the Honorable The Chief Justice and the Honorable Minister of Justice and Constitutional Affairs for organizing this important and groundbreaking conference. It is my great honor to be invited to share a few thoughts about your ambitious vision for Uganda's leadership role in ADR across Africa – a vision that is achievable with the wisdom gathered in this room.

Uganda has been my second home for the past decade and it holds a special place in my heart. In 2012, my family moved here for six months, **[slide of family]** and this is my 29th trip to this remarkable country, and I love the culture and the landscape, but I love the people most of all. The Judiciary and its leadership have become some of my dearest friends as we have collaborated to reduce case backlog and overcrowding in prisons

through the implementation of plea bargaining in nearly every prison throughout the country. **[slide of plea bargaining in prison and conference]** In fact, at this very moment, the Judiciary, the DPP, and a team from Pepperdine are collaborating on a plea bargaining camp in Mbarara where several hundred remandees will be provided access to justice this week. **[slide of recent PB camp]**

The leadership, foresight, determination, and perseverance shown by the past three DPPs, chief justices, deputy chief justices, and principal judges – together with many high court, court of appeals, and Supreme Court justices, Chief Registrars, and Technical Advisors – have made this plea bargaining initiative a phenomenal success. I see so many friends here today who have made the growth and success of the Judiciary and the Republic of Uganda their life's work. Let me add my special thanks to Justice Katureebe for delivering an address at my inauguration as president of Pepperdine University in 2019. **[slide of Katureebe]**

But don't take my word for it. The evidence is compelling, which is why I believe Uganda's desire to be a leader in ADR on this continent is achievable. Other African countries have seen the fruits of Pepperdine's

partnership with Uganda. First, Ghana called and asked us to help them implement “what Uganda has done” – to enhance access to justice and reduce case backlog and prison congestion. **[slide with former CJ Ghana - Yeboah]** Next, Rwanda called and asked the same – and they have already begun implementing it there. **[slide of Rwanda launch]** Then Nigeria and Liberia called.

As you can see, Uganda’s pioneering spirit and leadership are having an impact across the continent already in dispute resolution in the criminal justice realm. Relatedly, Pepperdine has in the past years assigned fellows to serve as mediators in the Commercial Court and Family Division, and I want to reiterate our commitment to working with you in realizing a robust ADR regime.

In addition, we have collaborated over the years to host other ground-breaking conferences including two conferences on Women in Leadership with Chief Justice Katureebe and a Christian Lawyers Conference with The First Lady Janet Museveni and Chief Justice Owiny-Dollo who was DCJ at the time. **[Slides of conferences]**

I would be remiss not to mention the profound and inspirational leadership of our dear, dear friend and colleague the late Supreme Court Justice Stella Arach Amoko. Our relationship with Lady Justice Stella goes back to 2006 and she was a force of transformative leadership in her various roles. And did so with such joy and sweetness. We are missing our dear friend – may her soul rest in peace. **[slide of Stella]**

The present global conflict has awakened the world to the truths Africa has known and practiced for centuries – the fundamental importance of unity, community, and peace. And the world would be better for learning from the rich history of dispute resolution of Uganda. The ADR we are talking about today is merely a modern expression within the formal justice system of the timeless and effective truths that heal human nature and restore harmonious relationships.

And as providence would have it, Pepperdine is the home of the Straus Institute for Dispute Resolution, **[slide of Straus]** which just so happens to be the #1 ranked Dispute Resolution Training Institute over the past 20 years, and we offer our partnership with you on this worthy initiative.

Over the past decade, we have had numerous delegations of Ugandan leaders travel to Pepperdine for civil and criminal ADR training in contemplation of this initiative. **[slides of Odoki, Katureebe, and other delegations]** Pepperdine's campus is located in beautiful Malibu, California. We also have campuses in London, Heidelberg, Florence, Buenos Aires, and Washington D.C. **[slides of each campus]** We will soon be opening campuses in Japan and, God willing, in Jinja.

Next week, we officially expand our global influence when we open our new sixty-seven acre campus in Vevey, Switzerland overlooking Lake Geneva – The Chateau d'Hauteville. As CJ Owiny-Dollo referenced earlier, Pepperdine would be delighted to co-host with Uganda the countries of Africa for a Pan-Africa ADR Summit here next year.

It is a great honor for me and Vice President Danny DeWalt, along with distinguished professors Jack Coe and Selina Schultz from our Straus Institute, to be here with you today, participating in this Dispute Resolution (ADR) summit. The summit's theme, "Transforming Uganda into an Attractive ADR Destination," speaks to the pressing need to address institutional, attitudinal, and policy constraints that have, unfortunately,

impeded Uganda's goal of having substantially more parties or institutions choose Uganda as a seat for commercial arbitrations.

Refinements to Uganda's arbitration laws can aid in becoming an attractive ADR destination. The principal law governing arbitration and conciliation in Uganda is, of course, the Arbitration and Conciliation Act of Uganda. While I am not an expert in this Act, section six allows a party to an arbitration agreement to apply to the court – before or during arbitral proceedings – for an interim measure of protection, and a court may grant that measure.

