

**REPORT OF THE SECTORAL COMMITTEE OF LEGAL AND
PARLIAMENTARY AFFAIRS ON THE ARBITRATION AND CONCILIATION
(AMENDMENT) BILL, 2024**

OFFICE OF THE CLERK TO PARLIAMENT
PARLIAMENT BUILDING
KAMPALA-UGANDA

OCTOBER, 2024

1.0. INTRODUCTION

On 24th September 2024, the Arbitration and Conciliation (Amendment) Bill, 2024 was read for the first time and pursuant to Rule 129 (1) of the Rules of Procedure of Parliament of Uganda and the same was referred to the Sectoral Committee on Legal and Parliamentary Affairs for scrutiny. In accordance with Rule 129 (2) of the Rules of Procedure of Parliament of Uganda, the Committee has examined the Bill and hereby presents its report.

2.0. PURPOSE OF THE BILL

The intention of the Bill is to amend the Arbitration and Conciliation Act, Cap 4 to-

- (a) mainstream the functions of the Centre for Arbitration and Dispute Resolution established under the Act into the Ministry responsible for justice; and
- (b) abolish the Centre for Arbitration and Dispute Resolution as a corporate entity and re-establish it as a department in the Ministry.

The policy of the Bill is to give effect to the Government policy for Rationalisation of Government Agencies and public Expenditure (RAPEX) which was adopted by the Cabinet on 22nd February, 2021. The RAPEX policy is premised on the need to merge, mainstream and rationalize Government agencies, commissions, authorities and public expenditure in order to relieve the Government of the financial drain on its resources and the burden of wasteful administration and expenditure.

3.0. METHODOLOGY

In the process of analyzing the Bill, the Committee;

- (a) held discussions with the following stakeholders;-
 - i. Ministry of Justice and Constitutional Affairs;
 - ii. Law Development Centre;
 - iii. Mr. Jimmy M. Muyanja, the Executive Director, Centre for Arbitration and Dispute Resolution.

- (b) reviewed the following relevant documents;
 - i. The Constitution of Republic of the Uganda, 1995;
 - ii. the Arbitration and Conciliation Act, Cap. 4;
 - iii. Written submission by Ministry of Justice and Constitutional;
 - iv. Written submission by, Centre for Arbitration and Dispute Resolution; and
 - v. Written submission by Law Development Centre.

4.0. OVERVIEW OF THE BILL

The Bill makes the following proposals-

- (1) abolishes the Centre for Arbitration and Dispute Resolution as a corporate entity and re-establish it as a department in the Ministry responsible for justice; **see clause 3 and 4**
- (2) transfers the mandates and functions of the Centre for Arbitration and Dispute Resolution to Ministry of Justice and Constitutional Affairs; **see clause 5**
- (3) abolishes the governing body of the centre; **see clause 6**
- (4) abolishes the secretariat of the council; **see clause 7**
- (5) removes all financial provisions relating to the council; **see clauses 8 to 19.**
- (6) transfers all the property, assets, rights, obligations, and liabilities of the Centre for Arbitration and Dispute Resolution to the Ministry of justice; **see clause 20**
- (7) Discontinues proceedings commenced by or against the Centre for Arbitration and Dispute Resolution and continues them against the Attorney General. **See clause 20**
- (8) Provides for payment of terminal benefits to members of the Council and staff of the Centre for Arbitration and Dispute Resolution serving immediately before the commencement of the Act; **see clause 20**

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- (9) Bars the payment of compensation to any member of the Council for loss of office resulting from the abolition of the Council by this Act. **See clause 20**

5.0. OVERVIEW OF THE CENTRE FOR ARBITRATION AND DISPUTE RESOLUTION

The Centre for Arbitration and Dispute Resolution (**CADER**) is a statutory body established under section 67 of the Arbitration and Conciliation Act, Cap. 4. The Centre is a body corporate with perpetual succession and a common seal.

