REPUBLIC OF ZAMBIA

THE JUDICIARY

REMARKS

BY THE

HONOURABLE THE CHIEF JUSTICE OF THE REPUBLIC OF ZAMBIA

DR. MUMBA MALILA, SC

AT THE 2025 CEREMONIAL OPENING OF THE HIGH COURT CRIMINAL SESSIONS
HELD AT

SUPREME COURT GROUNDS, LUSAKA
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SALUTATIONS

It is an honour to address you today on the occasion of the opening of the 2025 High Court criminal sessions. I am excited to address you on a subject that beckons our collective attention and reflection; the incorporation of Alternative Dispute Resolution (ADR) into our criminal justice system. This issue has been aptly captured by our theme this year couched as follows "*Exploring and Employing Alternative Dispute Resolution Mechanisms in Criminal Cases as a Tool to Counter Delays in the Delivery of Justice*".

I must say that it is quite fitting that we have in our midst today, His Lordship Chief Justice Alfonse Owiny-Dollo of the Republic of Uganda. For those of you who might not be aware, he is a true ADR champion on our continent and beyond.

Therefore, it is no coincidence that the birth of the Africa Chief Justices' ADR Forum took place under his visionary leadership. In 2024, Kampala, Uganda, served as the cradle of this noble initiative during the inaugural Africa Chief Justices' ADR Summit. Hosted by the Judiciary of the Republic of Uganda in partnership with

Pepperdine University, this historic gathering brought together 12 Court Chief Justices, as well as judges from judiciaries across the continent.

It was at this summit that the collective resolve to establish the Africa Chief Justices' ADR Forum was born with its first Chairperson being Chief Justice Owiny-Dollo. This forum is a platform dedicated to championing the reform and promotion of Alternative Dispute Resolution (ADR) and Alternative Justice Systems (AJS) across Africa. For this pioneering effort, we owe a debt of gratitude to Chief Justice Owiny-Dollo and the Ugandan Judiciary for their instrumental role in planting the seeds of this transformative movement. We are truly grateful and privileged that His Lordship was gracious enough to accept our invitation for him to speak at this ceremony on the important topic on ADR.

With regard to our theme this morning, I promise you, I will not spend the next few minutes lecturing you on what ADR is. I am confident that we are all seasoned professionals, well-versed in the legal lexicon. Besides, I am very confident that there is none amongst our number who is struggling with understanding the concept of ADR.

In the unlikely event that there is one, I urge you to see me in my chamber after this ceremony. You and I may need to have a very candid chat!

On a serious note, allow me to dive straight into the heart of the question of how we can effectively employ ADR in criminal cases to counter one of our justice system's greatest nemeses, delays and case backlog.

Traditionally, ADR has been synonymous with civil litigation. At least for the most part in our jurisdiction. In the civil sphere, ADR has been viewed as a tool to resolve disputes amicably, reduce case backlogs, and foster mutually agreeable outcomes.

The concept of ADR has for a very long time been viewed as alien to our adjudicators sitting in criminal courts and for counsel appearing before them. Critics have sometimes argued that ADR, by moving disputes away from the public eye, undermines the reinforcement of societal values that are traditionally affirmed through the public adjudication of cases. This critique is particularly piercing in the context of our criminal justice system, where the courtroom is seen

as a stage for reaffirming the rule of law and deterring delinquent behaviour.

However, I must be quick to posit that this criticism is based on a misconception of ADR's true potential. I hold the view that far from undermining public norms, ADR can serve as a powerful tool to strengthen them in ways that traditional full-blown criminal trials often cannot. One author, Maggie Grace, sums up the restorative nature of ADR when she puts the point this way:

