



THE JUDICIARY OF UGANDA

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AT THE COMMONWEALTH RESORT MUNYONYO**

ADR IN THE ADMINISTRATION OF FAMILY JUSTICE

BY

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1.0 Overview of ADR in Family Justice

- ❖ Family occupies a central place in human life as a primary space in which individuals experience belonging, care and identity.
- ❖ Family is also a setting in which conflict, breakdown and profound emotional distress may arise. Research has demonstrated that, for the vast majority of people, family relationships are more significant than professional achievement or social status. When such relationships fracture, the impact extends beyond the private sphere and engages the justice system in matters of deep personal and societal consequence.
- ❖ Human beings are inherently relational. They depend on family and extended kin networks for emotional, social and often, economic support. Therefore, prolonged and adversarial separation from these support systems, particularly through unresolved conflict can severely impair an individual's capacity to live a stable and fulfilling life.
- ❖ The Constitution of Uganda recognises the importance of family under Objective XIX of the National Objectives and Directives of State Policy which provides that “*the family is the natural and basic unit of society and is entitled to protection by society and the State*”.



1.0 Overview of ADR in Family Justice conti...

- ❖ It is therefore critical that the family unit is protected as we strive to deliver family justice and as elaborated in this presentation, the use of ADR and particularly mediation is aimed at protecting family.
- ❖ Family justice is not merely concerned with the determination of legal rights; it is fundamentally about the preservation, repair or dignified re-ordering of human relationships.
- ❖ It is within this context that children emerge as the most vulnerable participants in family disputes. Although rarely the source of conflict, they are too often exposed to its repercussions. Thus the need to avoid protracted litigation, especially adversarial litigation because it intensifies emotional harm to children, contributing to anxiety, social withdrawal and long-term behavioral challenges.
- ❖ The Family Division and any court that deals with family matters therefore bears a profound responsibility to ensure that the processes do not inadvertently deepen harm, but rather promote outcomes that safeguard children's welfare and future development.
- ❖ The traditional adversarial model of dispute resolution, while indispensable in appropriate cases, is often ill-suited to the realities of family conflict.



1.0 Overview of ADR in Family Justice conti...

- ❖ Family disputes rarely end with a clean severance of relationships; parties remain bound by parental responsibilities, shared histories or common economic interests. In such contexts, court-imposed outcomes frequently struggle to secure compliance, entrench hostility and prolong instability within families.
- ❖ Alternative Dispute Resolution (ADR) assumes particular significance in the administration of family justice. ADR offers a restorative, participatory and child-centred approach that prioritises dialogue, accountability and consensual outcomes. By enabling parties to retain ownership of decisions affecting their families, ADR reduces conflict, promotes sustainable settlements and mitigates the emotional and institutional costs associated with prolonged litigation.
- ❖ At the Family Division, the integration of ADR is therefore not simply a matter of procedural efficiency. It represents a deliberate judicial choice to administer justice in a manner that heals rather than fragments families, protects children from avoidable harm and supports judicial officers in managing cases effectively while preserving their own professional wellbeing.
- ❖ Therefore, ADR stands as both a tool for effective case management and a pathway to a more humane and responsive system of family justice.



2.0 Legal and Policy Framework for ADR in Uganda

- ❖ The framework governing ADR in Uganda is firmly anchored in the Constitution of the Republic of Uganda, 1995, supported by the National Alternative Dispute Resolution Policy, 2024, statutory instruments, Judiciary policy instruments and Uganda's international and regional obligations.

- ❖ **The Constitution**

- ❖ Article 126 of the Constitution provides for exercise of judicial power as follows-

“(1) Judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people.