CADER was granted regulatory functions under section 68 to, among others, appoint arbitrators where parties fail to do so and to-

- (a) make appropriate rules, administrative procedure and forms for effective performance of the arbitration, conciliation or alternative dispute resolution process;
- (b) establish and enforce a code of ethics for arbitrators, conciliators, neutrals and experts;
- (c) qualify and accredit arbitrators, conciliators and experts;
- (d) provide administrative services and other technical services in aid of arbitration, conciliation and alternative dispute resolution;
- (e) establish appropriate qualifications for institutions, bodies and persons eligible for appointment;
- (f) establish a comprehensive roster of competent and qualified arbitrators, conciliators and experts;
- (g) facilitate certification, registration and authentication of arbitration awards and conciliation settlements;
- (h) establish and administer a schedule of fees for arbitrators;
- (i) avail skills, training and promote the use of alternative dispute resolution methods for stakeholders; and
- (j) do all other acts as are required, necessary or conducive to the proper implementation of the objectives of the Act

As required in section 69, CADER is managed by a governing council which is responsible for formulating and implementing the policy for the Centre. The council consists of-

- (a) the chairperson appointed by the Minister on such terms and conditions as the Minister may determine;
- (b) the executive director of the centre appointed by the council on such terms and conditions as the council may determine;

- (c) the president of the Uganda commercial court;
- (d) three representatives appointed by the Minister from the existing private sector organisations or their representatives;
- (e) a representative of the Uganda Law Society.

The members of the council, other than the executive director, hold office for a term of three years and are eligible for reappointment. The Centre has a secretariat consisting of an executive director and such other officers and staff as the council may from time to time appoint.

CADER receives funding from the Consolidated Fund and was empowered to receive loans, grants, donations and gifts from sources within and outside Uganda. CADER was empowered to borrow and invest excess funds which the Centre does not desire, as determined by the Centre with the prior approval of the council.

CADER is a self-accounting body and deals directly with the Ministry responsible for finance on matters concerning its finances. The funds of the Centre are administered and controlled by the Executive Director who is also the accounting officer in accordance with the Public Finance and Management Act.

The financial year of the Centre is the same as that of the Government and the Centre is required to, before the commencement of each financial year, submit to the Minister responsible for finance, estimates of income and expenditure of the Centre for the ensuing financial year.

CADER is required, through the Minister, to lay before Parliament, among others, any program prepared by the executive director of the Centre and approved by the Council and any proposals for reform formulated by the Centre pursuant to that programme.

5.0. GENERAL ANALYSIS, OBSERVATION, FINDINGS AND RECOMMENDATIONS

This part considers the provisions being amended, the proposed amendments made to the provision, the effect of the amendments, including the provisions' legality, effect and effectiveness in light of other provisions of any other law, existing public policy if any, Court decisions and the mischief it intends to cure. The analysis is classified in thematic areas the Bill proposes to amend, after which a recommendation is stated.

5.1. **Abolition of the CADER and mainstreaming it back into the Ministry of Justice**

Clauses 3, 4 and 5 propose to abolish the Centre for Arbitration and Dispute Resolution as a corporate entity and re-establish it in the Ministry of Justice as a department. The effect of that amendment is to dissolve the Centre as a legal entity and re-establish it in and transfer its functions to the Ministry of Justice.

The stakeholders who opposed the Bill raised the following issues-

- (a) Dissolving CADER and integrating it into the Ministry of Justice will erode the impartiality of CADER;
- (b) Dissolving CADER will impact negatively on service delivery since the Ministry is already burdened by various other responsibilities;
- (c) Loss of employment opportunities for the staff, Executive Director and council members due to the dissolution of CADER;

On the other hand, those who supported the proposal to mainstream CADER back into the Ministry point at-

- (a) relieving Government of the financial drain on its resources and the burden of wasteful administration and expenditure;
- (b) facilitating efficient and effective service delivery by clearly delineating the mandates and functions of the Ministry in respect to the Centre for Arbitration and Dispute Resolution, thereby avoiding duplication of mandates and functions;
- (c) promoting coordinated administrative arrangements, policies, and procedures for—
 - (i) ensuring the efficient and successful management, financial accounting and budgetary discipline of the Centre for Arbitration and Dispute Resolution;
 - (ii) enabling the Government to play its proper role more effectively; and
 - (iii) enforcing accountability;
- (d) eliminating bloated structures and functional ambiguities.

The Committee supports the Bill for the following reasons-

1. Lack of a Governing Council

Whereas Section 69 of the Arbitration and Conciliation Act requires CADER to have a Governing council, there is no Council in place currently and none has existed before. The Committee also found out that no formal structures have been put in place to manage CADER. This has affected the proper functioning of the Centre in discharging its mandate under the Act.

