AN ANALYSIS OF THE EFFICACY OF ARBITRATION AS A FORM OF ALTERNATIVE DISPUTE RESOLUTION IN ENHANCING QUICK DISPUTE RESOLUTION IN UGANDA'S OIL AND GAS SECTOR.

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MAY 2023.

DECLARATION

I, Natukunda Janeva do hereby declare that this Dissertation entitled an Analysis of the Efficacy of Arbitration as a form of ADR in enhancing quick dispute resolution in Uganda's Oil and Gas Sector is entirely my original work, except where acknowledged, and it has never been submitted to any other University or any other institution of higher learning for the award of a Degree.

SIGNATURE…… **DATE……**

APPROVAL

This is to certify that this Dissertation entitled an Analysis of the Efficacy of Arbtration as a form of ADR in enhancing quick dispute resolution in Uganda's Oil and Gas Sector, has been done under my supervision and now it's ready for submission.

SIGNATURE  **……** **DATE……**

MR. MUGABI IVAN

DEDICATION

This Dissertation is dedicated to my loved ones, David, Angel and Benjamin for being great pillars of my life.

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LIST OF ACRONYMS

ADR	Alternative Dispute Resolution
CGT	Capital Gains Tax.
CAEW	Chartered Accountants of England and Wales.
CNOOC	China National Offshore Oil Company.
DMO	Domestic Market Obligation.
DRC	Democratic Republic of Congo.
ENE	Early Neutral Evaluation
FDI	Foreign Direct Investment.
FCI	Foreign Company Investments.
G.D.P	Growth Domestic Product.
GRMP	Gas Revenue Management Policy.
ITA	Income Tax Act.
IOCS	International Oil Companies.
MPSA	Model Production Sharing Agreement.
NOC	National Oil Company.
NOGP	National Oil and Gas Policy.
NAFTA	North America Free Trade Area
PITL	Petroleum Income Tax Law.
PSA	Production sharing Agreement.
MPSC	Model Production Sharing Contract
IA	International Arbitration.
HGs	Host Governments
HSE	Health and Safety of the Environment
ICSID	International Centre for Settlement of Investment Disputes
EACJ	East African Court of Justice
CADRE	Centre for Arbitration and Dispute Resolution
UNCITRAL	United Nations Commission for International Trade Law.
LCIA	London Court of International Arbitration.
SJT	Summary Juror Trials

ABSTRACT.

This study aimed to analyze the effectiveness of arbitration as an alternative dispute resolution (ADR) mechanism in promoting prompt dispute resolution in Uganda's oil and gas sector. The research used a mixed-methods approach, including literature review, interviews with industry experts, and case studies of disputes that had been resolved through arbitration. The findings indicate that arbitration is an effective method of dispute resolution, particularly in the oil and gas sector, where time is of the essence. Arbitration is perceived as quicker and more flexible than traditional court litigation, and it is preferred by businesses in the sector. Additionally, arbitration awards are generally enforceable, which further enhances its efficacy. However, there are challenges to the effectiveness of arbitration in Uganda's oil and gas sector, including inadequate capacity and knowledge among arbitrators and a lack of awareness about the process among stakeholders. The study recommends the need for capacity building for arbitrators, increased awareness campaigns, and the development of specialized arbitration rules for the oil and gas sector to enhance the efficacy of arbitration in Uganda's oil and gas industry.

CHAPTER ONE.

GENERAL INTRODUCTION.

1.0. INTRODUCTION.

1.1. General introduction.

ADR is one of the best ways to resolve oil and gas disputes that could normally arise in the oil and gas industry without resorting to litigation in courts of law. The challenges of the industry are also attributed to delays, expenses, and other potential shortcomings of oil and gas projects. There are many forms of alternative dispute resolution found in Uganda's PSAs and in its fiscal regime, for example, mediation, arbitration, conciliation, negotiation, and reconciliation.[1] They are aimed at ensuring that disputes that arise in the industry are solved accordingly without having as much delay as those involved in courts of law. Under ADR, parties agree on the procedure to be used in solving their conflicts with the help of a neutral person or party in order to reach an agreement and avoid litigation.[2]

These methods reduce costs, reduce stress, take into account the needs of the parties, maintain confidentiality, and save time. Due to globalization over the years, there has been an overflow of foreign investments in this country because of foreign direct investments, which calls for revisiting ADR mechanisms as a comparably quicker and cheaper way of protecting such investments.[3] These ADR methods have been developed for years and have become very popular of late compared to the traditional way of settling legal disputes involving contracts. However, arbitration has proved to be one of the most popular forms of ADR in the oil and gas sector since most of these companies are owned privately and their main objective is to maximize profits on their investment returns, as per the International Investment Report.[4]

These foreign-based companies, normally from the West and Asia, when investing their capital, always want guarantees that their investments will be protected through a proper dispute

[1] PSA Model of 2018.
[2] Bello, Adesina Temitayo: Dispute Mechanism in Petroleum Industry: An Overview of Arbitration Frontiers (2017) 1 https://www.papers.ssm.com last visited on 4th June 2022.
[3] International Arbitration Report, 2020.
[4]Bello, Adesina Temitayo: Dispute Mechanism in Petroleum Industry: An Overview of Arbitration Frontiers (2017) 1 https://www.papers.ssm.com last visited on 4th June 2022

resolution mechanism. The rules for settling oil disputes differ in every jurisdiction since the prices of crude oil can change dramatically due to the complexity of the industry. This calls for the parties to engage in meaningful discussions as a way of getting a better deal and when all those fail, contractual disputes arise.[5]

Therefore, this calls for a proper dispute resolution mechanism. However, it depends on every contract and the intentions of both parties since disputes are unavoidable and part of business. According to Article 33 of the UNC, disputes can be resolved through mediation, arbitration, conciliation, inquiry, or the use of good offices and the judicial system. These disputes are resolved with the help of a third, impartial person. Arbitration is neutral compared to other forms of ADR, and the New York Convention supports this.[6]
Therefore, arbitration is one of the best mechanisms for resolving oil and gas disputes because of the benefits associated with this form. However, this research focuses on the effectiveness of the arbitral system in enhancing quick dispute resolution in Uganda's oil and gas sector.[7]

Disputes in the oil and gas industry

Though differences between the state and IOCs grab the most attention, disputes in the oil and gas industry take various forms and can involve other parties, as we explain below.

State versus IOCs disputes: these represent disagreements between the government and IOCs in relation to agreements for petroleum exploration, development, and production ("PSAs").[8]

They are also referred to as "state investment disputes".

Disputes between IOCs and host governments can arise from several issues but more often if there are regulatory revisions that threaten to dilute the value of the project as earlier evaluated, for example resulting from changes to the tax and fiscal regime. Another area of

[5]Bello, Adesina Temitayo: Dispute Mechanism in Petroleum Industry: An Overview of Arbitration Frontiers (2017) 1 https://www.papers.ssm.com last visited on 4th June 2022
[6] Isaac Christopher Lubogo, The Law of Oil and Gas in Uganda, First Edition, Jecho Group Ltd, Kampala East Africa, 2021, Pg 718.
[7] PSA model of 2016.
[8] Isaac Christopher Lubogo, The Law of Oil and Gas in Uganda, First Edition, Jecho Group Ltd, Kampala East Africa, .2021, Pg. 717.

potential dispute relates to acquisitions and disposals of interests in projects (either via direct asset sales or disposals of subsidiaries). The avenues provided to resolve such disputes are usually complemented by other techniques, such as stabilization clauses that embolden substantive rights relating to the allocation of resource wealth between the state and IOCs.

State disputes that are rarer but may arise with respect to petroleum fields overlapping international borders both onshore and offshore include: Offshore maritime disputes arise largely in respect of who can exercise sovereign rights in the Exclusive Economic Zone. Disputes between states can also arise with respect to the transit fees charged on the throughput of cross-border oil and gas.

IOC versus company disputes. These represent disagreements between the IOCs with their subcontractors and are also referred to as 'international commercial disputes.' IOCs enter into various agreements during the commercialization of oil and gas discoveries that include, but are not limited to, joint operations, cost allocation, production and allocation, crude oil offtake and purchase, and crude oil transportation and lifting, among others. The implementation of these agreements can trigger disputes between the IOCs. Service agreements between the IOCs and their subcontractors can also elicit disputes.[9]

Individuals versus IOCs. The negative legacy issues of early oil and gas operations pushed concerns about sustainable development and intergenerational equity to the forefront of the industry agenda. For example, under the provisions of the United States Alien Tort Statute, individuals outside of the US can institute judicial cases and claims against large corporations that engage in business activities that violate their human rights.[10]

Arbitration is often used to resolve oil and gas disputes but there are other methods as set out below.

(a) Negotiation which involves direct and indirect communication between aggrieved parties discussing joint actions for resolving subsisting disputes. Negotiation happens as a matter of course and can be included in oil and gas agreements as part of the multi-step dispute resolution

[9] Isaac Christopher Lubogo, The Law of Oil and Gas in Uganda, First Edition, Jecho Group Ltd, Kampala East Africa, 2021, Pg. 734

10 ibid

processes.

(b) With mediation, parties can resolve their disputes without going to court. With the help of a mediator, parties can come to agreement.

Therefore, this paper analysed the efficacy of Arbitration as ADR specifically focusing on arbitration in resolving oil and gas disputes.

1.2. Background of the study.

The presentation of the background was based on (Amin, 2003)[11] who puts emphasis on the discussion of the Theoretical, Historical, Conceptual and Contextual Background of the Study.

1.3. Historical Background of the Study.

Uganda's gas reserves are estimated at 672 billion cubic feet of gas, with 499 billion barrels of non-associated gas and 173 of associated gas. There is still considerable potential for discovering more petroleum, given that less than 40 per cent of the total area in Albertine Graben with the potential for petroleum production has been explored.[12] For instance, two more petroleum production licences were cleared by the Cabinet, and on 14 September 2017 the Government signed a production-sharing agreement with an Australian company, Armour Energy Limited.[13]

Previously, eight licences were granted over oil fields in Exploration Area 1 (EA I), Exploration Area 2 (EA2) and Kingfisher Area, and shared out between Tullow Uganda Operations Pty Limited, Total E&P Uganda B.V. and China National Offshore Oil Corporation (CNOOC) Uganda Limited. There are also efforts to search for oil and gas in other prospective areas of the country, including Amuru in Northern Uganda and the Karamoja area.[14]

Cumulative foreign direct investment in petroleum exploration in Uganda since 1998 was

[11] Amin E. Analysing Social Research, Kampala: Makerere University Printers, 2005
[12] Pamela and Martin, 2020
[13] ibid
[14] Pamela Mbabazi and Martin Muhangi: Uganda's Oil and Governance Institutions: Fit for Purpose? in Arnim Langer, Ukoha Ukiwo & Pamela Mbabazi: Oil Wealth and Development in Uganda and Beyond: Prospects, Opportunities and Challenges Leuven University Press 2020 Page 33

estimated to be over US$ 3 billion at the end of 2016.[15] Investment in the petroleum sector is expected to increase significantly as the country enters the development phase, and subsequently the production, transportation and refining phases of the petroleum value chain.[16]

To add value to oil and gas resources there are plans to develop the Uganda Refinery with a capacity of 60,000 barrels per day and the associated down-stream infrastructure. In addition, feasibility studies on the development of a crude oil export pipeline from the Albertine Graben in Uganda to the East African coast were undertaken, with a view of selecting the least-cost route for transporting Uganda's crude oil to the coast.[17]

The Hoima (Uganda)–Tanga (Tanzania) route was selected for being more secure, and cheaper in terms of cost. Consequently, a 1,445 km long, 24-inch diameter, heated East Africa crude oil pipeline (EACOP) will be developed to transport crude oil from Uganda to Tanga Port in Tanzania.[18] The licensed upstream oil companies in Uganda spearhead the development of this pipeline, with participating interests by the governments of Uganda and Tanzania through the Uganda National Oil Company and the Tanzania Petroleum Development Corporation respectively.[19] These developments are indicative of the expectations that oil production will increase government revenue, improve economic growth and promote development in Uganda[20] [21]

In order for Uganda to effectively benefit from its new black gold, it needed an effective ADR, which would help in regulating the oil sector and ensure that the government gets as much revenue from oil and gas activities as possible, that is normally threatened by continuous litigation. The government enacted many laws aimed at ensuring tax compliance and benefit accrual before even oil exploration took effect, this was aimed at ensuring that international oil companies do not take advantage of weaker dispute resolution regime to benefit more from the resource than the host nation itself.

[15] Ibid.
[16]ibid
[17]ibid
[18] ibid
[19] Pamela, 201
[20]Pamela Mbabazi and Martin Muhangi op cit.
[21] Isaac Christopher Lubogo, The Law of Oil and Gas In Uganda, First Edition, Jecho Group Ltd, Kampala East Africa, .2021, Pg. 13

Uganda repealed its 1999 Production Sharing Agreement (PSA) model, but the 2012 PSA model, which was modified to cater for eventualities that were not foreseen by the 1999 model, was adopted in 2016. Then lately there is the 2018 PSA model, which provided among others for royalty, bonuses and many other tax instruments. In all the laws and PSAs, the government enacted several provisions aimed at resolving oil and gas disputes anticipated to occur in the future.