Additionally, the Civil Procedure Act – and the Rules therein – bestow upon the court inherent discretionary powers to entertain *any* matter in the exercise of its inherent jurisdiction. Such provisions, of course, create substantial risks of abuse of arbitration by parties who seek to *undermine* the arbitration. It almost goes without saying that in order for parties to be willing to enter into international commercial arbitration agreements, arbitral independence is both *assumed* and *imperative*. And yet these wide inherent discretionary powers could threaten to undermine Uganda's attractiveness as an arbitral seat due to the readily apparent risks of potential court interference.

Another important challenge is the ACA's lack of immunity of arbitrators from suits. This failure to insulate arbitrators from personal liability threatens to undermine both the arbitrator's neutrality and the parties' interests in the award's finality. For these reasons, the rules are different in other jurisdictions. For example, in the United States, the Uniform Arbitration Act provides that an arbitrator – or an arbitration organization acting in that capacity – is immune from civil liability to the same extent as a judge of a court acting in a judicial capacity. The absence of such a provision disincentivizes arbitrators from serving in Uganda and signals that Uganda is out of step with much of the rest of the world on this score.

Likewise, international commercial arbitration practice can thrive in Uganda if, and only if, constraints on foreign counsel are removed. Again, the laws of other jurisdictions are instructive. For example, under the laws of the UN, England, Germany, Sweden, and the United States, there are *no* restrictions as to who may act as a party representative in an arbitration. In contrast, the Ugandan Act does not explicitly provide for this. One of the leading characteristics of popular seats of arbitration are clear relaxed rules about who can represent parties in arbitrations.

At the same time, it is imperative that those who practice international commercial arbitration be well-trained. Consequently, it is critical that Ugandan ADR practitioners, Ugandan students taking the bar, and students in Ugandan law schools undertake continuous training in this area to enable them to both grasp the concepts of ADR, and to be able to be accredited both locally and internationally.

In order for Uganda to take its place as an ADR leader on this continent, it is also crucial for this country to develop a national ADR policy that will give important direction both on matters concerning ADR in general, and the appointment and accreditation of ADR practitioners in particular. Doing so would bring Uganda in line with most other countries, who set the criteria and qualifications for arbitrators at a high standard. Uganda needs a fully equipped arbitration bar to be competitive with other potential arbitral seats.

I am pleased to be present today when this policy is being widely introduced, and I am confident that it will pave the way for making Uganda an attractive ADR destination.

An important part of this effort will be the establishment in Uganda of an arbitration Registry that clearly meets international standards, where parties and arbitrators can file documents and receive important information about international commercial arbitration rules and standards.

Another important factor in improving Uganda's attractiveness as an ADR hotspot for this continent will be infrastructure. While this includes roads, it also includes continuing to upgrade the information superhighway – the internet. Those who come to Uganda to resolve complicated, high-value disputes will be looking for efficiency in both transportation and communication. This is not to say that substantial improvements have not been made. The airport bypass was a game changer in getting to and from Entebbe. Additionally, access to high-speed internet has vastly improved over the past decade. Let me humbly encourage you to continue these important advancements.

Another important feature is alignment with international standards. For example, Singapore is one of the countries known to have a highly-rated ADR system. This is because its government has aligned its laws to international standards. Uganda should endeavor to do likewise. This can

be done through ratification and domestication of international treaties and conventions. For example, Uganda can ratify the Singapore Convention on Mediation, which would readily allow for global enforcement of mediated agreements reached in Uganda.

Another possibility would be for Uganda to consider using its tax policy and flexible investment laws to promote the establishment of robust arbitral institutions that will aid in transforming the country into a regional hub for settling disputes.

I agree with the Hon. Minister of Justice and Constitutional Affairs that Uganda ought to seek to partner with international arbitration institutions in growing mediation and arbitration in Uganda. For instance, the London Court of International Arbitration (LCIA) entered into an agreement with Mauritius, which greatly enhanced the reputation of Mauritius as an arbitration seat.

In a bid to realize these proposals, Pepperdine University – at the request of the Honorable The Chief Justice of Uganda – customized an online Masters in Dispute Resolution Program for eleven senior government

officials, led by the Chief Justice himself. At my direction, the University extended a scholarship of 80% to enable these high-level students to undertake this course. Let me take this opportunity to thank the Honorable the Chief Justice for his wisdom and leadership. Indeed, the fruits of this Masters in Dispute Resolution are reflected by the fact that this summit was organized by this cohort. Likewise, this cohort drafted the alternative justice strategy for the judiciary and the draft national ADR policy that addresses many of the issues we will be examining in great detail over these next two days. I commend them for their leadership and sacrifice to pave the way for this conference and vision.

Please also allow me to commend the key leaders who have collaborated to make this happen – Pepperdine’s Vice President Danny DeWalt, Professors Jack Coe and Selina Schulz, and Technical Advisor to the Judiciary and Pepperdine Professor Andrew Khaukha.

Your Excellency the Vice President, kindly convey Pepperdine’s greetings, love, and prayers to His Excellency the President.

Let me close by reiterating our commitment to working together to advance this important initiative.

Thank you.