2. Nature of the functions of CADER

The functions of the Centre are regulatory in nature as opposed to being an arbitration centre. These regulatory functions should therefore be performed by the Ministry as opposed to the Centre. Indeed, when CADER tried taking on other mandate, by appointing arbitrators, Court rejected such attempts and directed CADER to seek the authorisation of the Minister to perform such functions. The Committee's attention was drawn to the case of ***International development consultants limited Vs Jimmy Muyanja, the centre for arbitration & Dispute resolution (Cader) and Rajesh dewan High Court Miscellaneous Cause No.133 Of 2018*** wherein court found that CADER was not designated by the Minister as an appointing authority and could not therefore appoint arbitrators. CADER was designed to perform purely regulatory functions which are better placed in the Ministry of Justice.


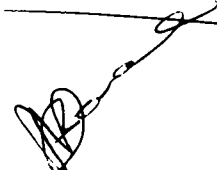



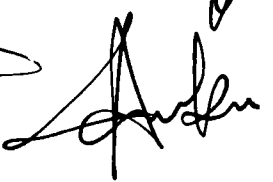


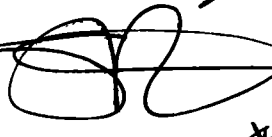
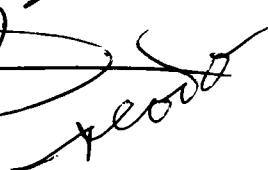
3. Lack of funding from Government

Whereas the Arbitration and Conciliation Act empowered Government to provide funds to CADER from the consolidated Fund, Government has not done so for the last 24 years. CADER has been receiving donor support from USAID, EU/ Democratic Governance Fund, JLOS and other sources but this has all been stopped by the donors, thereby exposing the CADER to financial constraints. The Committee opines that if CADER is mainstreamed back to the Ministry of Justice, Government will provide funding and manage the affairs of CADER in a prudent manner.

4. Loss of status as sole arbitration Centre

CADER is currently not the sole arbitration centre in Uganda since Government has approved the establishment of other arbitration centres such as the International Centre of Arbitration and Mediation in Kampala (ICAMEK.) ICAMEK was recognised by the Ministry of Justice as an appointing authority and was issued with an instrument to appoint Arbitrators and Conciliators by the Minister on 23rd April 2019. This means that Government

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has opened the space for the introduction and existence of other arbitration centres in order to give those people who seek arbitration services more options thereby reducing the reliance on CADER and making it redundant. Mainstreaming CADER back to the Ministry will enable CADER to perform those very functions that it was originally designed to do, being a regulator of arbitration services in Uganda.

5. Lack of Executive Director and support staff

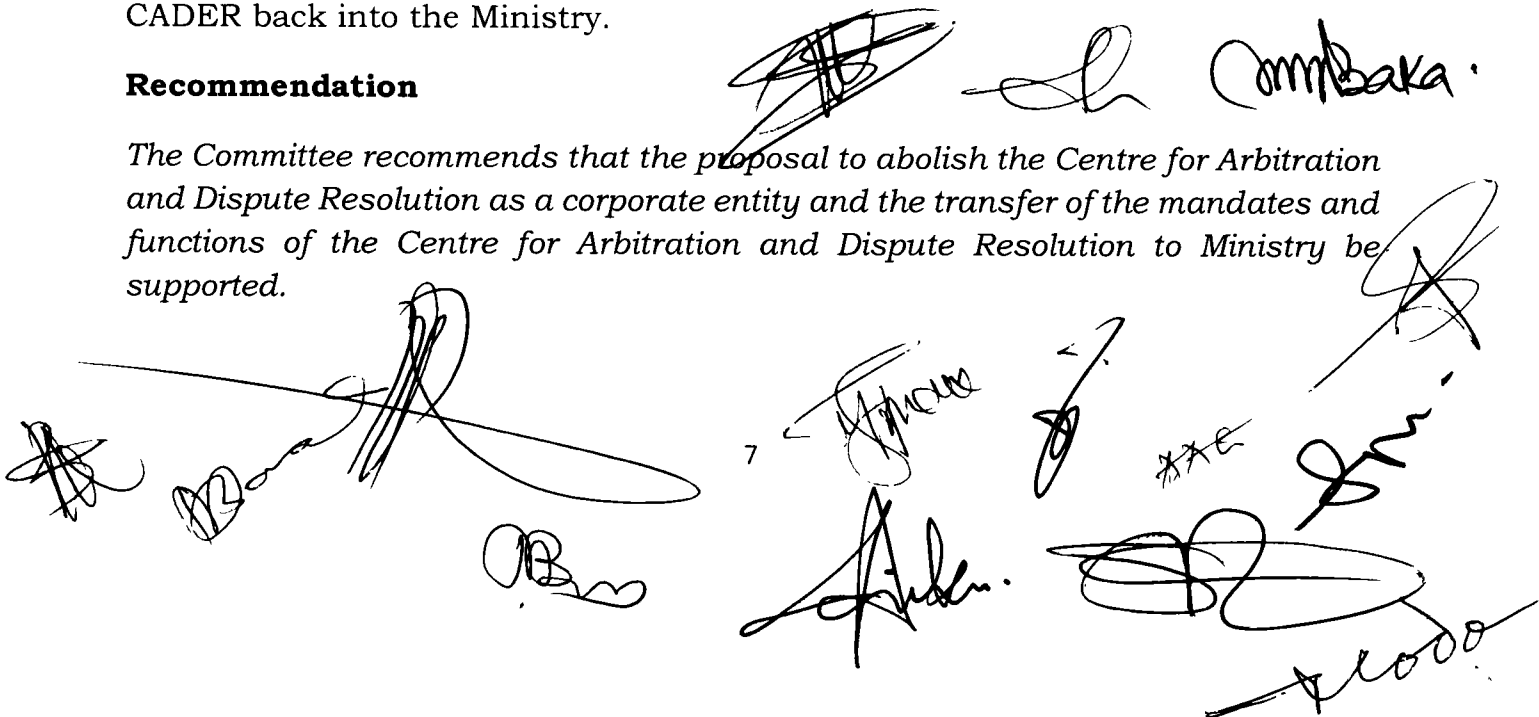
Whereas CADER is empowered under the Arbitration and Conciliation Act to have an Executive Director and other support staff, the Committee found that currently, CADER is run by skeletal staff of three members, the Executive Director, an accountant and a receptionist/clerk, whose legal status is questionable since their contracts expired. Indeed, the Committee was informed that the Executive Director, who has been in the position since inception in 2000, does not have a valid instrument of appointment due to lack of a Governing Council.