(2) In adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles—

- (a) justice shall be done to all irrespective of their social or economic status;*
- (b) justice shall not be delayed;*
- (c) adequate compensation shall be awarded to victims of wrongs;*
- (d) reconciliation between parties shall be promoted; and*
- (e) substantive justice shall be administered without undue regard to technicalities.”*



2.0 Legal and Policy Framework for ADR in Uganda cont...

- ❖ The Constitution expressly mandates courts to avoid delays and technicalities in administration of justice and promote reconciliation between parties. These directives are of particular significance in the administration of family justice, where disputes frequently arise within ongoing relationships and where negotiated, dialogue-based outcomes reached without delay are often more appropriate and sustainable than adversarial determinations.
- ❖ **The National Alternative Dispute Resolution Policy, 2024** sets out the policy framework for ADR for Uganda. It is hoped that the Policy will soon be operationalised through enactment of an Act of Parliament to give the Policy a force of law.
- ❖ **The Judicature (Mediation) Rules, 2013** (under review) provide the procedural foundation for court-annexed mediation, establishing mediation as a structured, principled and rights-respecting process within the formal justice system. The Rules emphasise the core tenets of mediation, including voluntariness, confidentiality, neutrality and party self-determination.



2.0. Legal and Policy Framework for ADR in Uganda cont...

- ❖ **The Judiciary Strategic Plan VI (2025/26–2029/30)** identifies ADR as a key mechanism for enhancing access to justice, improving case management and reducing court backlog.
- ❖ **The Judiciary's Alternative Justice Systems (AJS) Strategy**, which situates ADR within a broader range of justice delivery mechanisms. The AJS Strategy draws normative support from several sources, including the Constitution's recognition of cultural and customary values in the administration of justice, Uganda's obligations under international and regional human rights instruments and global development frameworks such as Sustainable Development Goal 16.3, which calls for the promotion of the rule of law and equal access to justice for all.
- ❖ **The National Development Plan IV (2025/26–2029/30)** expressly advocates for the strengthening of informal and alternative justice processes as part of a people-centred approach to justice, law and order; to support the formal courts.



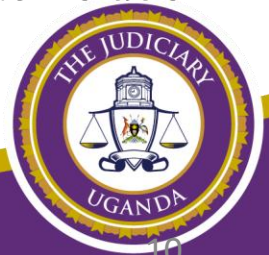
2.0. Legal and Policy Framework for ADR in Uganda cont...

- ❖ Taken together, this legal and policy framework affirms that ADR in Uganda is constitutionally grounded, legally regulated and institutionally endorsed. Within the context of family justice, ADR emerges not merely as a tool for efficiency, but as a principled mechanism for delivering justice that is timely, accessible, humane and responsive to the lived realities of families and children.



2.1 Types of ADR

- ❖ The common types of ADR are Negotiation, Mediation, Conciliation, Arbitration, Neutral evaluation/expert determination and Minitrials.
- ❖ **Negotiation** is a direct discussion between parties, sometimes with lawyers, aiming for a mutual agreement without a third party.
- ❖ **Mediation** is where a neutral mediator helps facilitate communication and guides parties toward a voluntary, consensual settlement, but does not impose a decision.
- ❖ **Conciliation** is similar to mediation, but the conciliator might suggest potential solutions, playing a slightly more active role in proposing agreements.
- ❖ **Arbitration** is where a neutral arbitrator or panel hears evidence and makes a binding decision, an “award”, similar to a court ruling but usually faster and less formal.
- ❖ **Neutral Evaluation/Expert Determination** is where a neutral expert provides an assessment or opinion on the merits of the case, helping parties gauge their positions.
- ❖ **Minitrials** are a structured, abbreviated version of a trial where lawyers present cases to senior executives and a neutral advisor, aiming for settlement. This is often used for complex corporate, patent or contract disputes with the objective of facilitating informed, direct settlement negotiations by showcasing the strengths and weaknesses of each side’s position.



2.2 Why Mediation is the preferred mode of ADR in Family Justice

Mediation is the preferred mode of ADR in Family Justice because of the following reasons-

- ❖ **Empowerment and control:** Unlike court hearings where a judge imposes a decision, mediation allows parties to directly negotiate, providing greater control over the outcome.
- ❖ **Confidentiality:** Proceedings are private, allowing for open, honest and safe discussions, unlike public court records.
- ❖ **Child-focused outcomes-**Mediation helps parents prioritise the needs of their children and understand the impact of divorce, promoting co-parenting rather than further conflict.
- ❖ **Reduced cost and time:** Mediation is generally less expensive and faster than traditional, long-drawn-out litigation and arbitration.
- ❖ **Preserving relationships:** It promotes cooperation, which is essential for maintaining relationships between parties to a dispute.
- ❖ **Flexibility and customisation:** Solutions can be tailored to the specific, unique circumstances of the family rather than adhering to rigid legal precedents.