> "A restorative lens … highlights how ADR emerges as a more satisfactory theory of criminal punishment that serves public justice and embraces failures of the offender and community. Because the problem is conceived of as a violation of relationships, the solution must seek to restore the offender with the victim and his community. ADR actualizes this solution; it connects public norms and community relations by exploiting the community as ultimate "consumer" to produce justice and reframe the relationship between offender and community in both personal and public terms. But ADR also respects traditional notions of blame and responsibility by

addressing the damage done by forcing the offender to take moral responsibility for his actions and make amends, while also attending to environmental factors through rehabilitation and reintegration… the focus is no longer on traditional blame or deterrence, but on using the social history of the crime as a procedural avenue to correct the offender's deficits."[1]

We must not lose sight of the fact that as our societies evolve, so too must our justice systems. I dare say that the time has come to reimagine ADR beyond its conventional boundaries and popularity in the civil justice system. It is time to explore its application in the realm of our criminal justice system.

Criminal justice, as we know, is heavily grounded in principles of retribution, deterrence, rehabilitation, and restitution. Yet, it is often adversarial, most times leaving victims yearning for closure and offenders lacking a genuine opportunity for reintegration. ADR, when thoughtfully applied, has the potential to bridge these gaps by fostering dialogue, understanding and, ultimately, reconciliation.

[1] Maggie T. Grace, **Criminal Alternative Dispute Resolution: Restoring Justice, Respecting Responsibility, and Renewing Public Norms**, Vermont Law Review, Vol. 34:563 at page 582

In July last year, I convened a meeting with criminal justice stakeholders and colleagues from Pepperdine University of California to discuss, among other things, the issue of employing ADR in criminal cases. It was generally acknowledged at that meeting that we currently have a legal framework within which ADR can be employed in the criminal justice system.

As most of you know, the Plea Negotiations and Agreements Act No. 20 of 2010 is our principal legislation. How often we employ this piece of legislation in practice is a question for another day. Also, whether or not the current legal framework is sufficient to fully achieve the deployment of ADR in the criminal justice system is something we can discuss during the course of the day. However, I am certain that the law in its current form gives us the impetus to, at the very least, get started with fully embracing ADR in the context of plea bargaining.

Plea-bargaining and ADR share a common ethos. Both seek resolution outside the traditional adversarial framework. In plea bargaining, the focus is on negotiation and reaching an agreement

that resolves a case efficiently. In ADR, the emphasis is on dialogue, collaboration and mutually beneficial outcomes.

By integrating ADR principles into our plea-bargaining process, we can transform it from a mere procedural tool into a mechanism that prioritizes restoration and healing. Imagine a process where victims are engaged, offenders are held accountable in a meaningful way, and justice is achieved not only in the eyes of the law but also in the hearts of those affected.

Allow me to turn to another critical element of this conversation; the role of sentencing guidelines in encouraging plea bargaining. This, again, was an issue that the July meeting achieved consensus on. While our current legal framework does not allow bargaining regarding sentence, there is still need for us to start critically thinking about developing sentencing guidelines within the current framework. The issue of whether or not we need to amend our laws to include sentence bargaining can be discussed at an appropriate time.

I am aware that in Uganda the Judicature (Plea Bargain) Rules of 2016 provide a plea negotiation framework that includes agreeing on the sentence, or at least in the context of those rules a recommendation of a particular sentence subject to the court's approval[2]. This is one major difference between the Ugandan framework and our own.

While plea bargaining holds great promise, I am sure you will agree with me that the presence of mandatory minimum sentences introduces some challenges. This somewhat rigid sentencing framework, while designed to deter crime and ensure uniformity in punishment, can inadvertently undermine the flexibility that ADR mechanisms like plea bargaining are meant to provide.

Mandatory minimum sentences limit judicial discretion, leaving very little room to consider the unique circumstances of each case or the rehabilitative potential of an offender. However, even with our

[2] The Ugandan Judicature (Plea Bargain) Rules of 2016 rules define plea bargain to mean "the process between an accused person and the prosecution, in which the accused person agrees to plead guilty in exchange for an agreement by the prosecutor to drop one or more charges, reduce a charge to a less serious offence, or recommend a particular sentence subject to approval by court…"

sentencing framework in its current form. We can still interrogate how we can develop guidelines that would assist in plea bargaining. You see, plea bargaining, as a cornerstone of ADR in criminal cases, relies on predictability and fairness. In the absence of robust sentencing guidelines, accused persons often find themselves hesitant to enter plea agreements. Why? Because they are uncertain about the sentence they may receive after a plea agreement. This lack of clarity has the potential to breed mistrust in the plea-bargaining process and creates an uneven playing field.