6. Mal-administration of the affairs of CADER

The Affairs of CADER are suffering a great deal of mal-administration arising from structural and personnel challenges. CADER has no permanent home and if a person needs services, they must get in touch with the Executive director personally. Secondly, whereas CADER is supposed to run prudently in accordance with the Public Finance Management Act, the affairs of CADER are not. For instance, the Committee was informed that all fees retained by CADER for services provided by it are not deposited on the consolidated fund and are instead utilised at source without appropriation. It should be noted that CADER retains 25% of the arbitration fees for its use. These fees should have been deposited on the consolidated fund and used to further develop arbitration services in Uganda. The personalization of the affairs of CADER in the person of the Executive Director can only be stopped by mainstreaming the affairs of CADER back into the Ministry.

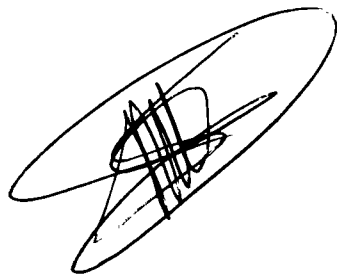
Recommendation

The Committee recommends that the proposal to abolish the Centre for Arbitration and Dispute Resolution as a corporate entity and the transfer of the mandates and functions of the Centre for Arbitration and Dispute Resolution to Ministry be supported.

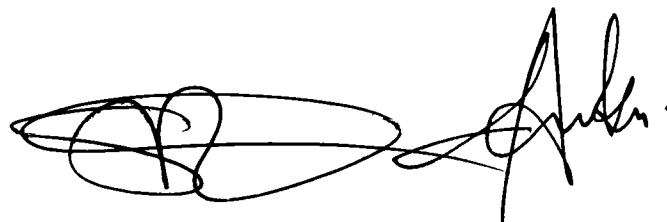
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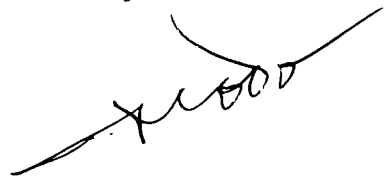
6.0 CONCLUSION

The Committee recommends that the Bill be passed into law subject to the attached proposed amendments.