Uganda discovered commercially viable quantities of oil and gas in its Western Rift Valley in the Albertine region of western Uganda in 2006[22], this news spread like bush fire since the country was thought to have hit a jackpot since the resource had capacity to economically transform the entire country in terms of social, economic and political spheres. Little did most of the Ugandans know that discovering oil is different from gaining from it due to the associated misuse of oil wealth that could potentially land Uganda into what is known as resource curse. In Africa, it's the way of life in most oil reach nations like Nigeria, among others. In places where the mechanisms are based on litigation, there is a limited investment and growth of the extractive sector.[23]

Dispute resolution can be traced far from the biblical times of Moses appointing judges to help him solve small disputes, to Solomon's story and two women who were fighting for one baby both claiming birth rights over the baby. The history of arbitration may also be traced from antiquity to the traveling crafters' guilds and merchants in medieval England, the religious communities of colonial America, and to some degree the maritime and commercial shipping industries. Arbitration became a more important feature of American dispute resolution with the rise of the labour movement in the late 19th Century.[24]

Arbitration emerged as an alternative to strikes in addressing labour grievances and today is included in more than 95 percent of all collective bargaining agreements" as the "law of the shop." Contractual arbitration is also common in the non-union workplace, as well as in an increasingly wide range of consumer settings, such as banking, credit card, financial, health care and insurance, retail purchase, and communication service agreements. Arbitration is

[22] Ministry of energy and mineral development policy report of 2006.
[23] Pamela,2020
[24]ibid

particularly well suited for cases involving technical and related matters, cases calling simply for a distribution of resources, and cases involving small disputes that do not justify the transaction costs of more formal litigation for which either party wishes.[25]

It is also noted that different interpretations have been given by national courts on various aspects of arbitration. One explanation of these is the fact that different national courts adopt different theories in relation to international commercial arbitration.[26]

Taking the issue of delocalization as an example, both French and US courts have placed more emphasis on the contractual element and enforced some arbitral awards which have been set aside at the place of arbitration whereas the English courts are still embracing the jurisdictional nature by following Lord Mustill's statement that;

'*At all events it cannot be the law of England, for otherwise this House would have dismissed at the very outset the attempt to procure an interim injunction during the currency of an ICC Arbitration*'. See *Channel Tunnel Group Ltd. v. Balfour Beatty Construction Ltd.*[27]

The various commentaries about the nature of arbitration have been collected into four different theories: the jurisdictional theory, the contractual theory, the hybrid theory (or the mixed theory) and the autonomous theory.

Among them, the jurisdictional theory is based on the complete supervisory powers of states to regulate any international commercial arbitration within their jurisdiction, whereas the contractual theory argues that international commercial arbitration originates from a valid arbitration agreement between the parties, and therefore arbitration should be conducted according to the parties' wishes.[28]

1.3. The government passed several legislation and PSAs in this regard.

Article 13 of the Uganda's 2018 PSA model,[29] is to the effect that all taxes, duties or other

[25] Ibid.pg.4
[26]Frédéric-Edouard K, (1958), 'Autonomie de la Volonté et Arbitrage', 47 Review Critic 255.
[27] Ancel, J. P. (1993), French Judicial Attitudes towards International Arbitration, 9(2) Arbitration Interest 121.
[28] Mann F.A. (1967), 'State Contracts and International Arbitration', 42 BRITISH Yearbook International Law 1.
[29] Uganda Production Sharing Agreement model of 2018.

lawful imposition applicable to the licensee are supposed to be applied according to the laws of Uganda, and any disputes that arise there in are supposed to be handled according to the objections and mechanism established under the laws of Uganda. This statement has a huge impact in ensuring that the country's fiscal petroleum regime is not subject to abuse from international oil companies. See Tullow oil company v Uganda Revenue Authority.[30] Also, under Article 12 it states that the production sharing agreement is calculated using R factor as a way of maximizing more profits by the host state. This is aimed at smoothening dispute resolution in the oil and gas sector.

Article 24 of 2018 PSA[31] model provides that any matter between the government and licensee may by the election of the parties be resolved by a sole expert appointed by the government and the licensee within 60 days and he is supposed to render his decision after 60 days. Then in case of failure to appoint an expert, The President of Institute of Petroleum, London and such a person if he is disqualified by law to act due to his conflict of interest in the matter, the highest official of the Institute shall be appointed. The decision of the expert is expected within 60 days unless the parties agrees otherwise but the decision is final and binding. This is part of the dispute resolution mechanism enshrined in the 2018 PSA model.[32]
Oil and gas are governed by the production sharing agreement of 1999, 2012, and the new one of 2016 and 2018 currently in force, the petroleum (Exploration, Development and Production) Act of 2013 with its upstream and midstream Regulations and Acts there under, Incomes Tax Act as amended by 2019, VAT Act as amended, the Petroleum (Exploration, Development and Production) (Health, Safety and Environment) Regulations 2016, National oil content Regulations of 2016, National Energy Policy etc.

With an increasing number of African countries having discovered commercially viable quantities of oil and gas in recent years, including, for example, Kenya, Chad, Ghana and Uganda, there is both excitement and trepidation about the prospects for increased incomes and investments, economic growth and development on the continent. This is due to comparative historical evidence of the link between natural resource exploitation, economic growth and development on the one hand and natural resource exploitation, economic decline and socio-

[30] Pamela, 2020.
[31] PSA Model of 2018.
[32] PSA Model of 2018.

political crises on the other hand.[33]

Objective XIII of the National Objectives and Directive Principles of State Policy of the Constitution[34] Obligates the State to protect important natural resources, including oil on behalf of the people of Uganda. Indeed, Article 8A of the Constitution[35] commands Uganda to be governed based on the principles of national interest and common good enshrined in the national objectives and directive principles of state policy.

In the case of **Godfrey Nyakaana Vs National Environment Management Authority & 6 Others**[36] in a lead Judgement with which the Supreme Court unanimously agreed, the words of Justice **B. M. KATUREEBE, CJ. (Emeritus)** are apt while discussing Article 8A, His Lordship stated that "To my mind, this means that these objectives have gone beyond merely guiding us in interpreting the Constitution, but may in themselves be justiciable".

Article 244 of the Constitution[37] commands Government of the Republic of Uganda to hold in trust for the people of Uganda natural resources which include oil deposits**.** Oil proceeds if well utilized would potentially turn around the Ugandan economy and assist it to make strides towards becoming a middle-income country**.**[38]

The Petroleum (Exploration, Development and Production) Act [39]enjoins the Government with power of licensing and management of the oil resources among other roles and developing model PSAs.

By their nature, PSAs are central in the Petroleum Exploration, Development and Production and as such form the bedrock of the development of Uganda's upstream oil and gas sector. Whereas these PSAs define relationships between Uganda Government and International Oil

[33]Arnim Langer, Ukoha Ukiwo & Pamela Mbabazi: Oil Wealth and Development in Uganda and Beyond: Prospects, Opportunities and Challenges Leuven University Press, 2020 Page 17 https://www.library.oapen.org last visited on 28 June, 2021
[34]The Constitution of the Republic of Uganda 1995 as amended
[35]ibid
[36] Godfrey Nyakaana Vs National Environment Management Authority & 6 Others[36] Supreme Court Constitutional Appeal No. 05 of 2011
[37]The Constitution of the Republic of Uganda 1995 as amended
[38]Pamela Mbabazi and Martin Muhangi, Uganda's Oil Governance Institutions: Fit for Purpose? CRPD Working Paper No 60 (2018) Centre for Research on Peace and Development
[39] The Petroleum (Exploration, Development and Production) Act No. 3 of 2013.

Companies, one pertinent point is a mechanism of resolving disputes arising under the said PSAs**.** It is in this context that the current research is being undertaken to find the efficacy of the dispute resolution mechanisms in Uganda's PSAs and its role in development of Uganda's upstream oil and gas sector.[40]

They are many laws which govern Arbitration in Uganda, these include, the 1995 Constitution of the Republic of Uganda as amended, the Arbitration and Conciliation Act, 2000 and its rules, the Civil Procedure Act and Civil Procedure Rules. An arbitration clause can be in the form of a clause in a contract that is enforced and binding on the parties unless set aside by the law. It's also governed by the New York Convention 1959, Reciprocal of Foreign Award Enforcement Act, ISCIDS Rules, the UNCRITAL Rules among others and Uganda is signatory to these conventions. Parties are bound to an arbitration clause and agreement is final and capable of being enforced inform of an award if the claim is brought forward.[41] The same provisions are provided for in the PSAs Models of 2009, 2012 and 2016 and then later excluded tax matters from being part of arbitral matters under this agreement.[42]

1.4.1. THEORETICAL FRAME WORK.Alternative dispute resolution (ADR) mechanisms have gained significant popularity in recent years as a means of resolving disputes outside of the court system. One such mechanism is arbitration, which involves the submission of a dispute to one or more impartial third-party arbitrators who make a binding decision. The efficacy of arbitration in promoting quick dispute resolution has been extensively studied in various industries, including the oil and gas sector.

One theoretical framework that can be used to understand the efficacy of arbitration is the conflict resolution theory. Conflict resolution theory posits that conflicts arise due to differences in interests, needs, and values among parties involved. It further suggests that the resolution of conflicts can be achieved through various mechanisms, including negotiation, mediation, and arbitration.

Arbitration is seen as an effective conflict resolution mechanism because it provides parties with a neutral and impartial decision-maker who can help them reach a resolution quickly and

[40] PSA model of 2018
[41] Yan Jain Uganda company Ltd V Siwa Buliders and Engineers (Misc APP 2014/ 1147) UGCOMMC 22, 2015.
[42] Bello, Adesina Temitayo: Dispute Mechanism in Petroleum Industry: An Overview of Arbitration Frontiers (2017) 1 https://www.papers.ssm.com last visited on 4th June 2021

efficiently (Mitchell & Kressel, 2013). Unlike traditional court litigation, arbitration is often faster and more flexible, allowing parties to choose their arbitrator and decide on the procedures for resolving the dispute. Additionally, arbitration awards are generally enforceable, which further enhances its efficacy (Van den Berg, 2011).

Another theoretical framework that can be used to understand the efficacy of arbitration in the oil and gas sector is the transaction cost theory. Transaction cost theory suggests that parties engage in transactions to minimize the costs associated with obtaining goods or services. In the context of dispute resolution, transaction cost theory suggests that parties will choose the dispute resolution mechanism that minimizes the costs associated with resolving their disputes (Williamson, 1985).

Arbitration is often preferred in the oil and gas sector because it is perceived as a more cost-effective mechanism for resolving disputes compared to traditional court litigation (Bwogi, 2014). It is also perceived as a more specialized mechanism, with arbitrators having the expertise to understand the technical and commercial issues involved in disputes in the sector (Adewopo, 2017). This perception has led to an increase in the use of arbitration in the sector.

However, there are challenges to the efficacy of arbitration in the oil and gas sector, including the lack of adequate capacity and knowledge among arbitrators and a lack of awareness about the process among stakeholders (Bwogi, 2014). These challenges can undermine the effectiveness of arbitration in promoting quick dispute resolution in the sector.

1.4. CONCEPTUAL FRAMEWORK

The conceptual framework for analyzing the efficacy of arbitration as a form of ADR in enhancing quick dispute resolution in Uganda's oil and gas sector involves understanding the various factors that affect the use and effectiveness of arbitration in resolving disputes in the sector.

The conceptual framework for analyzing the efficacy of arbitration in the oil and gas sector can be divided into three main components: the legal and institutional framework, the commercial and technical issues, and the cultural and social factors.

The legal and institutional framework component includes the legal and regulatory framework that governs the oil and gas sector in Uganda, including the relevant laws and regulations, the role of government agencies, and the role of international legal instruments such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This component also includes the institutional framework for arbitration, including the rules and procedures for conducting arbitrations and the capacity and expertise of arbitrators.

The commercial and technical issues component involves understanding the technical and commercial issues that often arise in disputes in the oil and gas sector, including issues related to production sharing agreements, joint venture agreements, and exploration and production contracts. This component also includes understanding the role of experts in resolving technical issues and the impact of delays and disruptions on the operations of oil and gas companies.
The cultural and social factors component includes understanding the cultural and social factors that affect the use and effectiveness of arbitration in the sector, including the level of awareness and acceptance of arbitration as a dispute resolution mechanism, the role of traditional dispute resolution mechanisms, and the importance of maintaining relationships and preserving reputation.

To analyze the efficacy of arbitration as a form of ADR in enhancing quick dispute resolution in Uganda's oil and gas sector, it is necessary to examine each of these components and their interrelationships. This analysis can help identify the factors that promote or hinder the use and effectiveness of arbitration in the sector and suggest strategies for improving the efficacy of arbitration in resolving disputes in the sector.
In summary, the conceptual framework for analyzing the efficacy of arbitration in Uganda's oil and gas sector involves understanding the legal and institutional framework, the commercial and technical issues, and the cultural and social factors that affect the use and effectiveness of arbitration in the sector. By examining these factors, it is possible to identify strategies for improving the efficacy of arbitration in enhancing quick dispute resolution in the sector.

1.5. Statement of problem.

The problem statement for analyzing the efficacy of arbitration as a form of ADR in enhancing quick dispute resolution in Uganda's oil and gas sector is that despite the presence of legal and regulatory frameworks for arbitration in Uganda, the oil and gas sector still experiences delays and disputes that often result in significant economic losses for companies and the country as

a whole. This is due to a lack of awareness and acceptance of arbitration as a viable dispute resolution mechanism, inadequate capacity and expertise of arbitrators, technical and commercial complexities in the sector, and cultural and social factors that affect the use and effectiveness of arbitration.

The problem statement can be further broken down into the following specific issues:

Limited awareness and acceptance of arbitration as a viable dispute resolution mechanism: The use of arbitration as a dispute resolution mechanism is still relatively new in Uganda's oil and gas sector, and there is limited awareness and acceptance of its benefits and advantages over traditional litigation. This results in companies and stakeholders often resorting to court proceedings, which are often slow and costly, leading to significant economic losses.

Inadequate capacity and expertise of arbitrators: Despite the presence of arbitration institutions in Uganda, there is still a shortage of qualified and experienced arbitrators with technical and legal expertise in the oil and gas sector. This often leads to delays in the selection of arbitrators and the conduct of proceedings, which further contributes to the delay in resolving disputes.

Technical and commercial complexities in the sector: The oil and gas sector is highly technical and commercial, and disputes often involve complex technical and commercial issues that require the input of experts in the field. The lack of technical expertise among arbitrators and the absence of clear procedures for appointing experts often lead to delays and inadequate resolution of disputes.

Cultural and social factors that affect the use and effectiveness of arbitration: The cultural and social factors, such as the preference for traditional dispute resolution mechanisms, the importance of maintaining relationships, and preserving reputation, often affect the use and effectiveness of arbitration in resolving disputes in the oil and gas sector.

The problem statement highlights the need to examine the efficacy of arbitration as a form of ADR in enhancing quick dispute resolution in Uganda's oil and gas sector and to identify strategies for improving the use and effectiveness of arbitration in the sector.

1.6. Purpose of the research.

The purpose of this study is to examine the effectiveness of arbitration as an alternative dispute resolution mechanism in Uganda's oil and gas sector. The study aims to identify the factors that influence the effectiveness of arbitration, including the legal and institutional framework, technical and commercial complexities, capacity and expertise of arbitrators, and cultural and social factors. The study also aims to suggest strategies for improving the use and effectiveness of arbitration in enhancing quick dispute resolution in the sector.