3.0 Early diversion of family disputes to ADR

- ❖ Early diversion of family disputes to ADR is a critical pillar of effective family justice. It prevents the entrenchment of adversarial positions, reduces emotional and financial exhaustion and enhances the prospects of sustainable dispute resolution.
- ❖ In family matters, where relationships often continue long after legal disputes are concluded, early intervention through ADR is not merely desirable, but essential.
- ❖ Judicial Officers occupy a central gatekeeping role in this process- careful screening at the point of filing, mention, summons for directions, scheduling and pre-trial conferencing, help to identify disputes suitable for early referral to mediation.
- ❖ Experience in the Family Division indicates that early diversion is effective in a considerable number of cases filed at the Division relating to custody of children and access to children disputes, maintenance claims, succession and estate administration conflicts, divorce and matrimonial property matters.



3.0 Early diversion of family cases to ADR conti...

- ❖ Cases are referred to mediation at any stage but mostly after completing of filing of pleadings and at the point of giving directions where parties are sensitized about mediation, the benefits of mediation and recognition or endorsement of mediation agreements.
- ❖ Encouraging ADR within family courts promotes a more harmonious, efficient and child-sensitive approach to dispute resolution.
- ❖ By fostering dialogue rather than confrontation, ADR reduces emotional stress, expedites dispute resolution and lowers the financial burden on both litigants and the justice system.
- ❖ These benefits are especially significant in family disputes, where prolonged litigation often exacerbates hostility and undermines family cohesion.



4.0 Identification of family disputes suitable for ADR.

- ❖ The effective use of ADR in family justice depends not only on its availability, but on the careful identification of disputes that are amenable to consensual resolution.
- ❖ Family disputes are not standardised and judicial discretion plays a central role in determining which matters are best resolved through ADR and which require formal adjudication.

Guiding principles for determining cases appropriate for ADR-

- ❖ The preservation of the family unit. This is a central objective of family justice and except in circumstances where there is a real risk of significant harm, family disputes should be resolved through ADR. The justice system must therefore be cautious not to exacerbate conflict in ways that undermine children's welfare or destroy functional family relationships.
- ❖ Secondly, family disputes should ideally be resolved outside the courtroom. Judicial intervention should be reserved for situations where parties are genuinely unable or unwilling to make decisions that advance their interests and those of children if involved.



4.0 Identification of family disputes suitable for ADR cont...

- ❖ Thirdly, where appropriate and legally permissible, children of sufficient age and maturity, if affected by the dispute should be afforded an opportunity to have their voices heard in decisions affecting them. ADR processes, particularly mediation, provides a more flexible and child-sensitive environment for considering children's views than formal litigation, while still safeguarding their protection and dignity.
- ❖ Finally, where ADR is attempted but proves unsuccessful, or where disputes escalate to a level that renders consensual resolution impracticable, such matters should proceed to court through quickened hearings. Prolonged litigation in high-conflict cases compounds harm to children, deepens parental resentment in divorce cases and deepens resentment among beneficiaries in succession disputes.
- ❖ Guided by these principles, a significant proportion of family disputes are well suited to resolution through ADR. We believe that 30% of all cases filed at the Division should be resolved through mediation.



4.0 Identification of family disputes suitable for ADR cont...

Note, not all family disputes are appropriate for ADR-

- ❖ Cases involving severe domestic violence, coercion, intimidation or extreme power imbalance require careful screening and, in some instances, exclusion from mediation. In such circumstances, the safety and protection of vulnerable parties, must take precedence over consensual resolution.
- ❖ Where ADR is considered in cases involving vulnerability, appropriate safeguards must be employed, including separate sessions, involvement of professional support persons or alternative protective measures.
- ❖ The identification of family disputes suitable for ADR is a critical judicial function that shapes the effectiveness of family justice. When exercised thoughtfully and early, appropriate referral to ADR reduces conflict, enhances compliance, protects children and preserves family relationships.
- ❖ Conversely, reserving formal adjudication for matters that truly require judicial determination ensures that court resources are deployed where they are most needed.