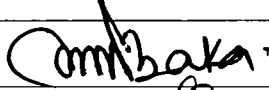

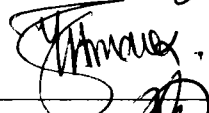

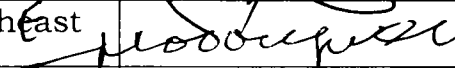

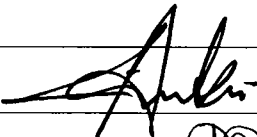
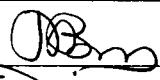

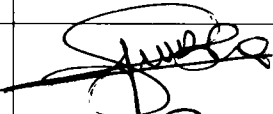



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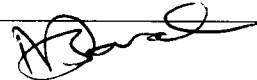





**SIGNATURE SHEET FOR THE REPORT OF THE COMMITTEE OF LEGAL
AND PARLIAMENTARY AFFAIRS ON THE ARBITRATION AND
CONCILIATION (AMENDMENT) BILL, 2024**

No	Name	Constituency	SIGNATURE
1	Hon. Baka Mugabi	Bukooli North	
2	Hon. Teira John	Bugabula North	
3	Hon. Nkwasiibwe Zinkurature Henry	Ruhaama	
4	Hon. Werikhe Peter Christopher	Bubulo West	
5	Hon. Fox Odoi Oywelowo	West Budama North East	
6	Hon. Lokkii Peter Abrahams	Jie County	
7	Hon. Pamela Nasiyo Kamugo	DWR-Budaka District	
8	Hon. Kamusiime Caroline	DWR-Rukiga	
9	Hon. Achayo Juliet Lodou	Ngora	
10	Hon. Okiror Bosco	Usuk	
11	Hon. Oseku Richard Oribo	Kibale	
12	Hon. Okia Joanne Aniku	DWR-Madi Okollo	
13	Hon. Kisembo Neoline	DWR, Kibaale	
14	Hon. Silwany Solomon	Bukooli Central	
15	Hon. Musinguzi Yona	Ntungamo Municipality	
16	Hon. Remegio Achia	Pian	
17	Hon. Malende Shamim	DWR Kampala	
18	Hon. Lubega Medard Ssegona	Busiro East	
19	Hon. Ssekitoleko Robert	Bamunanika County	



20	Hon. Patrick Nsanja	Ntenjeru South	
21	Hon. Adeke Ann Ebaju	Soroti City District	AAE
22	Hon. Alum Santa Sandra O	DWR Oyam	
23	Hon. Asuman Basalirwa	Bugiri Municipality	
24	Hon. Niwagaba Wilfred	Ndorwa East	
25	Hon. Katuntu Abdu	Bugweri County	
26	Hon Barnabas Tinkasiimire	Buyaga West	
27	Hon Zijjan David Livingstone	Butembe	
28	Hon Lumu Richard Kizito	Mityana South	
29	Hon John Baptist Nambeshe	Manjiya County	
30	Hon Mathias Mpuuga	Nyendo-Mukungwe	
31	Hon Jonathan Odur	Erute South	
32	Hon. Najjuma Sarah	DWR, Nakasekwe	
33	Hon Odoi Bernard	Youth MP, Eastern	
34	Hon Akampurira MbAbazi Prossy	DWR, Rubanda	

**PROPOSED AMENDMENT TO THE ARBITRATION AND CONCILIATION
(AMENDMENT) BILL, 2024**

CLAUSE 5: AMENDMENT OF SECTION 67 OF CAP. 4

Clause 5 is amended in the head note and in the provision, by substituting for the word “Cap.4”, the words “Cap. 5”.

Justification

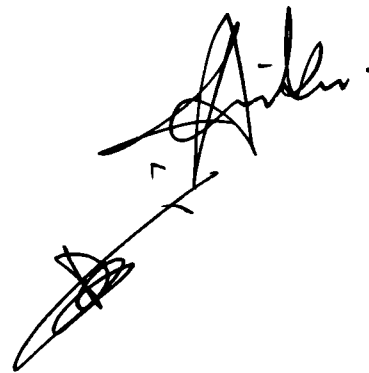
To align the Bill with the Chapter of the Arbitration and Conciliation Act under the revised law of Uganda.

CLAUSE 8: REPEAL OF SECTION 70A OF PRINCIPAL ACT

Clause 8 of the Bill is amended in the head note and in the provision by substituting for the words “section 70A”, the word “section 71” and thereafter, realign the numbering in the Bill with the numbering in the Arbitration and Conciliation Act, Cap 5.

Justification

To align the numbering of the Bill with the numbering of the Arbitration and Conciliation Act Cap 5 as provided under the revised law of Uganda.

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