1.7. Objectives of the study.

The general objective of this study is to analyze the efficacy of arbitration as a form of alternative dispute resolution (ADR) in enhancing quick dispute resolution in Uganda's oil and gas sector. The study aims to identify the factors that promote or hinder the use and effectiveness of arbitration in the sector and to suggest strategies for improving the efficacy of arbitration in resolving disputes in the sector.

1.7.1 Main Objectives of the Study

The main objective of the study analyzing the efficacy of arbitration as a form of Alternative Dispute Resolution (ADR) in enhancing quick dispute resolution in Uganda's oil and gas sector is to examine the effectiveness of arbitration as a means of resolving disputes in the oil and gas industry. The study aims to explore the advantages and disadvantages of using arbitration as a form of ADR and to identify the factors that contribute to the success or failure of arbitration in resolving disputes in the oil and gas sector in Uganda. Additionally, the study seeks to evaluate the legal framework and institutional arrangements for arbitration in Uganda and to recommend appropriate measures for improving the effectiveness of arbitration in the sector. Ultimately, the study aims to provide insights into the potential of arbitration as a means of promoting quick and efficient dispute resolution in Uganda's oil and gas industry.

1.7.2 Specific Objectives of the Study

(i) To identify the effectiveness of Arbitration legal regime and other forms of ADR.

(ii) To assess how Arbitration can be used to enhance quick dispute resolution.

(iii) To examine the applicability of Arbitration in Uganda Oil and Gas sector.

(iv) To analyse how to improve the implementation mechanism of Arbitration in Uganda's oil and gas sector.

1.7.3 Specific Research Questions

(i) What is the effectiveness of Arbitration legal regime the Oil and Gas sector?

(ii) How can Arbitration be used to enhance quick dispute resolutions in Uganda's oil and gas sector? "

(iii) How is Arbitration applied in oil and gas disputes?

(iv) How can Arbitration be effectively implemented as a dispute resolution mechanism in Uganda's Oil and Gas Sector?

1.8. Justification of the study.

The Oil and Gas industry can earn a country very massive revenue, which can facilitate development in other sectors and consequently boosting sustainable development across all the sectors. However, this can be realised if the country adopts a quick and cheap dispute resolution mechanism that cannot stall projects for a long time if there any disagreements and conflicts in the oil and gas sector. Therefore, having a sound legal framework for an alternative resolution for example Arbitration is very critical in attracting foreign investments due to the security offered by foreign capital in the country.

Arbitration clauses plays a crucial role in enhancing quick despite resolution in extractive industry in case cases of investment disputes arise out of foreign investments since these investments involves many players with huge volumes of capital involved. Therefore, in order to ensure quick resolutions of these disputes parties tend to incorporate arbitration clauses although such clauses are left redundant and these issues stifle investments. A proper and well thought dispute resolution mechanism must be able to attract investors since it's expected to help in attracting investors in Uganda's oil and gas industry due to its influence on investor's decision on the sector in which they base their decision on how attractive a country's dispute resolution mechanism is.

However, in reality Uganda's petroleum sector still faces litigable issues which have in the past hindered the growth of the oil and gas sector due to delays caused by negotiations and court

cases which has thrown back Uganda's oil and gas sector to lay behind for years despite the incorporation of these arbitration clauses in the PSA models of 2009, 2012 and 2016.

This study will help the Researcher to be able to articulate pertinent problems that are hindering the foreign investments in Uganda's Oil and Gas sector despite numerous efforts put up by the government to encourage more matters in Uganda's Oil and Gas industry to be resolved under arbitration other than resorting to expensive and lengthy litigation which pushes back the investment decisions and this automatically reduces economic growth.

1.9. Theoretical framework.

Theoretically ADR is the most traditional and easiest way of solving disputes in the oil and gas sector due to its simplicity and limited time involved in settling investment disputes for example incorporating an arbitration clause of provision in a contract or agreement. But despite the availability of these forms, Uganda still litigates oil related disputes in oil and gas sector which is absurd. The latest example was the Heritage oil and gas ltd v URA 2011[43] which consumed a lot of time before it was settled in Arbitration in London over the capital gains tax of assists sold to Tullow.

1.10. Scope of the Study

The scope of the study was divided into three perspectives which include Content, Time and Geographical.

1.10. Content Scope

The focus of this study was Oil and Gas industry in the Republic of Uganda. It is limited to the Arbitration as a dispute resolution mechanism in the Oil and Gas activities in Uganda. It reviews the characteristics of an ideal dispute resolution mechanism and the extent to which they are incorporated into Uganda's PSAs. This study concentrated on the efficacy of arbitration clauses in enhancing quick dispute mechanisms in Uganda's oil and gas sector looking at the best benefits and efficacy of this form of dispute resolution compared to other forms of dispute resolution.

[43] Ibid.

Looking at the benefits and the bottlenecks to the implementation of these clauses which may include; corruption, limited expertise in arbitration areas, lack of plausible dispute resolution framework and many others and the factors that may hinder quick dispute resolution in the Oil and Gas sector in Uganda and reasons why the efforts made by government despite having all these clauses, Uganda has still experienced problems and delays in the upstream activities due to disputes emanating from tax disputes.

The study aimed at devising ways upon which Arbitration can be properly implemented as a means of quick dispute resolutions in Uganda's oil and gas sector.

1.10.1. Time Scope

This study took a span period of 10 years considering the time period from the year 2012 to 2022. This period was used because of the availability of good quality and reliable data relevant to the topic under investigation since there has been many changes in Uganda's PSAs arbitration regime.

This time frame helped the researcher to analyse the efficacy of ADR in enhancing quick dispute resolution in Uganda's Oil and Gas sector; A Case study of Arbitration and study how these clauses have been developed in the Oil and Gas industry of Uganda today as a way of promoting and enhancing quick dispute resolution mechanism in the Oil and Gas industry of Uganda.

1.10.2. Geographical Scope.

This study was carried out in Uganda since the study focused on Uganda as a country in terms of assessing its oil and gas industry. Uganda is found in East Africa, neighboring Kenya in the east, Tanzania in the south, the D.R. Congo in the west, South Sudan in the north, and Rwanda in the south-western part of East Africa. It is located in the heart of Africa, in the central sub-Saharan region of Africa. Its oil and gas fields are located near the border part of Uganda and the D.R. Congo.

It's reported that Uganda has a population of about 42 million people, according to UBOS 2020 estimates in its statistics. The report indicated that most of the cases in Uganda about 98% end up in courts of law other than arbitration, which is very cheap compared to other forms of dispute resolution mechanisms, and it's in the same spirit that this mechanism can be utilized

in Uganda's oil and gas sector.

The study aimed at looking at the companies that intend to invest in the oil and gas sector in Uganda as a whole. The oil that has been discovered in Uganda is about 6.5 billion barrels, and the recoverable oil is about 1.8 to 2.2 barrels of oil.[44] The investment opportunities are quite many, ranging from transportation, road construction, welding, and real estate, which means that conflicts are likely to come up and need to be resolved quickly.

1.11. Significance of the Study.

i. To the Researcher.

With this study, the researcher was able to add value to what has been put across in the research, identify other key issues crucial to note, and help with the already existing policy aspects in place. Those existing policies are meant to develop a reasonable dispute resolution. The fiscal laws and policies are examined in the research question. On a more personal level, the study enables the researcher to fulfil one of the basic requirements for the award of the degree of Master of Laws (LLM) in Oil and Gas at Uganda Christian University, Mukono (UCU).

ii. To the policy makers.

This study is of importance because it helps to determine how best arbitration can be effectively applied to minimise on cost of dispute resolution in the oil and gas sector and entire economy to grow.

1.12. Structure of the Dissertation.

This study was divided into five (5) parts, as follows;

i) Chapter one introduces the study. It presents an overview of the background, Problem Statement, Research Objectives and Questions, Significance of the study, Scope of the study, Justification of the study as well as the Framework of the study.

ii) Chapter 2: Literature Review: This section reviewed the existing literature on what makes arbitration an effective dispute resolution method, the legal framework in place, and the characteristics of an effective arbitration petroleum regime as articulated by various scholars,

[44] oil in uganda < https://www.oxfordinstituteforenergystudies.org > accessed on 10th June, 2022

academicians, and researchers. This part also presents an analytical overview of dispute resolution with regard to dispute resolution mechanisms in Uganda's oil and gas sector.

iii) Chapter 3: Methodology: this part looked at bringing out the research design, research methods, research instruments, data sources, ways of analysing data, research ethical considerations, and justifications of the study.

iv) Chapter 4: looked at other forms of ADR which can be used in the oil and gas sector.

v) Chapter 5: Conclusions and Recommendations: this section presented the summary of findings, limitations of the study, recommendations as well as areas for future research.

CHAPTER TWO

2. LITERATURE REVIEW

2.0. Introduction.

According to Hart, literature review is "the selection of available documents on the topic that contain information, ideas, data, and evidence written from a particular standpoint to fulfill certain aims or express certain views on the topic and the effective evaluation of these

documents in relation to the research being proposed."[45]

This chapter therefore presents the theoretical framework of the research and makes a review of some of the relevant previous research. This chapter also handles the literature review basing on the objectives highlighted of which this is through reviewing scholarly work related to the topic in question, identifying the gaps in the research question that seeks to bridge.

According to Barifaijo, K., Basheka, B., and Onyu, J., reviewing literature involves the systematic identification, location, and analysis of documents containing information related to the research problem being investigated. The activity of a literature review involves locating, reading, and evaluating research reports as well as reports of observation, discussions, and opinions that are related to the individual's planned research project.[46]

Uganda as a country that is newly developing its oil and gas industry, has the mandate to ensure that it adopts arbitration as a modern dispute resolution mechanism for resolving legal disputes arising out of the industry. The topic in question that is meant to be handled by this study is meant to establish and portray how best the effective dispute resolution mechanism of arbitration can be adopted in solving oil and gas issues in Uganda's oil and gas sector.

2.1 Alternative Dispute Resolution

According to Natalia Cruz;[47] the term 'Alternative Dispute Resolution' (ADR) means a variety of dispute resolution mechanisms that are used as alternatives to the formal court process, where the disputants are encouraged to negotiate directly with each other. ADR methods encourage the parties to come to a mutual agreement, which allows a win-win situation for the disputed parties rather than winner-take-all, as in a formal adjudicatory process. It increases accessibility to justice due to its low cost and non-application of rules of evidence. It also emphasizes improving efficiency and reducing court delays.[48]

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[45] HART, C., Doing a Literature Review: Releasing the Social Science Research Imagination. London: Sage Publications 1998

[46]Barifaijo, K., Basheka, B. and Onyu, J. (2010) How to write a good Dissertation Thesis, 1st Edition, The New Vision printing and publishing Company Limited, Kampala.

[47] Natalia Cruz; International Tax Arbitration and the Sovereignty Objection: The South American Perspective, Tax Notes International 2008.

[48]M.A.D.S.J.S Niriella: Amicable Settlement Between the Disputed Parties in a Criminal Matter: An Appraisal of Mediation as a Method of Alternative Dispute Resolution with Special Reference to Sri Lanka Sri Lanka Journal of Social Sciences 2016 39(1): 15-25 https://www.researchgate.net last visited on 3rd june, 2022

According to Akinjide-Balogun,[49] the underlying core principles of ADR, such as a speedy arrival at a mutual agreement between the parties, the assistance of a neutral third party for reaching an agreement between the victim and offender, and maintaining confidentiality at the highest level, have made ADR more confident and popular among the general public.[50]

In other words, the growing importance of ADR mechanisms is fueled by the significant advantages that such mechanisms offer compared to the court process, such as confidentiality, low cost, the possibility of defining the dispute and the procedure, as well as the involvement of an expert or neutral third party in the matter concerned. ADR methods also generate a better understanding between the rival parties in the search for a resolution to a given dispute. ADR methods make it possible for the parties to reach agreements based on their common interests, resulting in an outcome that, as far as possible, allows the parties to put aside their differences.[51]

Therefore, these mechanisms can be defined or recognized as legal instruments designed to build agreements in any type of dispute between the parties, through means other than formal litigation. Such means may involve the intervention of a third party, expected to facilitate, in a neutral manner, the negotiation process. ADR methods could be generally categorized as negotiation, conciliation/mediation, or arbitration.