4.1 Snapshot of performance of mediation at the Division in the Financial Year 2024-2025

No	Mediation Cases	Number of cases
1.	Registered Cases	1,119
2.	Successful Mediations	288
3.	Partial Success	105
4.	Failed Mediations	559
5.	Pending Mediation as at 30 th June	167



4.1 Snapshot of performance of mediation at the Division in the Financial Year 2024-2025 conti...

- ❖ This in our view is a good start and we are aware that the performance can be improved if the challenges so far identified as highlighted later in this presentation are addressed.



5.0 ADR as a tool for case management and judicial wellness

- ❖ The theme of this year's Conference is "Judicial Wellness: A Tool for Effective Case Management". This theme is timely and resonates very well with Family Justice.
- ❖ The administration of family justice places exceptional demands on judicial officers and legal practitioners. Family disputes are rarely confined to legal questions alone; they are emotionally charged, deeply personal and often involve ongoing relationships that cannot simply be severed by judicial decree.
- ❖ Judicial officers handling family matters routinely confront heightened emotions, entrenched hostility and repeated non-compliance with court orders. The cumulative effect of these pressures has significant implications for judicial wellness and effective case management.
- ❖ One of the defining challenges of the family justice system is delay. Delay blights lives, particularly in matters involving children. Delay is not only detrimental to children; it is emotionally exhausting for parents, guardians, beneficiaries of estates and judicial officers alike.
- ❖ Protracted litigation fuels repeated interlocutory applications, enforcement proceedings and appeals, contributing to docket congestion and judicial fatigue. The constitutional imperative under Article 126 (2) (b) that justice shall not be delayed therefore assumes particular urgency in family justice.



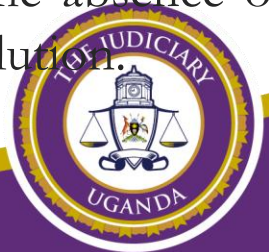
5.0 ADR as a tool for case management and judicial wellness

cont...

- ❖ ADR directly responds to this challenge. Court-annexed mediation, governed by the Judicature (Mediation) Rules, 2013, is designed to deliver timely outcomes through structured but flexible processes. By resolving disputes early and efficiently, ADR reduces the accumulation of pending matters, allows judicial officers to focus on cases that truly require adjudication and mitigates the emotional strain associated with prolonged proceedings.
- ❖ ADR offers a fundamentally different approach. Through mediation, parties engage in dialogue aimed at understanding each other's interests rather than assigning blame. Solutions are reached consensually, often more quickly and with greater durability, reducing the need for repeated judicial intervention.

Several attributes of mediation make it particularly effective in advancing both case management and judicial wellness:

- ❖ **Confidentiality:** Rule 18(1) and (3) of the Judicature (Mediation) Rules, 2013. Statements made in mediation are not admissible in subsequent trials, fostering openness and reducing adversarial posturing.
- ❖ **Informality and flexibility.** Mediation dispenses with rigid procedural formalism. The absence of excessive documentation and technicalities lowers barriers to access and accelerates resolution.



5.0 ADR as a tool for case management and judicial wellness cont...

- ❖ **Self-determination:** Mediation is founded on party autonomy. The mediator facilitates dialogue but does not impose outcomes. Because parties generate their own solutions, compliance is often higher and enforcement disputes fewer- avoids numerous applications and increasing judicial workload.
- ❖ **Time and cost efficiency:** Mediation is significantly more time-effective and cost-efficient than litigation. Court-annexed mediation offers meaningful access to justice for litigants who would otherwise be excluded by cost.
- ❖ **Finality and reduced appeals:** Rule 17 of the Mediation Rules, mediated settlements are generally not appealable except as part of a general appeal at the conclusion of the civil action in respect of that mediation.
- ❖ **Preservation of relationships/restoration of family relationships.**
- ❖ By diverting highly emotional disputes into structured, problem-solving forums, ADR reduces the psychological burden placed on judicial officers. It limits repeated exposure to hostile litigation, alleviates docket pressure and enhances professional fulfilment by facilitating durable and humane outcomes. ADR therefore operates not merely as a procedural alternative, but as a critical support mechanism for judicial wellness.