Consider a situation where an accused person who is charged with murder is offered a plea deal to reduce the charge from murder to manslaughter. While this might seem advantageous, the reality is that such an offer carries little motivational weight when the statute book provides that manslaughter can attract a sentence of up to life imprisonment.

Without clear sentencing guidelines, the accused person will have no drive to accept such a deal as his sentence remains uncertain. At the back of the accused's mind the possibility of a life sentence even after the charge is reduced will still be lingering; justifiably so. In the

circumstances, an accused person is likely to reject such an agreement and try their luck to obtain an acquittal after trial.

Therefore, the efficacy of plea bargaining in Zambia hinges, to a fair extent on the certainty of a sentence after a plea agreement is reached. Especially when one considers the fact that the Plea Negotiations and Agreements Act, as earlier indicated, does not permit an agreement relating to sentence. Without clear sentencing guidelines, the plea-bargaining process becomes fraught with uncertainty, undermining the very goals it seeks to achieve.

We must remember that sentencing guidelines are not merely a technical tool. They bring clarity, consistency, and fairness to the plea-bargaining process. Allow me to highlight some of their key benefits.

Sentencing guidelines establish clear parameters for the likely outcomes of criminal cases. Accused persons can make informed decisions about whether to accept a plea, confident that the terms are fair and transparent and the sentence is certain.

Sentencing guidelines ensure that similar cases receive similar treatment, reducing disparities that may arise from subjective decision-making. This fosters a sense of justice, both for the accused and society at large. When the sentencing landscape is predictable, plea negotiations become more straightforward, reducing delays and streamlining case management. This allows courts to focus their resources on cases that truly require adjudication.

Clear guidelines also incentivize accused persons to take responsibility for their actions through plea agreements, fostering a culture of accountability and rehabilitation.

I must caution here that while the benefits of sentencing guidelines are evident, the design and implementation of these guidelines require careful consideration. They should be grounded in empirical data and reflect the gravity of offences, societal values, and rehabilitation goals. While ensuring consistency, guidelines must allow room for judicial discretion to account for the unique circumstances of each case. The process of developing and applying these guidelines must also be open and accessible to build public trust. As societies evolve, so too must our sentencing practices.

Regular review and updates ensure that guidelines remain relevant and effective.

I must state that sentencing guidelines are not an end in themselves; they are a means to achieve a broader vision of justice. They ensure that plea bargaining operates not as a backroom deal but as a structured, fair, and transparent process that serves the interests of justice for all parties involved including victims, offenders, and society.

Furthermore, the guidelines reinforce the principle of proportionality, ensuring that sentences are commensurate with the severity of the offence and the circumstances of the accused. This balance is crucial in maintaining public trust in the justice system.

As leaders within the criminal justice system, we must champion this ADR evolution thoughtfully and responsibly. It is our duty to ensure that plea bargaining, when paired with ADR, aligns with the fundamental principles of fairness, transparency, and justice.

This may call for legislative reforms, policy reforms, capacity-building initiatives and awareness campaigns to demystify this approach and build trust among all stakeholders. Most importantly, it requires a cultural shift. One that views justice not as a win-or-lose gamble but as a process of healing and restoration.

Ladies and gentlemen, the integration of ADR in criminal cases offers us a unique opportunity to humanize justice. It is a chance to design a system that addresses not only legal violations but also the emotional, social and psychological needs of those impacted by crime.

Let us embrace this moment to reimagine criminal justice not as an endpoint but as a pathway to restoration, reconciliation, and societal harmony. Through innovation, collaboration, and a steadfast commitment to justice, we can lead the way toward a more inclusive and restorative system.

I Thank You