These methods are applied in resolving both civil and criminal disputes.[52] Now, it is pertinent to answer two questions – first, what are the permissible circumstances in which parties to a dispute can be required to use ADR and, second, what are the standards of justice expected of such processes – one must understand the role and possibilities of ADR processes and their relationship to the courts.[53]

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[49] Akinjide-Balogun, Oil and Gas arbitration. Seminar On "International Commercial Arbitration in the African Sub-Region: Meeting the User"s Need" http://www.akinjideanco.com/oil gas. html accessed 20th March 2015 10

[50] M.A.D.S.J.S Niriella: Amicable Settlement Between the Disputed Parties in a Criminal Matter: An Appraisal of Mediation as a Method of Alternative Dispute Resolution with Special Reference to Sri Lanka Sri Lanka Journal of Social Sciences 2016 39(1): 15-25 https://www.researchgate.net last visited on 3rd june, 2022

[51] M.A.D.S.J.S Niriella: Amicable Settlement Between the Disputed Parties in a Criminal Matter: An Appraisal of Mediation as a Method of Alternative Dispute Resolution with Special Reference to Sri Lanka Sri Lanka Journal of Social Sciences 2016 39(1): 15-25 https://www.researchgate.net last visited on 3rd June, 2022

[52] M.A.D.S.J.S Niriella: Amicable Settlement Between the Disputed Parties in a Criminal Matter: An Appraisal of Mediation as a Method of Alternative Dispute Resolution with Special Reference to Sri Lanka Sri Lanka Journal of Social Sciences 2016 39(1): 15-25 https://www.researchgate.net last visited on 3rd june, 2022

[53]Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 610 https://www.academic.oup.com last visited on 4th june, 2022

Debates on whether or not access to courts can be made conditional on a prior consideration of ADR and the general standards required of ADR often gather momentum in moments of 'disagreements, congestion, delay and expense' in the national judicial system. As most cases are settled, proponents argue that a focus on making ADR more effective has an enormous potential for reducing caseloads. A purely instrumentalist view of ADR, however, conceals deeper discussions on whether ADR carries public value to the same extent as courts and whether it can and should offer similar standards of justice to those presumed to be inherent in courts.[54]

According to Owen Fiss Through his seminal article, 'Against Settlement,' he became synonymous with a rejection of what he calls the "dispute-resolution story" on the grounds that it could not substitute for the public value of adjudication. He argues that adjudication is founded 'on principles of social justice, rather than individual consent,' that it upholds 'the social premises of the welfare state,' and that it "reflects and reinforces public rather than private values." He argues that it is not possible to draw a bright line between suits amenable to settlement and those that should be adjudicated since the "problems of settlement are not tied to the subject matter of the suit but instead stem from factors that are harder to identify, such as the wealth of the parties, the likely post-judgment history of the suit, or the need for authoritative interpretation of the law.".[55]

According to Harry Edwards, he expressed concern that the development of the law in key areas such as civil rights may be 'stifled' by a formal diversion to ADR, particularly if 'difficult issues of public law' are 'hidden' in 'seemingly private disputes.' While Fiss focused on agreement-based ADR, similar critiques have been made of arbitration, used commercially in international sport, bilateral investments, and consumer and employment contracts in states such as the USA.[56]

According to Lorna McGregor, arbitration is characterized as a "privatized justice system" that does not necessarily comply with the standards of justice expected of courts. This critique is

[54] Natalia Cruz;
[55] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 610 https://www.academic.oup.com last visited on 4th june, 2022.
[56] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 610 https://www.academic.oup.com last visited on 4th June, 2022.

advanced on procedural grounds—for example, lack of transparency, lack of written decisions in some types of arbitration, and, in some arbitrations, a lack of, or very limited, judicial review.

According to Rebecca Hollander et al., "the protections for parties in arbitration offer a nod in the direction of the rule of law but fail to promote rule of law values in the same way as courts." Substantive critiques of arbitration tend to focus on the "private-commercial aspects of disputes" to the exclusion of public policy concerns, as well as the potential for extra-legal information and policy to play a much more significant role in the arbitration decision and for arbitrators to appear to be following the law while deviating from it in nuanced ways.[57]

Thus, the "public value" critique can apply equally to agreement-based and adjudicative ADR. Fiss' article elicited a slew of criticism, with many accusing him and others of being "litigation romanticists" and offering a "flat" view of dispute resolution that is abstracted and "caricatured," with the assumption that ADR does not use legal principles unaffected by precedent and is incapable of providing justice.[58]

Many respondents focus on the public value of ADR and contend that "law and justice are not synonymous," pointing to characteristics of ADR such as consent, participation, empowerment, dignity, respect, empathy, emotional catharsis, privacy, efficiency, quality solutions, equity, access, and yes, even justice. ADR is championed on the grounds that it advances self-determination and autonomy and empowers parties to "control the outcome."[59]

On this justification, the major critiques of arbitration for example, its privacy and confidentiality are seen as advantages to party choice and control of the dispute. Commentators emphasize that courts are not always the best venue for all disputes and that not every dispute must be of public interest. This argument has a fiscal dimension of matching the "forum to the

[57] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 611 https://www.academic.oup.com last visited on 4th June, 2022.
[58] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 611 https://www.academic.oup.com last visited on 14th June, 2022.
[59] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 612 https://www.academic.oup.com last visited on 4th June, 2022.

fuss," and, as Michael Moffitt points out, "litigation fulfills its public function best if it is not called upon as the method of resolving every kind of dispute."[60]

It also has a substantive angle in that ADR increases the chances of preserving continuing relationships (Cappelletti's "mending justice"), both personal and commercial, as well as protecting reputations. Related to this, ADR is promoted as a means of achieving creative remedies, particularly non-financial ones, that are suited to the needs of the parties and are more wide-ranging than those typically ordered by a court. Finally, the projected informalism of agreement-based ADR is highlighted as a response to the "excesses of adversarialism and formalism" of legal processes.[61]

Equally, empirical studies of ADR indicate that there is not yet sufficient evidence to assess whether these claims are borne out in practice. The increasing standardization of agreements and adjudicative ADR, including court-annexed processes, may undermine the strength of arguments about creativity, particularly where engagement is mandatory and not voluntary.

For example, Leonard Riskin and Nancy Welsh have argued that the institutionalization of mediation has diminished some of its "expansive potentials," such as self-determination and participation, due to the dominance of lawyers and "repeat players," who tend to narrow the settlement options based on assessments of the cost-benefits of settling over risking litigation.[62]

According to Lisa Bernstein Similar arguments have been made in relation to arbitration. He noted that part of the reason for the success of ADR is the consent of the parties "to its use" and that the more institutionalized the process becomes, the more likely it is to "become increasingly formal and complex." Bernstein therefore cautions against using evidence of the success of the voluntary use of ADR as a reason to require its use, particularly as an attachment to court proceedings.[63]

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[60] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 612 https://www.academic.oup.com last visited on 4th June, 2022.

[61] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 612 https://www.academic.oup.com last visited on 4th June, 2022

[62] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 613 https://www.academic.oup.com last visited on 4th June, 2022.

[63] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015)

Beyond the debates around the public values of courts and ADR, a further line of analysis focuses on the nature and standards of justice and the existence of safeguards for parties within ADR. Nancy Welsh argues that "courts are supposed to resolve disputes, of course, but they are also supposed to provide something special in how they resolve those disputes." Whether courts actually deliver a positive experience of justice can be challenged.[64]

However, according to Welsh's point, he highlights the expectation of a particular standard and the "experience" of justice through the courts. Some commentators have argued that agreement-based ADR risks power imbalances and a lack of equality of arms because parties are rarely equal. This is particularly true if there is an absence of legal representation, which is typical in forms of dispute resolution that are less formal than those of traditional courts on the premise that simplified processes facilitate self-representation even if the other side can afford and instruct a lawyer.[65]

Commentators observe that a party may feel pressurized to settle on less favorable terms than the case merits because of financial need, the leveraging of access to children, and/or a lack of resources to proceed to litigation where legal aid is unavailable. Pre-existing power imbalances between the parties as well as a history of domestic violence may also contribute to the more deserving party agreeing to less.[66]

Beyond the dynamics between the parties, the role of the mediator is significant. This role varies between "facilitative, evaluative, transformative, narrative, and understanding," and each places different values on how active the mediator is in the substantive resolution of a dispute and how the mediator conducts the mediation session. Thus, the more the mediator is substantively involved in the resolution of the dispute as well as the environment in which the

613 https://www.academic.oup.com last visited on 4th June, 2022

[64] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 613 https://www.academic.oup.com last visited on 4th June, 2022

[65] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 613 https://www.academic.oup.com last visited on 4th June, 2022

[66] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 613 https://www.academic.oup.com last visited on 4th June, 2022

mediation takes place, including the threats of a cost penalty for a failure to reach agreement, the more a party may feel pressured to settle.[67]

According to this view, the process involves a lack of procedural safeguards and the risk of "unregulated coercion and manipulation." Much of this line of criticism has focused on agreement-based dispute resolution processes, with the exception of an analysis of the impact of repeat players in arbitration on the outcome of the case.[68]

According to Carrie Menkel-Meadow, it is difficult to gauge such an impact because in adjudicative processes such as arbitration, the proceedings are often private and, as Carrie Menkel-Meadow notes, consequently "difficult to study empirically." Analogies to specialized tribunals might be made (notwithstanding that they are often part of the formal legal system), as they bear different characteristics from "ordinary" courts in that they are presented as procedurally more simple, thereby dispensing with the need for legal representation and, by extension, legal aid.[69]

Hazel Genn exposes the contradiction between the specialist nature of tribunals and the introduction of simplified processes by pointing out that the small value of a claim does not necessarily equate to a "legally and factually simple case" and that "none of the procedural informality of tribunals can overcome or alter the need for applicants to bring their cases within the regulations or statute and prove their factual situation with evidence." She submits that these features can affect comprehension and the ability to participate effectively in proceedings, with the result that cases "may not be properly ventilated." "The law may not be accurately applied, and ultimately justice may not be done." By implication, these theories suggest that "ordinary" courts provide more predictable and consistent procedural protections.[70]

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[67] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 613 https://www.academic.oup.com last visited on 4th June, 2022.

[68] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 614 https://www.academic.oup.com last visited on 4th June, 2022

[69] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 614 https://www.academic.oup.com last visited on 4th June, 2022

[70] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 614 https://www.academic.oup.com last visited on 4th June, 2022

The foregoing could imply the need for stark choices between ADR and courts. It is suggested that a better response would be to articulate the values and characteristics of courts in greater detail in order to assess the circumstances in which other forms of dispute resolution might be appropriate. or whether their use is conditional on the transfer of some or all of the values and characteristics of courts.[71]

This is particularly the case given the developments in the forms of ADR beyond the traditional models of conciliation, mediation, and arbitration that include hybrid models and the many variants within each model, including whether engagement is voluntary or mandatory; whether the "outcome is consensual or commanded"; how formal the process is and whether it is integrated into the judicial system; whether the decisions reached are binding; whether the process is public or private; and how involved "repeat players" are.[72]

These factors challenge generalized assumptions about ADR, with Menkel-Meadow noting that "the truth is that the landscape of disputing has indeed become more and more complex, with predictions of outcomes, costs, and strategies becoming harder and harder to produce with any degree of accuracy."[73]

According to Fiss and Amy Cohen, indeed, in his reinterpretation, he argues that the majority of responses to his seminal article assume that he "indicted extrajudicial institutions as intrinsically incapable of promoting public values." However, she reads Fiss as "assembling a historical and, in fact, provisional critique of settlement ideologies." Her reading of Fiss acknowledges the public values that can be attributed to courts as well as the risks posed by a diversion to ADR, but, conceptually and empirically, contests the proposition that ADR cannot also offer public value.[74]

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[71] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 614 https://www.academic.oup.com last visited on 4th June, 2022

[72] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 615 https://www.academic.oup.com last visited on 4th June, 2022

[73] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 615 https://www.academic.oup.com last visited on 4th June, 2022

[74] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 615 https://www.academic.oup.com last visited on 4th June, 2022

In doing so, she offers an alternative reading of Fiss that does not position courts against ADR but, rather, focuses on the risks of privatization that could "accommodate broader social efforts to replace the law with markets as a primary means of resolving conflict and replace the state with citizens as the agents primarily responsible for social well-being."[75]

Therefore, she argues for the need to "continuously re-evaluate the social contexts within which we labor." She can be read to encourage scrutiny of the reasons and justification for resorting to ADR and the standards these processes adhere to, rather than a blanket rejection of their use.[76]

Further, while it is possible to critique ADR processes on procedural grounds, similar critiques can be made of judicial processes.

Tamara Relis points out that while the critiques of informalism may stand in many circumstances, we "must not lead our critique of informalism to end in glorification of the formal justice system, as that too is shown to be just as defective."[77] Moreover, it may be possible to identify ways in which to strengthen particular ADR and PDR processes in order to overcome such critiques, provided the baseline of expected standards is identified.

For example, according to Dominique Allen, the confidential conciliation process used in Australia for discrimination complaints confirms Fiss' concerns about settlement by preventing future parties from learning about the process or accessing examples of past settlements (which are not based on legal principles) and the positional vulnerability of many complainants within society who are unrepresented.[78]

However, she also acknowledges the causal connection between the proliferation of ADR and the problems with courts, including delays, costs, and complex rules and procedures. She thus

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[75] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 615 https://www.academic.oup.com last visited on 4th June, 2022

[76] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 615 https://www.academic.oup.com last visited on 4th May, 2022

[77] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 616 https://www.academic.oup.com last visited on 24th May, 2022

[78] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 616https://www.academic.oup.com last visited on 24th May, 2022

proposes modifications to the ADR model to make it a "voluntary rather than mandatory rights-based process," with settlements being binding and presumptively a matter of public record, and the conciliator trained in discrimination law and able to ensure that "settlements do not breach the law." These examples suggest that a clear dichotomy between ADR and adjudication cannot be drawn. Rather, the literature encourages critical thinking on the value and meaning of a court, on whether these values must be capable of transfer to ADR or whether alternative values are sufficient, and on the need to evaluate the context in which ADR takes place, particularly whether it should be voluntary or mandatory.[79]

As Moffitt points out, "settlement, like litigation, has the potential to contribute far more than the mere resolution of disputes." Settlement, like litigation, has the potential to jeopardize both public and private interests. He thus makes the point that it is not ADR per se that is problematic, but rather the way in which it is conducted and potentially the choice over when and for what it should be used.[80]

The public litigation process may be effective as a truth-and-justice-seeking vehicle, but it certainly carries efficiency costs. While empirical research tends to repudiate popular beliefs in a "litigation crisis," the civil justice system nonetheless remains heavily burdened and can be expected to become even more so as law and society expand. "An already sluggish civil trial process is further slowed by the gamesmanship of litigation, increasing direct costs to parties and indirect costs to the system itself, which are reflected, for example, in higher insurance premiums and lower public confidence." Moreover, the complexity of the process, the trauma often associated with trials, and a general dissatisfaction with the traditional legal system have led to a search for new approaches to resolving disputes.[81]

The 1980s and 1990s have seen the unprecedented rise of ADR in both the governmental and contractual spheres, and at both the state and federal levels.[82] This movement is more about informal methods of dispute resolution and may be one of the most significant developments in our system of civil justice since the advent of modern discovery in 1938. It includes dispute

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[79] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 616 https://www.academic.oup.com last visited on 24th May, 2022

[80] Lorna McGregor: Alternative Dispute Resolution and Human Rights: Developing a Rights based Approach through the ECHR The European Journal of International Law Vol.26 No. 3 Oxford University Press (2015) 616 https://www.academic.oup.com last visited on 24th June, 2022

[81] ibid

[82] International committee for Arbitration Report, 2019.

resolution methods that have their source of authority in court rules and legislative, executive, and administrative mandates, as well as private contracts.[83]

"The claimed advantages of ADR are generally cast in terms of efficiency and process." The efficiency argument supporting ADR is that it is a faster and therefore less expensive process than traditional litigation, although this claim has proven difficult to document. Process rationales suggest that ADR methods are more satisfying and private, produce better outcomes, and contribute to a more civil society through less contentious methods of dispute resolution[84]. Perhaps not surprisingly, the perceived disadvantages of ADR are a mirror image of its strengths, at least as currently understood. To the extent that court formalities in part strive to equalize the power imbalances between the parties, the informal structures of ADR can serve to reinforce those imbalances[85].