6.0 Monitoring, Reporting and Oversight of ADR cases

- ❖ Effective ADR does not end at referral. Its success depends on deliberate monitoring, structured reporting and continuous judicial oversight. While mediators facilitate the mediation process, ultimate responsibility for ensuring that ADR functions efficiently, lawfully and within prescribed timelines rests with the court.
- ❖ Referral to mediation does not mark the conclusion of judicial engagement; rather, it signals a shift in the mode of case management. Judicial officers who refer matters to ADR retain supervisory responsibility over those cases. Without active oversight, mediation risks becoming an unmonitored holding process, leaving disputes unresolved and parties in prolonged uncertainty.
- ❖ Good judicial practice requires that, at the point of referral, courts clearly define expectations and retain control of the process. **This includes setting clear timelines consistent with the Judicature (Mediation) Rules; requiring periodic status updates from the mediator or mediation registry; fixing return dates to confirm whether mediation has concluded, failed or lawfully requires extension; and ensuring that any extension granted strictly complies with the limits prescribed by the Rules.**
- ❖ Oversight ensures that cases don not remain in limbo, un resolved through ADR and not returned to court for determination.
- ❖ Mediation Rules recognise the importance of monitoring and evaluation-Rules 21 and 22 establish the Monitoring and Evaluation Committee to evaluate the performance of mediation and make recommendations for improved implementation.



6.0 Monitoring, Reporting and Oversight of ADR cases cont...

- ❖ Courts must maintain functional mediation registries, supported by reliable tracking and reporting mechanisms. Accurate records of referrals, commencement dates, progress updates and outcomes are essential for effective oversight and informed judicial decision-making. Registrars play a central coordinating role in ADR processes, linking judges, mediators and litigants to ensure scheduling, compliance with timelines and proper documentation of outcomes.
- ❖ Mediators must uphold ethical standards of neutrality, confidentiality and professionalism.
- ❖ As a best practice in the Family Division, every Monday morning during Judicial Officers' meetings, the Division receives a status report on the performance of Mediators during the preceding week which helps to track performance, identify challenges and propose solutions.
- ❖ The Division also operates a Mediation Committee composed of a Judge, Registrar, Magistrate, a Mediator and support staff dedicated to strengthening effectiveness and accountability through oversight of the mediation function.
- ❖ Ultimately, the success of ADR depends on judicial stewardship. Judges are not passive referral agents; they are custodians of the process. By insisting on accountability and intervening when necessary, judicial officers ensure that ADR fulfils its promise as a tool for timely, humane and effective justice.



7.0 Timelines and prevention of ADR backlog

- ❖ The effectiveness of ADR in family justice is inextricably linked to its timeliness. ADR must remain both efficient and flexible if it is to serve its intended purpose as an alternative to protracted litigation. When mediation becomes delayed, poorly monitored or allowed to drift beyond prescribed timelines, it risks replicating the very inefficiencies it was designed to cure. At that point, justice is not merely delayed; it is diminished.
- ❖ **Rule 8 of the Judicature (Mediation) Rules, 2013** provides clear timelines for mediation- 60 days and extension for 10 days where there is realistic likelihood of settlement. Safeguards against stagnation.
- ❖ Judicial officers should monitor cases they refer to mediation to ensure timely progression and conclusion.
- ❖ Practical measures include fixing a return date at referral, requiring interim updates from the mediator/ mediation registry and declining extensions unless there is demonstrable progress and a clear prospect of settlement within the lawful window.
- ❖ Where mediation stalls or parties act in bad faith, the matter should be promptly recalled to court for appropriate directions. ADR is intended to reduce backlog, not to create a parallel system of delay.
- ❖ Experience within the Family Division demonstrates that mediation is most effective when supported by adequate staffing of mediation registries, adequate funding, continuous training and accreditation of mediators, dedicated and appropriate mediation spaces/mediation chambers, clear cause lists and scheduling structures, proper service of mediation notices and active collaboration between judges, registrars and mediators.
- ❖ Flexibility is sometimes necessary in family matters, but flexibility must not be confused with laxity. Judicial discipline in enforcing timelines ensures that ADR remains credible, efficient and responsive to the needs of families.



