Kluwer Arbitration Blog

How Did Uganda Miss the Boat in the Latest Arbitration Law Reform?

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A few years ago, the government of Uganda embarked on Rationalization of Government Agencies and Expenditure (RAPEX) Reform to eradicate structural and functional duplications, mandate overlaps, and expenditure deemed uneconomical. As such, over 31 bills have received presidential assent, drawing the curtain on agencies that were either absorbed by the line ministries, merged with others or had their functions transferred to other agencies.

One of the 'casualties' of this scorched-earth approach to reform was the Centre for Arbitration and Dispute Resolution (CADER or the 'Centre'), a creature of the Arbitration and Conciliation Act, Cap. 5. Parliament passed the Arbitration and Conciliation (Amendment) Act, 2024 and in December 2024, the President assented to it. The amended law seeks to mainstream the functions of the CADER into the Ministry responsible for justice. It also abolished the CADER as a corporate entity and re-established it as a department in the Ministry of Justice and Constitutional Affairs (MoJCA) but still to be known as CADER.

Uganda: The Arbitration 'Desert'?

In 1969, seven years after attaining independence, the academic, Taban Lo Liyong, described Uganda as "a literary desert." 56 years after attaining independence from Britain, it would not be hyperbolic to label the East African nation, baptized by Winston Churchill in 1907 as the Pearl of Africa, as "an arbitration desert." Whereas on December 19, 1930, while still a British protectorate, the Governor W. F Gowers enacted the Arbitration Ordinance (No. 29 of 1930), with the advice and consent of the Legislative Council, Uganda's arbitration culture is yet to come of age even by the African country average. Between 1889 when the Arbitration Act was the legal framework governing arbitration in the Uganda protectorate and 2024 when CADER was legislated into oblivion, Uganda has not nurtured a serious arbitral institution. The 1930 Ordinance, for instance, did not speak much to the institutional set up of arbitration in Uganda as it focused on the procedure for submission of 'differences' to arbitration and enforcement of foreign awards in the context of the League of Nations at the time.

Uganda only 'woke up' to have a law relating to domestic arbitration, international commercial arbitration, and enforcement of foreign arbitral awards, to define the law relating to conciliation of disputes and to provide for funding of CADER by the government, at the turn of the millennium—May 2000 to be precise. 25 years later, that Centre, before it could grow organically as a reputable institution and earn credibility and respect, has been mutilated. CADER's death was

imminent. It was not only poorly run and misgoverned but was also crippled by the state in terms of resources and functional malaise.

The abolition of CADER, is therefore, of serious concern because the oldest arbitral institution standing in the country has to now be rebuilt afresh as a department under the justice ministry. At 25 years, CADER was still trying to find its bearing. Let us now turn to the question of whether it was proper to abolish CADER and make it a department in the MoJCA.

Arbitration Under a Ministerial Department: What Next?

Commentary from legal circles that paints a gloomy future of arbitration under this department has largely been premised on its independence and impartiality. That is neither here nor there. Like CADER before it, the department is only going to offer services of administration of arbitration proceedings and manage the process of dispute resolution.

There are valid concerns, however, to do with the fact that an arbitral institution exercises significant powers in arbitration which require decisions to be made and those decisions may potentially affect the character and direction of the arbitration. Depending on what its arbitration rules stipulate, the department may have such powers as deciding, absent consensus or prior agreement of the parties, on the number of arbitrators as well as joinder of parties to the arbitration which may become controversial in case non-signatories to the arbitration agreement are involved. The arbitral institution in administration of the pre-arbitral tribunal processes will also have power to determine whether, in the first place, there exists an arbitration agreement between the parties before proceeding to process the request for arbitration to the next stages. Determining the existence, or lack thereof, of arbitration agreements is not a black-and-white matter all the time. Some case files may have a non-signatory to the contract or arbitration agreement seeking to enjoin a party to the arbitration and the arbitral institution has to make incidental decisions on how to proceed before the arbitrator is appointed.

These incidental decision-making powers, including on serious questions of law such as joinder of parties, before the arbitral tribunal is appointed and handed over the administration, hearing and determination of the dispute between or among the parties, ought to be exercised with abundance of caution, diligence, and utmost independence. The arbitral institution's conduct of this process can make or break the arbitration. Parties' trust and confidence in the process can be built or decimated by the nature in which the arbitral institution handles the preliminary stages or even interprets and applies its own arbitration rules. And yes, how those stages are managed can have a bearing on the outcome of the arbitration, exposing the winning party to a challenge of the arbitral award in the courts of law later.