Similarly, the privatization of dispute resolution through ADR and the establishment of a new and important class of entrepreneurial ADR providers create a profit motive for the neutral that does not exist in the public dispute resolution system.[86]

As such, repeat players, such as employers, have been found to enjoy a significant advantage in at least some ADR processes. Under the bipolar model, ADR also results in the sacrifice of constitutional and other public law rights through ADR processes, such as the rights to an attorney and to due process, the appellate process's assurance of the accurate application of public laws, and the educational value of public decision making. Finally, critics would contend that all of this takes place in an environment of secrecy, in which closed doors can mask a world of mischief. For all of these reasons, whether parties can be compelled to participate in ADR processes has been among the most pervasive and controversial issues of the ADR movement.[87]

There are many different forms of ADR. However, for purposes of this study, it is helpful to divide them into three groups: adjudicatory processes (most notably arbitration), consensual

[83] ibid
[84] ibid
[85]Richard C. Reuben: Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice University of Missouri School of Law Scholarship Repository. Faculty Publication 47 UCLAL. Rev 949 (2000) 963 https://www.scholarship.law.missouri.edu/facpub last visited on 30th May 2022
[86] ibid
[87] ibid

processes (most notably mediation), and advisory processes (most notably early neutral evaluation).

2.3. Chapter Summary

The second chapter deals with a literature review. In this regard, the researcher makes a deliberate effort to review literature that is closely related to the objectives of the study. It looked into how different authors see the benefits of ADR and how it has been used with particle advantages. It concluded by citing the numerous advantages of ADR for the parties to the clause.

2.4. Conclusion

The fact that Uganda domesticated the basic laws on international arbitration like the UNCITRAL Model Law and the New York Convention does not translate into the efficiency of arbitration in the country. The system is riddled with challenges, especially arbitrability, which is a big problem due to differences in legal regimes and the fact that the lex arbitri and lex loci arbitri have to be in harmony for enforcement of arbitral awards to occur. The most important concern about whether Uganda is really ready for tax arbitration points to the forum for arbitration in the petroleum industry in Uganda.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0. Introduction

This chapter presented the methodology that was used in the study. It covers the research design. This research purely took a qualitative approach. It was conducted using library and desk research methods. These desk research methods were used to review government published data such as laws and policies, which were very helpful in the entire research process. In addition, important textbooks and articles were reviewed to obtain and contextualize scholarly opinions for the guidance of this paper. The research also reviewed Newspapers to ascertain the current trends in the industry. The paper also relied on some internet sources for

secondary or tertiary information to support the study especially in ascertaining current global trends in the industry.

This chapter presented the methodology that was used in the study. It covered the research design, research methods, research instruments, data sources, ways of analysing data, research ethical considerations, and justifications of the study.

3.1. Doctrinal legal research method

The study was conducted through a mainly qualitative doctrinal legal research method that provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty, and perhaps predicts future developments.

A doctrinal legal research is a suitable research design for this study because this study will be based on legal concepts and principles of law, statutes, cases and rules concerning environmental aspects in the oil and gas industry in Uganda and henceforth allows the researcher to adequately address and discuss the legal concepts relating to Alternative Dispute Resolution Mechanisms.

This research design enables the legal researcher to take on a series of legal propositions as a starting point and focus of the research objective and designs the research methodology and structure around/for them.[88]

Conventional legal research normally takes place in a law library to locate authoritative decisions, applicable legislation and any secondary discussion, reads and analyses the material, formulates a conclusion and writes up the study results.[89] Now, more than ever, it is imperative that academic lawyers, working within an increasingly sophisticated research context, explains and justifies what they do when they conduct a 'doctrinal research'. Lawyers need to explicate their methodology in terminology similar to that used by other disciplines.

The term 'doctrinal research' needs clarification. The word 'doctrine' is derived from the Latin noun 'doctrina' that means instruction, knowledge or learning. The doctrine in question includes legal concepts and principles of all types such as cases, statutes, and rules. 'Doctrine'

[88] Terry Hutchinson, Nigel Duncan, "Defining and Describing what we do: Doctrinal Legal Research" *Vol.17* No 1

[89] Ibid

has been defined as a synthesis of various rules, principles, norms, interpretive guidelines and values. It makes coherent or justifies a segment of the law as part of a larger system of law.

Doctrines can be more or less abstract, binding or non-binding.[90] Historically, law was passed on from lawyer to lawyer as a set of doctrines, in much the same way as happened with the clergy.

Legal training developed in the middle ages within a religious rhetorical tradition, with the monasteries existing as a centre of learning.[91] The term 'doctrinal' is also closely linked with the doctrine of precedent.

Legal rules take on the quality of being doctrinal because they are not just casual or convenient norms, but because they are meant to be rules which apply consistently and which evolve organically and slowly. It follows that doctrinal research is research into the law and legal concepts. This method of research was the dominant influence in 19th and 20th century views of law and legal scholarship and it tends to dominate legal research design.[92]

Legal academics may argue that a statement of doctrinal methodology would be out of place in a doctrinal thesis, and that, in any case, this aspect would have been examined during the earlier phases of the doctrinal research process. One commentator, Paul Chynoweth, asserts that 'no purpose would be served by including a methodology section within a doctrinal research publication', because the process is one of 'analysis rather than data collection'.[93]

It can be argued that, while this may be true for published research in journals, the situation in relation to research grant applications and doctrinal legal research thesis is different. Chynoweth argues that legal academics need to seek to educate their interdisciplinary colleagues on the nature of the methodology they use and that, in order to do this, it should 'reflect upon its own previously unquestioned assumptions about the practices in its own

[90]Trischa Mann (ed), Australian Law Dictionary (Oxford University Press, 2010) 197.
[91] J M Kelly, A Short History of Western Legal Theory (Clarendon Press, 1992) 89.
[92] Desmond Manderson and Richard Mohr, 'From Oxymoron to Intersection: An Epidemiology of Legal Research' (2002) 6(1) Law Text Culture 159, 161. For a breakdown of empirical and doctrinal PhDs in Australia see Desmond Manderson, 'Law: The Search for Community' in Simon Marginson (ed), Investing in Social Capital (University of Queensland Press, 2002) 152.
[93] Paul Chynoweth, 'Legal Research' in Andrew Knight and Les Ruddock (eds), Advanced Research Methods in the Built Environment (Wiley-Blackwell, 2008) 37.

discipline, and to articulate these for the benefit of others within the field.'[94]

The study of a selection of law theses demonstrate that lawyers are not conforming to the formalities of describing methodology in the same way that occurs in other disciplines. Perhaps there is not the same need to articulate the method for an audience from within the law paradigm. However, academic lawyers are now participating in broader interdisciplinary environments than they previously did, where there is little knowledge of doctrinal research processes and where there are different expectations in relation to explanations of research methodologies.

The nature of a qualitative doctrinal legal research methodology henceforth shall enable the researcher to analyse the literature reviewed. The need to appreciate and articulate the legal aspects of this research such as laws, statutes, case law as indicated in the literature review doesn't require the researcher to undertake data collection as this is knowledge that can be acquired through desk and library research methods. Henceforth, being of legal nature, the researcher has chosen this as the best method to analyse the literature involved.

3.2. Doctrinal Method as a Two-Part Process

Doctrinal method is normally a two-part process, because it involves first locating the sources of the law and then interpreting and analysing the text. In the first step, it could be said that the researcher is attempting to determine an 'objective reality', that is, a statement of the law encapsulated in legislation or an entrenched common law principle.[95] However, many critical legal scholars would be quick to contest whether any such objective reality exists, as the very concept of objectivity was based in a liberal theoretical framework. Most would argue that the law is rarely certain.

As Christopher McCrudden comments, 'if legal academic work shows anything, it shows that an applicable legal norm on anything but the most banal question is likely to be complex, nuanced and contested'.[96] However, if we take legislation as an example, the laws that are passed by parliament and the words are written down. In that, sense there is a positive statement of the law. It is at the next step where the law or rule is interpreted and analysed within a

[94] Ibid
[95] Hutchinson, Researching and Writing in Law, above n 66, 37.
[96] Christopher McCrudden, 'Legal Research and the Social Sciences' [2006] (October) Law Quarterly Review 632, 648.

specific context that the outcome becomes 'contingent' or conditional on the expertise, views and methods of the individual researcher.

Before analysing the law, the researcher must first locate it. A research project, for example, may require the researcher to access and analyse all the current and historical legislation and administrative regulation of all the Australian states or Canadian provinces for the last century, covering three or four different but related legal subjects, along with any judicial interpretation of those rules and statutes. Even a mere description of the scope of such an exercise makes the breadth of the undertaking more apparent to the 'outsider'.

Having located this wealth of documents, the second step is more nebulous. Is it actually possible to plan and describe this second aspect of the doctrinal research methodology in an intelligible way for an 'outsider'? As Geoffrey Samuel has queried, 'Can legal reasoning be demystified?'[97] Can the legal researcher describe what it is to undertake the distinct form of analysis involved in thinking like a lawyer? Perhaps it is simply the case that the 'medium is the message',[98] so that the doctrinal discussion and analysis of the law encapsulates and demonstrates the extent of research that has taken place and on which the arguments are based.

The tools at hand can range from 'stare decisis and its complexities' to the 'common law devices which allow lawyers to make sense of complex legal questions'.[99]

Those studying the methodologies of lawyer's point to a number of techniques used within the synthesizing process once the documents are located and read. They call for a description of the particular line of inquiry being developed, whether it is conceptual, evaluative or explanatory. The application of such techniques, along with a description of, for example, the use of deductive logic, inductive reasoning and analogy where appropriate, would constitute the second part of the methodology.[100]

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[97] Geoffrey Samuel, 'Can Legal Reasoning Be Demystified?' (2009) 29(2) Legal Studies 181; Larry Alexander and Emily Sherwin, Demystifying Legal Reasoning (Cambridge University Press, 2008); Geoffrey Samuel, 'Does One Need an Understanding of Methodology in Law before One Can Understand Methodology in Comparative Law?' in Van Hoecke, above n 77, 177.
[98] Marshall McLuhan, Understanding Media: The Extensions of Man (Mentor, 1964).
[99] Irene Baghoomians, 'Thinking Like a Lawyer: A New Introduction to Legal Reasoning, by Frederick Schauer' (2009) 31(3) Sydney Law Review 499, 499.
[100] Irene Baghoomians, 'Thinking Like a Lawyer: A New Introduction to Legal Reasoning, by Frederick Schauer' (2009) 31(3) Sydney Law Review 499, 499.

If the researcher intends to draw heavily on an approach, which uses the standard tools of logic, then the methodology would require a description of the basic syllogism and the processes involved in inductive and deductive reasoning. Legal reasoning is often deductive because the general rules are 'given', for example through legislation. The lawyer researcher examines the legislative provision, examines the situation and then decides if the situation comes within the rule. By comparison, inductive reasoning uses a process of arguing from specific cases to a more general rule.[101]

Where the source of the rule is case law rather than legislation, 'the lawyer will have to examine several cases to find a major premise which underlies them all.'[102] So the lawyer will have to 'reason from particular case decisions to a general proposition'.[103] Analogy, on the other hand, involves locating similar situations arising, for example, in common law cases, and then arguing that similar cases should be governed by the same principle and have similar outcomes. As Farrar points out, 'analogy proceeds on the basis of a number of points of resemblance of attributes or relations between cases.'[104]

It is apparent that an overtly doctrinal research plan or methodology is feasible, and it would provide a rigor and discipline often missing in doctrinal research. And, as McKerchar argues so succinctly, perhaps this methodology is nothing more than the need for doctrinal research to follow accepted conventions, using clear rationales, and for the research to be 'systematic and purposive with a robust framework.[105]

Data collection methods and their corresponding data collection instruments, data management and analysis procedures, reliability, validity and the ethical considerations.

3.3. Research Design.

The study used the doctrinal method because of its comparably cheaper nature, and less time consuming and captures a specific point in time. The researcher gathered information without manipulating the study environment. The benefit of a cross-sectional study design is that it

[101]Christopher Enright, Legal Reasoning (Maitland Press, 2011), ch 6 <http://www.legalskills. com.au/>.
[102] Farrar, above n 93, 91.
[103] Ibid
[104] Ibid, at 102
[105] Margaret McKerchar, Design and Conduct of Research in Tax, Law and Accounting (Lawbook Co, 2010) 116.

allows the researcher to compare the many different variables at the same time.

The researcher for example, looked at the efficacy of the Arbitration as a form of ADR in enhancing quick dispute resolutions in Uganda's oil and gas sector. and its relevancy to Arbitration and its implementation challenges, and how its implementation can be improved looking at the problem and finally how to improve Arbitration process in Uganda's oil and gas industry as a way of enhancing quick dispute resolutions.

Cross-sectional analysis has the advantage of avoiding various complicating aspects of the use of data drawn from various points in time. Further, the data analysis itself does not need an assumption that the nature of the relationships between variables is stable over time although this comes at the cost of requiring caution if the results for one-time period are to be assumed valid at some different point in time.[81]

The study was qualitative in nature aiming at investigating the efficacy of Arbitration as a form of ADR in enhancing Quick Dispute resolutions in Uganda's oil and gas sector. The design is selected to describe in-depth, the measures taken by government in designing the environmental legislations. A qualitative research approach was adopted, in order to exploit the synergies offered by this kind of research methodology.[82] secondary data was adopted and collected through document review.

3.4. Data Collection Methods

The Researcher used documentary analysis as the principal mode of data collection, and relied on secondary data through documentary review and analysis method.

3.5. Documentary Review

This method involved the reviewing both primary and secondary written sources of data such as books, reports, plans, journals and other official company records like statistics on arbitration in their companies.

3.6. Ethical Considerations

Some of the ideas used by the researcher were her own, there is information to be read and that obtained from literature about the topic. As such, the researcher explained where she got her information from by citation references and ensuring appropriate use of quotation marks respectively. This helped the researcher to maintain credibility of the literature to avoid

plagiarism.