8.0 Leadership Support to Foster Seamless Linkage Between ADR and Court Processes and Sharing Best Practices

- ❖ Judicial leadership is central to the success and sustainability of ADR in family justice. ADR does not operate in a vacuum; it thrives where there is clear institutional commitment, consistent supervision, adequate resourcing and a shared culture that values consensual dispute resolution.
- ❖ The Family Division is fully committed to mediation. The Division is making strides in the use of ADR because of a clear institutional commitment. The Judges at the Division, spearheaded by the Head of Division are fully committed to making ADR work and as a result, they are always innovating on how to improve the performance of mediation.
- ❖ At the Family Division, the leadership has embedded ADR within routine court operations and best practices include-
 - Integration of mediation reporting into Judicial Officers' weekly meetings to reinforce accountability, ensure visibility of ADR outcomes and allow early identification of stalled matters.
 - Designation of a Registrar to monitor and coordinate mediation, act as a link between the litigants, the Judges and mediators and prepare mediation reports.



8.0 Leadership Support to Foster Seamless Linkage Between ADR and Court Processes and Sharing Best Practices conti...

- ❖ **Family Division Mediation Committee** that supports monitoring and continuous improvement of the mediation function.
- ❖ **Institutionalisation of quarterly Case Settlement Fortnights.** The dedication of two weeks every quarter to mediation is also used as a sensitization tool to encourage Advocates and litigants to embrace mediation as an effective dispute resolution mechanism.
- ❖ **Registration of telephone contacts of Advocates and parties** at the point of filing pleadings. This is because mediation is party-driven and to ensure that mediation communication reaches the parties directly.
- ❖ **Attaching the Mediators to Judges.** This was done for easy allocation of work, monitoring and to ensure that the staff (clerk, process server and secretary) attached to the Judge also support the mediator, in view of staffing gap.



8.0 Leadership Support to Foster Seamless Linkage Between ADR and Court Processes and Sharing Best Practices conti...

- ❖ Endorsing mediation agreements signed by the parties on the same day. Consents are presented to a Judge on the same day for consideration and endorsement, as appropriate. – Ensures justice without delay and avoids change of agreed and negotiated position.
- ❖ Planned introduction of counselling or therapeutic support alongside mediation to improve outcomes in cases involving trauma, substance abuse, mental health challenges or child welfare concerns.

Challenges

Despite the notable progress made by the Family Division on the use of mediation, a few challenges remain and these include-

- ❖ **A persistent constraint of inadequate mediation space.** Only two chambers are available at the Division prompting mediators to work in shifts. The Judiciary should therefore prioritize the establishment of dedicated mediation centers, not only within the Family Division but across other divisions.
- ❖ **Inadequate financial resources.** The target of the Division is to resolve 30% of the cases filed at the Division through mediation. To achieve this, there is need for funds to pay facilitation to mediators as prescribed by the Circular Instruction issued by the Chief Justice, to pay for transport of process servers and in some cases for locus visits. The funds received every quarter are not sufficient to facilitate the mediation.



8.0 Leadership Support to Foster Seamless Linkage Between ADR and Court Processes and Sharing Best Practices contin...

- ❖ **Resistance to mediation among some members of the legal profession** remains a challenge. Continuous engagement with the Uganda Law Society and other stakeholders is essential to promote a culture in which settlement is viewed as a legitimate and professionally responsible outcome.
- ❖ Capacity building remains essential. While progress has been made, further training is required for judicial officers, mediators and Advocates. The Judicial Training Institute is well placed to strengthen continuing professional development and to standardise good practice across the courts.



9.0 Conclusion

- ❖ Careful identification of cases suitable for mediation at an early stage, adequate funding, adequate infrastructure, leadership, institutional support and effective coordination/monitoring are the backbone of effective ADR. Where judicial leadership is proactive, infrastructure adequate, mediators empowered and stakeholders engaged, ADR flourishes. The experience of the Family Division illustrates that with deliberate leadership and sustained institutional commitment, ADR can move beyond policy aspiration to become a practical, reliable and humane pillar of family justice and ultimately a tool of case management and foster judicial wellness.



9.0 Conclusion