In exceptional circumstances, such as under the 2021 Arbitration Rules of the International Chamber of Commerce (ICC), the arbitral tribunal's draft award has to be remitted to the Court of Arbitration for a second eye's check for certainty that it meets the ICC standard and is not fraught with glaring errors of omission or commission. The fairness, impartiality, and independence of the arbitral tribunal let alone the arbitration process, in such rare cases, is therefore, joined at the hip with the credibility and professionalism of the arbitral institution administering the process.

Therefore, how the arbitration rules governing the new CADER as a department at the MoJCA are drafted and implemented will be of utmost importance to building or destroying parties' confidence in the Centre.

However, contrary to the public sentiments in some quarters, against having an arbitration centre housed, financed, and managed under a department of government, on account of political interference or perceptions of bias in cases where government is a party, the evidence out there shows that governments, including in Africa, have actually demonstrated capacity to establish, run, and finance arbitral institutions without those institutions losing their credibility or reputation.

Cairo Regional Centre for International Commercial Arbitration (CRCICA), Mauritius International Arbitration Centre (MIAC), Kigali International Arbitration Centre (KIAC), and Lagos Court of Arbitration are some of the leading arbitration centres on the continent. They had a significant role and place of the state in their establishment and even funding.

The task that lies ahead for Uganda's 'new kid' on the arbitration block, the CADER under a department of the justice ministry, will be enormous. It will have to assure parties that like the above-listed centres which had their government's role and active involvement in their funding to run operations, its credibility, impartiality, and independence, will be free of political interference and manipulation. The old fear of 'he who pays the piper calls the tunes' cannot be dismissed.

The whispers on Kampala's streets and law firm corridors about 'cadre judges,' a portrayal of judicial officers whose loyalty is not to the blind goddess of justice and the judicial oath but to the political currents of the day, do little to bolster lawyers' and their clients' confidence that a Centre that relies on state funding for its operations as well as career progress of civil servants working at the Centre, can immunize itself of interference from the usual spoilers of the justice party. Packing the Centre with cadres whose only claim to a job is real or perceived loyalty to the powers-that-be or the political mood of the day, as opposed to competent staff appointed on merit, is a risk that the justice Minister ought to guard against as it will render the Centre another 'CADER' with no serious arbitrations being referred there by parties and their counsel.

What are the Hits and Misses in Arbitration Reform Efforts by Uganda?

The abolition of CADER was long overdue. It had failed to take off and was being abused by self-centered management and crippled by disillusioned state actors who treated CADER with either indifference or utter disdain. The Centre's death was, therefore, a foregone conclusion.

In opening a new chapter, however, the government's approach and execution leaves too much to be desired. To give a ministerial department the lead for arbitration under the new Act was not a bad idea but to house it under such a department risks undermining the broader goals of the reform from the start.

The reform process should have drawn lessons from Rwanda, Egypt, Kenya, Mauritius, South Africa, and Nigeria, some of the leading jurisdictions for arbitration on the continent. In Egypt, Mauritius, Rwanda, and Nigeria, whose leading arbitration centres had a heavy hand of government, the approach was to include the private sector and internationally reputable arbitration centres in the picture. The Mauritius government worked closely with the world's oldest arbitral body (since 1892), the London Court of International Arbitration (LCIA), to found the MIAC. Today, investors bringing business to Uganda are happy to have arbitration agreements with Mauritius as the seat and venue for arbitration. In Rwanda, the private sector was at the heart of establishing the KIAC. In Uganda's latest arbitration law reform, the private sector was a bystander (they could have made presentations to parliament on the bill) but having a hand in the actual establishment of the arbitration centre would have made a difference.

The government of Uganda, for instance, could have partnered with the Uganda National Chamber of Commerce and Industry (UNCCI) and other such industry-specific chambers of commerce, Chartered Institute of Arbitrators (CiArb) or other private sector players that bring experience and credibility to the table. An engagement with the ICC, LCIA, or the UK's CIArb would have seen the government of Uganda create an arbitration centre that is hard to dismiss. The Mauritius government-LCIA approach comes to mind here. The concept of a government-led arbitration centre therefore is a good one but it was conceptualized without fully considering broader and long-term strategic implications, and focusing on quick results under the hailstorm of RAPEX. Government has funds, enforcement mechanisms, the institutional architecture, and ecosystem to support arbitration but done the wrong way, and arbitration centres being reduced to departmental functions of a ministry may negatively affect the quality and frequency of references to the centre.

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