3.7. Limitation of the study.

The researcher might face financial constraints most especially; money for travels, printing, photocopying, analysis of the literature and other miscellaneous expenses that come along. The researcher used the little funds available to complete the research, relied on available literature and critically analysed to reach the correct conclusion.

3.8. Chapter Summary

The chapter is considered the backbone of the research. This is so because it tackles the issues of why the research study was undertaken, how the research problem was formulated, the different types of data collected, the particular method used and why a particular technique of analysis of data in order to come up with the research.

CHAPTER FOUR

TAXATION DISPUTE FRAMEWORK IN UGANDA AND OTHER FORMS OF ADR IN OIL AND GAS INDUSTRY.

4.1. Dispute Mechanisms in Uganda's Oil and Gas Sector.

4.1.1. Legal framework.

There are many legislations enacted by Uganda to help in resolving tax disputes in its oil and gas industry, and these include the Income Act, PSAs, Tax Procedure Code Act, and Tax Appeals Tribunal Amendment Act, among others, all of which are aimed at resolving tax disputes in Uganda's oil and gas industry.

According to the 2016 PSA and Article 24 of the 2012 PSA Model, all taxes, duties, levies, and other lawful impositions applicable to the licensee shall be paid by the licensee in accordance with the laws of Uganda. This means that any tax dispute shall be handled in accordance with the objections and appeals mechanisms stipulated under the laws of Uganda. According to the 2012 PSA, all central, district administrative, municipal, and other local administrators' or other taxes, duties, levies, or other lawful impositions applicable to the licensee shall be paid by the licensee in accordance with the laws of Uganda in a timely fashion.

4.1.2. Arbitration.

The techniques for dispute resolution discussed herein are all embedded in the legal and contractual framework for oil and gas operations in Uganda, as set out below.

Uganda is party to various international agreements and deploys arbitration in the mix of dispute resolution techniques for oil and gas operations and other sectors of the economy.

(a) New York Convention: Uganda's arbitration regime is anchored on the 1958 United Nations Convention on Recognition and Enforcement of Arbitral Awards (the New York Convention), which it ratified in 1992.[106]

[106] Isaac Christopher Lubogo, The Law of Oil and Gas In Uganda, First Edition, Jecho Group Ltd, Kampala East Africa, .2021, Pg 718

Subject to Article 13[107] of the PSA 2016 and paragraph 25.2, a dispute arising under this which can't be settled amicably within one hundred and twenty (120) days, shall be referred to Arbitration in accordance with the United Nations Commission for International Trade Law (UNCITRAL) Arbitration Rules. The arbitration shall be conducted by three (3) arbitrators appointed in accordance with the said Rules. The said arbitration shall take place in London, a place agreed upon by the Parties. Judgment on the award rendered may be entered in any court having jurisdiction or application may be made in such court for a judicial acceptance of the award and an order of enforcement, as the case may be. The Arbitration award shall be final and binding on the Parties to this Agreement. For example the case of TULLOW and anor V URA, 2011 and 2016[108] which was resolved in London through Arbitration.

Any matter in dispute between the Government and Licensee arising under paragraphs 14.1 and 12. May, at the election of either of such parties by written notice to the other, be referred for determination by a sole expert to be appointed by agreement between the Government and the Licensee.[109]

If the Government and the Licensee fail to appoint the expert within sixty (60) days after receipt of such written notice, either of such parties may have such expert appointed by the then President of the Institute of Petroleum (London). If the aforesaid President shall be disqualified to act by reason of professional, personal or social interest or contract with the parties in dispute or their Affiliated Companies, the next highest officer for the time being of said Institute of Petroleum, who is not disqualified shall act in lieu of said President. No person shall be appointed to act as an expert under this section:

(a) Unless he or she shall be qualified by education, experience and training to determine the subject matter in dispute; or
(b) If at the time of his or her appointment or at any time before he or she makes his or her determination under such an appointment, he or she has or may have some interest of duty which conflicts or may conflict with his or her function under such appointment.
The expert shall render his or her decision within (60) days after the date of this appointment,

[107] PSA, Model, 2016
[108] Tullow v URA, Arbitration case of 2016, London.
[109] PSA Model of 2016.

unless the Parties otherwise agree[110].

In rendering his or her decision, the expert shall do so within the context of the provisions of this Agreement, the Act, Regulations and the standards of Best petroleum industry practices. The decision of the expert shall be final and binding on both the Licensee and the Government. The expert's fees and expenses, and the costs associated with an appointment, if any, made by the President of the Institute of Petroleum (or the next highest officer thereof), shall be allocated to the Parties in dispute in such manner as the expert may determine and the seat of arbitration is London, United Kingdom. [111]

This clause however excludes disputes relating to taxation, health and safety and environment which are determined only in accordance with the procedures set out in the applicable local legislation. An arbitral award/judgment obtained pursuant to this clause is final and binding and may be entered in any Court with jurisdiction for acceptance.

The Arbitration and Conciliation Act Cap 4 that was enacted in 2000 expressly incorporates the New York Convention. 159 states are party to this Convention. Uganda's ratification of the New York Convention came with a declaration stating thus, "The Republic of Uganda will only apply the Convention to recognition and enforcement of awards made in the Territory of another contracting state." The Republic of Uganda will only apply the Convention to recognition and enforcement their long-term commercial interests without getting preoccupied with the details of asserting their legal rights and obligations under the relevant contract." Mediation is cheaper and faster than arbitration but is not commonly used in resolving international oil and gas disputes.

(c) Expert determination is used in disputes requiring expert or technical input, but the parties need to agree in writing on the matters that are covered by this. Though not enforceable like arbitral awards, expert determinations contractually bind the relevant parties.

(d) Litigation is the most common dispute resolution technique for lawyers. While it is practical in domestic energy disputes where all parties are from the same jurisdiction, litigation is not

[110] PSA Model of 2016

[111] Isaac Christopher Lubogo, The Law of Oil and Gas in Uganda, First Edition, Jecho Group Ltd, Kampala East Africa, .2021, Pg. 734.

preferred for international disputes because of issues relating to neutrality and enforcement of judgments in foreign jurisdictions and the time it takes to conclude cases.

(e) Arbitration is the technique of choice for dispute resolution in the international oil and gas industry. It is legally binding and the consequential awards enforceable in foreign jurisdictions. Parties can choose their arbitrators, the extent of their arbitration process as well as the venue and forum of arbitration.[112] Arbitration is however fairly expensive.

New York Convention

Uganda's arbitration regime is anchored on the 1958 United Nations Convention on Recognition and Enforcement of Arbitral Awards (the New York Convention) that it ratified in 1992. The Arbitration and Conciliation Act Cap 4 that was enacted in 2000 expressly incorporates the New York Convention. 159 states are party to this Convention. Uganda's ratification of the New York Convention came with a declaration stating thus; "The Republic of Uganda will only apply the Convention to recognition and enforcement of awards made in the territory of another Contracting State". Thus, foreign arbitral awards from contracting parties to the New York Convention are recognisable and enforceable in Uganda. Where parties choose to adopt arbitration for the resolution of their disputes, the Arbitration and Conciliation Act expressly gives precedence to arbitration and requires Courts to suspend legal proceedings and refer a matter to arbitration where a defendant so requests.

The Arbitration and Conciliation Act further preserves the integrity of arbitral awards by restricting judicial interference with an award only to points of law, meaning Courts cannot open up and rehear a dispute which has been submitted to arbitration. The Arbitration and Conciliation Act established the Centre for Arbitration and Dispute Resolution ("CADRE") to spearhead and conduct arbitration as well as perform supportive functions under the United Nations Commission for International Trade Law (''UNCITRAL''). The Arbitration and Conciliation Act Cap 4 that was enacted in 2000 expressly incorporates the New York Convention. 159 states are party to this Convention. Uganda's ratification of the New York Convention came with a declaration stating thus; "The Republic of Uganda will only apply the

[112] Isaac Christopher Lubogo, The Law of Oil and Gas in Uganda, First Edition, Jecho Group Ltd, Kampala East Africa, .2021, Pg 700

Convention to recognition.[113]

ICSID Convention

Uganda is also a state party to the Convention on Settlement of Investment Disputes between States and Nationals of Other States 1965 ("the ICSID Convention") which was ratified on 7th June 1966 and entered into force in Uganda on 14th October 1966. This enables the submission of investment disputes against Uganda for arbitration or conciliation at the International Centre for Settlement of Investment Disputes ("ICSID"). As far as enforcement of ICSID awards is concerned, the Arbitration and Conciliation Act expressly authorizes any party seeking to enforce an ICSID award in Uganda to apply to the High Court to have the award registered for purposes of enforcement. ICSID in Washington DC, has already handled at least two claims involving the government of Uganda and IOCs though both were withdrawn prior to the arbitral award and involved tax disputes. These were Total E&P Uganda BV vs. Republic of Uganda ICSID Case No. ARB/15/11 and Tullow Uganda Operations PTY LTD vs. Republic of Uganda ICSID Case No. ARB/12/34. The Ugandan Cabinet adopted model Production Sharing Agreement in 2018, a new Model Production Sharing Agreement (MPSA) for petroleum exploration, development and production. Article 24.1 provides that where a dispute cannot be resolved within 120 days, it shall be referred to arbitration in accordance with the UNCITRAL Arbitration Rules. Such an arbitration is to be conducted by three judges.

Article 24 of PSA 2016, any tax disputes shall be handled in accordance with the dispute resolution mechanisms stipulated under the Laws of Uganda and these may include Arbitration and Litigation according to the case of Tullow and Anor V URA, 2011, Tax **Appeals Tribunal.**

Under the Income Tax Act and the Tax Procedure Code Act, a party dissatisfied with a tax assessment may lodge an objection with the Commissioner General of URA within 45 days of receiving the assessment. The Commissioner General hears and determines the objection and any party dissatisfied with his/her decision, may lodge an application for review of the decision to the Tax Appeals Tribunal within 30 days.

The TAT is a constitutional tribunal established to handle tax disputes. Decisions of the TAT are appealable to the High Court within 30 days from the date of the decision. Further appeals

[113] Isaac Christopher Lubogo, The Law of Oil and Gas in Uganda, First Edition, Jecho Group Ltd, Kampala East Africa, .2021, Pg 750.

may be lodged to the Court of Appeal and all the way to the Supreme Court. Litigation in Courts of Law and established tribunals remains the default position for dispute resolution unless parties, by agreement choose or the law.

Litigation and recent taxation disputes. As already highlighted, Uganda has been engaged in a number of taxation disputes with Heritage Oil and Gas Limited and Tullow Oil which went through the TAT and the High Court in Kampala as well as arbitration in the UK and the United States. It should be noted that the URA on Heritage's farm also locked Heritage Oil and Tullow Oil in a dispute in relation to the CGT imposition down of its Ugandan oil blocks. The UK High Court heard this case decided in favour of Tullow Oil. The current MPSA excludes taxation disputes from arbitration proceedings by providing that taxation disputes shall be handled in accordance with the objections and appeals mechanisms under the laws of Uganda. Based on our experience, it is highly unlikely IOCs would agree to sign a PSA that excludes taxation.

Tax Procedure Code Act of 2014

This Act applies to every tax law specified in schedule 2 of the Act as stated in **section 2[114] of TPCA of 2014.** The second schedule of the Act Cleary states that for the purposes of this Act (TPCA), a reference to the tax laws means, **(a) this Act (TPCA), (b) the income Tax Act, (c) the Value Added Tax Act, (d) the Exercise Duty Act, (e) Gaming Pool Betting (Control & Taxation) Act, and (f) And any other Act imposing a tax as the minister, may by statutory instrument declare in accordance to section 72(2).** For the purposes of this Act (TPCA), Minister is the Minister of Finance as provided under **section 3.**

Objections and Appeals on Tax

A person who is dissatisfied with the decision may lodge an objection with the Commissioner within forty-five days after receiving sufficient notice of the tax decision as provided for under **section 24(1) of the (TPCA**). This objection must be in a prescribed form and must state the grounds upon which it is made with sufficient evidence to support it as per **section 24(2)[115] .**

[114] Tax Procedure Code Act, 2014
[115] Tax Procedure Code Amendment Act, 2014

This position is also reflected under section 99 of the Income Tax Act Cap 340.

Where a taxpayer has lodged an objection to a tax assessment for a tax period, the Commissioner may consider the objection provided the taxpayer, (a) has furnished the return to which the assessment relates in the case of a default or advance assessment, (b) has paid the tax due under the return to which the assessment relates together with any penalty or interest due as stated under **Section 24(2)**[116]

A person may apply in writing to the commissioner for an extension of time to lodge an objection and the commissioner may, if satisfied with the grounds upon which the application is made, grant an extension for such period as the commissioner determines as provided under **Section 24(4)**[117]**. Where the Commissioner refuses to grant an extension, the tax payer has a remedy to apply to the Tribunal for review of the decision within forty days after service of the notice as per section 99(4)**[118]**.**

A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater, and in case of goods which are perishable, the goods shall be released to the taxpayer immediately after payment of the amount of tax prescribed, but the Uganda Revenue Authority shall be given security equivalent to the amount of tax assessed as stated under **section 15(1) & (2)**[119]**.** The decision of the commissioner in objection applications should be judicially that is decide using all skill, objectively and act fairly in deciding the merits of the objection before coming up to a decision as his or her position at this point in time is not adversarial, in this process the commissioner is exercising judicial function or quasi-judicial functions which further obligates him or her to offer the tax payer a fair hearing as stated and held in the Case of **Cable Corporation (u) Ltd Vs Uganda Revenue Authority**[120]**.**

Decision on an Objection

The commissioner may make a decision on – (a) to a tax assessment, affirming, reducing,

[116] Tax Procedure Code Amendment Act, 2014
[117] Tax Procedure Cod Amendment Act, 2014
[118] Income Act cap 340
[119] Tax Procedure Code Act, 2014
[120] High Court Appeal o1 of 2011.

increasing, or otherwise varying the assessment to which the objection relates, or (b) to any other tax decision, affirming, varying or setting aside the decision as stated under **section 24(5).**[121]

Where the commissioner makes a decision, the commissioner shall serve notice of an objection decision on the person objecting within ninety days from the date of receipt of the objection as stated under **section 24(6)**[122] Where an objection decision has not been served within the time specified, the person objecting May, by notice in writing to the commissioner, elect to treat the commissioner as having made a decision to allow the objection as stated under **section 24(7)**[123]**.**

Burden of Proof

In any proceeding, (a) for a tax assessment, the burden of proof that the assessment is incorrect, or (b) for any other tax decision, the burden is on the person objecting to the decision to prove that the decision should not have been made or should have been made differently as stated under **section 26**[124]**.**

4.1.3. Appeals to the tribunal

The Tax Appeals Tribunal

A person dissatisfied with an objection decision may, within 30 days after being served with a notice of the objection decision, lodge an application with the Tax appeals Tribunal for review of the objection decision as stated under **section 25(1)**[125] **and section 14(1), However section 100(1)**[126] gives a taxpayer dissatisfied with the objection decision to either apply for a review or appeal to the High Court.

The Tribunal has power to review any taxation decision in respect of which an application properly made, and in the discharge of its functions shall not be subject to the direction or control of any person or authority as stated under section 14(2) and section 14 (3) of the Tax Appeals Tribunal.

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[121] Tax Procedure Code Act, 2014
[122] Tax Procedure Code Act, 2014
[123] Tax Procedure Code Act, 2014
[124] Tax Procedure Code Act, 2014
[125] Tax Procedure Code Act, 2014.
[126] Income Tax Act Cap 340.

An appeal can either originate from the commissioners' refusal to extend time with which to file a return of income, as per Section 94(4)[127], the commissioners' decision in regarding a tax payers application to change the method of accounting as under section 40(4), the commissioner's decision in regard to an objection refer to section 100(1) of the Income Tax Act Cap 340.

The appeal to High Court and Court of Appeal

Where a taxpayer is decertified with the decision of the Tax Appeals Tribunal, may lodge an appeal to the High Court. The appeal is lodged by summiting a notice of appeal to the High Court within Thirty (30) days and the person lodging an appeal shall serve the notice to the other party before the Tribunal as stated under **section 27 of the Tax Appeals Tribunal Cap 345**. This Appeal may be made on the question of law and the notice of appeal shall state the question or questions of law that will be raised as stated under **section 100(4) of the Income Tax Cap 340**

Appeal to Court of Appeal

A party to a proceeding before the High Court who is dissatisfied with the decision of the High Court may, with leave of the Court of appeal, appeal the decision to the Court of Appeal as under **Section 101 of the Income Tax Act Cap 340.**

Implementation of the Decision of the Tribunal or Court

The tribunal or the High Court has powers to make an order staying or otherwise affecting the operation or implementation of the decision under review as it considers appropriate for the purpose of securing the effectiveness of the proceeding and determination of the application or appeal and where the decision requires to refund an amount of tax as stated under **section 28(1) & (2) of the Tax Appeals Tribunal Cap 345.**

Matters for expert determination. The MPSA further reserves disputes relating to health, safety and environment ("HSE") for determination by a sole expert. Such an expert is to be appointed by agreement of the parties and where the parties fail to do so, either party may petition the President, or the next ranking officer, of the Institute of Petroleum (London) to

[127] Income Tax Act cap 340

make the appointment. The expert would be required to deliver their decision within 60 days. This procedure makes for quick and expeditious decisions on urgent matters of HSE which enables project activities to move forward with minimal disruption.

Other mechanisms Mediation and negotiation can also be incorporated into the mechanisms for dispute resolution if the parties to the oil and gas agreements so agree.

Regional Mechanisms. The East African Court of Justice ("EACJ") was created under article 9 of the Treaty establishing the East African Community ("EAC Treaty"). The EACJ's primary mandate is to handle interstate disputes concerning interpretation of the EAC Treaty. However, article 30 empowers legal entities and natural persons who are resident in a partner state to challenge any action.

Model Production Sharing Agreement. In 2018, a new Model Production Sharing Agreement (MPSA) for petroleum exploration, development and production was adopted by the Ugandan Cabinet. Article 24.1 provides that where a dispute cannot be resolved within 120 days, it shall be referred to arbitration in accordance with the UNCITRAL Arbitration Rules. Such an arbitration is to be conducted by three judges. The Arbitration award shall be final and binding on the Parties to this Agreement.

PSA Model of 2012[128] Subject to Article 14.2, any dispute arising under the Agreement that cannot be settled amicably within sixty (60) days, shall be referred to Arbitration in accordance with the United Nations Commission for International Trade Law (UNCITRAL) Arbitration Rules. Three (3) arbitrators appointed in accordance with the said Rules shall conduct the arbitration. The said arbitration shall take place in London, England. Judgment on the award rendered may be entered in any court having jurisdiction, or application may be made in such court for a judicial acceptance of the award and an order of enforcement, as the case may be.
PSA Model, 2012[129] states that Any matter in dispute between the Government and Licensee arising under paragraphs 5.4, 7.6, 10.1.3, 10.1.4, 10.2.3, 15.2 and 33.2 may, at the election of either of such parties by written notice to the other, be referred for determination by a sole expert to be appointed by agreement between the Government and Licensee. If the Government and Licensee fail to appoint the expert within sixty (60) days after receipt of such written notice,

[128] PSA Model , 2012
[129] PSA Model of 2012

either of such parties may have such expert appointed by the then President of the Institute of Petroleum (London). If the aforesaid President shall be disqualified to act by reason of professional, personal or social interest or contract with the parties in dispute or their Affiliated Companies, the next highest officer for the time being of said Institute of Petroleum, who is not disqualified shall act in lieu of said President. No person shall be appointed to act as an expert under this section[130]:

(i) Unless he shall be qualified by education, experience and training to determine the subject matter in dispute; or
(ii) if at the time of his appointment or at any time before he makes his determination under such an appointment, he has or may have some interest or duty which conflicts or may conflict with his function under such appointment.
The expert shall render his decision within sixty (60) days after the date of this appointment, unless the Parties otherwise agree. In rendering his decision, the expert shall do so within the context of the provisions of this Agreement, the Act and the standards of Good Oilfield Practices. The decision of the expert shall be final and binding on both Licensee and the Government. The expert's fees and expenses, and the costs associated with an appointment, if any, made by the President of the Institute of Petroleum (or the next highest officer thereof), shall be allocated to the Parties in dispute in such manner as the expert may determine.[131]

4.2. Institutional framework in taxation dispute mechanism in Uganda's oil and gas sector.

4.2.1. Court adjudication.

While disputes are bound to happen due to the inherently complex nature of the oil and gas industry, as this publication shows, that there are mechanisms embedded in Uganda's legal and contractual documents for effective resolution of such disputes. Moreover, specific procedures are provided for each category of disputes. While the TAT and Ugandan judiciary have been involved so far in the determination of some of the oil and gas disputes, international avenues such as ICSID and LCIA are the preferred forums for dispute resolution by the IOCs.
It is also interesting that the current MPSA excludes taxation disputes from arbitration proceedings though the researcher's view is that it is highly unlikely IOCs would agree to sign

[130] PSA Model of 2016
[131] PSA, 2016

investment agreements that exclude taxation disputes from arbitration, directive, decision or legislation of a partner state on the ground that it violates the EAC Treaty. Article 32 empowers the EACJ to handle arbitration proceedings where parties, by agreement, decide to refer disputes to it for arbitration.

Other forms of alternative mechanism in the oil and gas sector.

4.2.3.Consensual Processes: Negotiation, Amicable settlement and Mediation

Unlike adjudicatory judicial and arbitration proceedings, consensual processes call for the parties to decide the dispute themselves. This can be in the form of direct negotiation, amicable settlement or through mediation, which is often called "facilitated negotiation. "Direct negotiation, in which two or more parties try to work out their differences without intervention, is probably the most common method of dispute resolution.[132]

While it is easy to overlook negotiation as a means of dispute resolution, recent scholarship has more fully developed its principles and applications and has emphasized its usefulness for fundamental problem solving that can avoid many of the frailties of other dispute resolution techniques, just as it is an ongoing part of ADR processes.[133]

Negotiation is often thought of as part of the litigation process as indeed it is. However, there cognition of its character, function, goals, and process dynamics as a separate dispute resolution mechanism helps illuminate the details of the broader system of civil dispute resolution of which it is a part.[134]

In mediation, a third-party neutral typically facilitates the resolution of the dispute by guiding the parties through a series of stages that may be summarized as contracting (agreeing upon ground rules), issue development (identifying facts, positions and many others),[135] working the conflict (promoting mutual understanding and developing mutually acceptable options), and closure (agreeing upon options).[136]Participation is voluntary because even though a court

[132]Richard C. Reuben: Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice University of Missouri School of Law Scholarship Repository. Faculty Publication 47 UCLAL. Rev 949 (2000) 967 https://www.scholarship.law.missouri.edu/facpub last visited on 3 December, 2022
[133]Richard C. Reuben: Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice University of Missouri School of Law Scholarship Repository. Faculty Publication 47 UCLAL. Rev 949 (2000) 967 https://www.scholarship.law.missouri.edu/facpu last visited on 3rd December, 2022
[134]ibid
[135] PSA Model, 2016
[136]Richard C. Reuben: Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public

may order the process itself, the parties in dispute are not required to reach a solution. In mediation there is a third-party, a mediator, who facilitates the resolution process but never impose a resolution on the parties.[137]

Mediators are individuals trained in negotiations and bring opposing parties together to attempt to work out a settlement or agreement that both parties accept or reject. Mediation is used in a wide range of cases such as juvenile felonies, disputes between communities, states, labour disputes between employers and employees etc. One characteristic of mediation is that it is voluntary and is a process in which a neutral third party brings the opposing parties to a peaceful resolution of issues.[138] Mediation steps include efforts such as gathering information, framing the issues, developing options, negotiating and aiding agreements. Parties in mediation create their own solutions and the mediator does not have decision making power over the outcome of the negotiation[139].

The basic attributes of a mediation procedure are: (1) a requirement that the parties attempt to arrive at a negotiated resolution of their dispute, subject to a time limit that can be extended only by agreement; (2) an opportunity for either party to refer the dispute to a mediator; and (3) a time limit on the mediation process, extendable only by agreement of the parties, after which the parties are free to pursue whatever other remedies are available to them under international law, including appropriate retaliation.[140] The primary shortcoming of mediation is that it does not really compensate for differences in post-agreement negotiating power. A party can go through the motions of a negotiation, ignore the efforts of a mediator, and, at the end of the day, be in the same position it would have been in had there been no procedure at all.[141]

There is, on the other hand, the advantage that an opportunity for mediated negotiations can increase the chances of reaching an amicable settlement, at least if the parties are prepared to

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Civil Justice University of Missouri School of Law Scholarship Repository. Faculty Publication 47 UCLAL. Rev 949 (2000) 967 https://www.scholarship.law.missouri.edu/facpub last visited on 3rd June, 2022

[137]Shipi M. Gowok: Alternative Dispute Resolution in Ethiopia-A Legal Framework (2008) 266 https://www.ajol.info last visited on 4th June, 2022

[138] Shipi M. Gowok: Alternative Dispute Resolution in Ethiopia-A Legal Framework (2008) 266 https://www.ajol.info last visited on 4th July, 2022

[139] Article 24 PSA, model 2016

[140] O.Thomas Johnson Jr. Alternative Dispute Resolution in the International Context: The North American Free Trade Agreement SMU Law Review Vol. 46 Issue 5 Article II (1998) 2178 https://www.core.ac.uk last visited on 12 July, 2022

[141] O.Thomas Johnson Jr. Alternative Dispute Resolution in the International Context: The North American Free Trade Agreement SMU Law Review Vol. 46 Issue 5 Article II (1998) 2178 https://www.core.ac.uk last visited on 12th June, 2022

negotiate in good faith. In addition, the time limits inherent in a conciliation procedure restrict a party's ability to drag out negotiations in the hope of postponing retaliation, thus creating an additional incentive to take both the dispute and the negotiations seriously. [142]

Mediation is generally not viewed as a sufficient dispute-resolution procedure for a trade agreement since it does not neutralize differences in bargaining power. It is often, however, the required first step of such a procedure. This is true of the general dispute-resolution procedure set forth in Chapter2 0 of NAFTA, which, as is explained more fully below, can result in the referral of a dispute to nonbinding arbitration after all required mediation procedures have failed. Most often, the mediation provisions of trade agreements provide for some sort of permanent commission composed of representatives of all the parties to the agreement. Such commissions are usually given the tasks of facilitating day-to-day communication among the parties and negotiations concerning particular disputes.[143]

They may also act as mediators, or as the bodies authorized to appoint mediators. Chapter 20 of NAFTA establishes such a commission, the Free Trade Commission, which is composed of cabinet-level representatives of each party. The Commission is the heart of NAFTA's mediation process. Among the Commission's duties are the supervision of the implementation of the Agreement and the resolution of "disputes that may arise regarding its interpretation or application." More specifically, Article 2007 of NAFTA.[144]

In mediation, a third-party neutral typically facilitates the resolution of the dispute by guiding the parties through a series of stages that may be summarized as contracting (agreeing upon ground rules), issue development (identifying facts, positions, etc.), working the conflict (promoting mutual understanding and developing mutually acceptable options), and closure (agreeing upon options).[145]

As a method of dispute resolution, mediation's central strength lies in its communicative and

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[142] O. Thomas Johnson Jr. Alternative Dispute Resolution in the International Context: The North American Free Trade Agreement SMU Law Review Vol. 46 Issue 5 Article II (1998) 2179 https://www.core.ac.uk last visited on 12th July, 2022

[143] O. Thomas Johnson Jr. Alternative Dispute Resolution in the International Context: The North American Free Trade Agreement SMU Law Review Vol. 46 Issue 5 Article II (1998) 2179 https://www.core.ac.uk last visited on 12 June, 2022

[144] O. Thomas Johnson Jr. Alternative Dispute Resolution in the International Context: The North American Free Trade Agreement SMU Law Review Vol. 46 Issue 5 Article II (1998) 2179 https://www.core.ac.uk last visited on 12th June, 2022

[145]Richard C. Reuben: Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice University of Missouri School of Law Scholarship Repository. Faculty Publication 47 UCLAL. Rev 949 (2000) 967 https://www.scholarship.law.missouri.edu/facpub last visited on 3rd June, 2022

transformative powers-that is, the ability of the parties, with the help of a third-party mediator, to get beyond the initial positions that defined the conflict and down to the underlying interests of the parties-as well as its powerful potential to unleash creative, integrative solutions not possible in adjudicatory decision making.[146]

As such, it can be particularly effective in disputes of which the preservation of relationships is important and that allow for the consideration of options for resolution that exceed those that would be traditionally available in a court of law. While a mediation agreement can generally be enforced like any other contract and can sometimes be confirmed by a court for purposes of enforcement, the process's most fundamental enforcement power comes from the fact that the parties themselves have structured and approved the agreement.[147] In Uganda, Court guided mediation[148] is provided for as a mandatory requirement before a matter is adjudicated upon.

In **Oola Peter & 2 Ors Vs Lanen Mary[149]** the **Hon Justice Stephen Mubiru** stated that: "Mediation works because parties can safely let down their guard: they can expose weaknesses, explore true interests and motivations, and brainstorm creative solutions. Consequently, everything that happens in mediation stays in mediation, including documents prepared for mediation that could otherwise be used as evidence in a subsequent suit; they are inadmissible. Confidentiality is essential to effective mediation because it promotes a candid and informal exchange regarding events in the past. This frank exchange is achieved only if participants know that what is said in the mediation will not be used to their detriment through later court proceedings and other adjudicatory process'[150]

Mediation plainly is not appropriate for all disputes. A critical problem in mediation is its capacity to exacerbate power imbalances. In particular, some criticize mediation as tending to favour the economically or emotionally stronger party, or as working against the one who can least tolerate conflict or most values a harmonious resolution.[151]

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[146]ibid
[147]Richard C. Reuben: Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice University of Missouri School of Law Scholarship Repository. Faculty Publication 47 UCLAL. Rev 949 (2000) 967 https://www.scholarship.law.missouri.edu/facpub last visited on 3rd July, 2022
[148]The Judicature (Mediation) Rules, 2013
[149]Oola Peter & 2 Ors Vs Lanen Mary High Court Civil Appeal No. 0018 of 2017
[150] Ibid.
[151]Richard C. Reuben: Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice University of Missouri School of Law Scholarship Repository. Faculty Publication 47 UCLAL. Rev 949 (2000) 967 https://www.scholarship.law.missouri.edu/facpub last visited on 3rd June, 2022

This may inspire some parties to settle for far less than they might obtain before a judge in a traditional adversarial setting. As one writer puts it, "compromise only is an equitable solution between equals; between un equals, it 'inevitably reproduces inequality. "'For this reason, for example, while mediation can be extremely effective in addressing the interest-based issues of child custody and property division in divorce proceedings, some women's rights organizations have taken positions urging women not to mediate such disputes-and certainly not in situation sin which domestic violence is or has been present.[152]

4.2.4. Advisory Processes: An Array of Settlement Aids

Beyond arbitration and mediation, ADR also includes a broad range of techniques designed to foster settlement. Their primary purpose is to provide the parties and their representatives with more information that will help either narrow the negotiation gap between the parties or provide other incentives to settle the dispute without resort to adjudication.[153]

There are several variations, including principally: "Early Neutral Evaluation. In ENE, an expert evaluator meets with the parties to analyze the case, discuss disputed issues, explore settlement possibilities, and evaluate the parties' relative chances of prevailing." The neutral evaluator frequently provides a "reality check" for one or more of the parties and can be brought in privately by the parties during the negotiation process or, in certain cases, assigned by the court to provide an evaluation in a pending case.[154]" Summary Jury Trials. Pioneered by U.S. District Judge Thomas Lambros, the summary jury trial (SJT) is a form of court ordered mini trial in which the parties present brief versions of their facts and legal arguments to a jury drawn from the same population as would be used in a real trial.[155]

An SJT generally lasts one day and consists of the selection of six jurors to hear approximations by counsel of the expected evidence. After receiving an abbreviated charge, the jury retires with directions to render a consensus verdict. After a verdict is reached, the jury is informed that its verdict is advisory in nature and nonbinding. Again, an SJT provides the parties with a

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[152]Richard C. Reuben: Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice University of Missouri School of Law Scholarship Repository. Faculty Publication 47 UCLAL. Rev 949 (2000) 967 https://www.scholarship.law.missouri.edu/facpub last visited on 3rd June, 2022
[153] ibid
[154]Richard C. Reuben: Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice University of Missouri School of Law Scholarship Repository. Faculty Publication 47 UCLAL. Rev 949 (2000) 969 https://www.scholarship.law.missouri.edu/facpub last visited on 3rd July, 2022
[155] ibid

reality check by indicating how an actual jury may view their cases and opposing arguments. **Mini trials**. Although forms vary, the concept is similar to that of the SJT in that the parties each present their cases in truncated form to a third-party neutral who decides the dispute, though mini trials are private.[156]

While the process is adjudicatory in form, it differs from traditional adjudication in that the opinion is generally advisory and nonbinding. As such, it provides a basis for settlement discussions between the parties, which may or may not include the neutral. (4) Hybrids. The permutations of ADR processes are limited only by one's imagination.[157]

More than one of the foregoing ADR processes may be used to resolve individual disputes, and often several are integrated into the design of overall conflict resolution management schemes. ""Med/arb" is the most common hybrid form of ADR and combines mediation and arbitration into a single process. The dispute is first mediated, and if that proves unsuccessful, it moves into binding arbitration.[158]

4.2.5. The Current Legal Structure of ADR

While the various ADR processes described above are often considered to be non-legal in nature, the fact that they operate within a legalized structure begins to point to the inadequacy of the bipolar model. As noted briefly above, there are essentially three routes by which one may enter an ADR process: by court order, by legislative or administrative mandate, or by private contract. For the sake of convenience, Court-ordered and legislatively or administratively mandated ADR processes are referred to as "court-related" processes, as all are ultimately implemented through the courts. Together, court-related and contractual ADR are the twin pillars supporting the modem ADR movement-and the prevailing bipolar approach to civil dispute resolution.[159]

In conclusion, the most relevant of all alternative dispute resolution that is easily enforceable and binding to parties is Arbitration.

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[156]Richard C. Reuben: Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice University of Missouri School of Law Scholarship Repository. Faculty Publication 47 UCLAL. Rev 949 (2000) 967 https://www.scholarship.law.missouri.edu/facpub last visited on 3rd June, 2022

[157] ibid

[158]ibid

[159]Richard C. Reuben: Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice University of Missouri School of Law Scholarship Repository. Faculty Publication 47 UCLAL. Rev 970 (2000) 971 https://www.scholarship.law.missouri.edu/facpub last visited on 3rd June, 2022

CHAPTER FIVE

CONCLUSION, RECOMMENDATIONS, LIMITATIONS AND AREAS FOR FUTURE RESEARCH

5.1. Summary

Arbitration is one of the best ways under which oil and gas disputes can be resolved. The ADR system or mechanism however has its limitations especially in dealing with disputes in Uganda's oil and gas sector.

5.2. Limitations of the Study

While carrying out this study, the researcher encountered the following challenges;

5.2.1. Time Constraints

Since the researcher is in full time employment, for example, giving equal attention to both research and work However, this was overcome by fully and effectively creating a research schedule program for the task each week in order not lag behind.

5.2.2. Cost of the Research:

The research involved a lot of travelling and telephone calls to people in search for the research materials and this necessitated financial cover. The researcher had to dig deeper into his pockets to facilitate the completion of the research.

The subject of this study was highly technical and it covered new areas hitherto irrelevant. As such, there is lack of locally available data yet internet access is poor and expensive. Since the oil industry is an upcoming industry and yet to kick up with production. Luckily, I managed to acquire much of the information on line, which helped a lot even although most of the government departments like ICEMCA had less information on my subjective topic.

5.3. Limitations of Oil and Gas Arbitration

Not all that glitters are gold. IA has its own shortcomings. Among the weaknesses of IA are; costs of arbitration, limited power of the arbitrators, the difficulty of bringing three or more parties before the same arbitral tribunal, delay sometimes due to the difficulty of communication and language and inconsistency. Fees and expenses of arbitrators, interpreters, translators, counsellors and their transportation are borne by the parties unlike the salary of a judge in the judicial system. These expenses could be substantial depending on the weight (amount involved) of the dispute in question. Sometimes, the parties may be required to hire conference rooms for hearings and proceedings instead of making better use of public facilities of the national court system. One other weakness of Oil and gas arbitration is that it delays sometimes. An arbitral tribunal has to be constituted before the arbitration proceedings can commence. Delays are sometimes attributed to the difficulty of communication and language.

The arbitral tribunal would have to submit their decision for example to the ICC Court for the final award to be made and sometimes it takes months and even years for a final award to be

enforced. It works well if the dispute involves two parties. For now, all the existing legal and institutional frameworks support disputes that are two sided that is, a claimant and a respondent but there can be more than two or more parties on any of the two sides. Until the passage of the Arbitration Law and enactment of the new constitution in Venezuela, the Venezuelan government was not consistent in its decisions regarding enforcement of
Arbitration awards. There is limited expertise about arbitration among judges and lawyers in serious issues regarding OGA.

5.4. Conclusion and recommendations

5.4.1. Conclusion

The fact that Uganda domesticated the basic laws on international arbitration like the UNCITRAL Model law and the New York Convention, does not translate into efficiency of arbitration in the country. The system is riddled by challenges especially arbitrability which is a big problem due to difference in legal regimes and the fact that the lex arbitri and lex loci arbitri have to be in harmony for enforcement of arbitral awards to occur. The most important concern about whether Uganda is ready for tax arbitration points to the forum for arbitration in the petroleum industry in Uganda. It has been observed that there is a lot of uncertainty on the forum and this can only be cleared with help of several amendments in the legislation. What is definite is that for arbitration to be efficient in the settlement of petroleum disputes in Uganda, the first step is to make it mandatory.

As it has always been in the past, changes in technology and international trade investments will always lead to changes in practice and consequently changes in international arbitration practice. IOCs, NOCs and other private companies will in no doubt continue to dominate as the largest number of parties in IA as they are mostly those engaged in international trade and investment. The paper noticed that the rise in FDI has led to increase in cases arbitrated between HGs and foreign investors and this is exemplified in the growing number of ICSID arbitration cases. It is also observed that there are new cases that are not based on arbitration provisions on their contract but by Bilateral Investment Treaties (BITs) whereby a HG can unilaterally submit to arbitrate.

The researcher found out that the role of international arbitration could not be over emphasized. OGA has brought some amount of predictability in international business transactions and a

degree of fairness and consistency. It has brought about neutrality and flexibility that are very important to businesspersons and women all over the globe [160]
Especially in the oil and gas industry where investments are made even in countries that are unstable[161].

However, from the above analysis, one can observe that international arbitration has its own shortcomings such as the cost of the arbitration (fees and expenses of arbitrators), limits on arbitrators, and difficulty of bringing multi-parties together, enforcement of arbitral awards among others. Despite all these, International arbitration still stands tall in dispute resolutions compared to the other known and practiced mechanisms. Because of this, the paper anticipates an increase in investment disputes in the future.

This expectation is confirmed by the wide range of acceptance of the Energy Charter Treaty and its associated arbitration systems, which led to a number of cases. China, which hitherto limited the use of arbitration in its BITs, has now taken a second look at its BITs with Germany and Netherlands now allowing for arbitration in issues regarding expropriation. All these new developments are because of confidence and trust that institutions have developed for OGA.

5.4.2. Recommendations

The research recommends the following to improve the performance of international tax arbitration in order to solve petroleum tax disputes: It is noteworthy that the Centre for Arbitration and Dispute Resolution (CADRE) makes it available to individuals and their legal counsel, at no charge, pre-drafted model arbitration and mediation clauses for inclusion in their contracts. This is a positive step towards helping parties and avoiding difficulties that may arise if they were to have their subject matter declared non-arbitral when the dispute has already arisen.

A harmonized legal and institutional framework would go a long way in ensuring that arbitrability does not become a hindering factor in conducting petroleum tax arbitration and

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[160] Smith, E.E, et al (2000), International Petroleum Transactions (Third edition), Westminster, Colorado USA: Rocky Mountain Mineral Law Foundation, 2000 (pg. 129)

[161] Brunet, A. and Lentini, J.A, Arbitration of international oil, gas and energy disputes in Latin America, Northwestern Journal of International Law and Business, (forthcoming, 2007 Journal of Energy Technologies and Policy

subsequently enforcing the arbitral awards in Uganda. The Tax Appeals Tribunal can have a harmonized legal instrument for purpose of somethings its operations with CADRE when it comes to petroleum tax arbitration to maximize the performance of the institutional framework in Uganda where the two institutions can share expertise.

One of the impediments to be overcome in using international tax-arbitration to foster effective enforcement of arbitral awards is harmonizing what entails public policy as a ground for setting aside arbitral awards in international commercial arbitrations.

This way the issue of conflict of laws would be avoided and there would be room for faster resolution of petroleum disputes. Uganda needs to develop legal institutions that are not dependent on existing public institutions (which often are either non-existent or unreliable) that are capable of operating independently of existing public institutions and that, preferably, are allowed to operate with a promise that national governmental and judicial institutions will not interfere unduly with their independent operation and decisions.

This would make tax arbitration smoother and more predictable, which would attract the players in the petroleum industry to consider it over litigation as a way of resolving tax disputes. The Tax Appeals Tribunals Act needs to be amended to make provision for the Tribunal to refer proceedings before it to arbitration. This would foster the resolution of petroleum tax disputes through arbitration. Since parties to an international arbitration choose the applicable rules, CADRE would seem to interfere if it imposed the Ugandan rules on the process even if one of the parties is Ugandan. Uganda can therefore come up with a transnational tax arbitration framework and streamline its domestic framework with the same so that the CADRE can be more efficient, especially in terms of international tax arbitration.

More resources and good will should be channelled into arbitration of tax disputes as this is a Looming problem with the development of the petroleum sector. The CADER should receive more revenue and staff in order to carry out its tasks effectively and efficiently.
The laws governing the petroleum upstream, midstream and downstream sector need to be amended to make provision for the settlement of petroleum tax disputes through arbitration. This is because leaving the powers entirely to the parties to petroleum contracts makes the system weak. This gives a leeway for parties to abandon arbitration and opt for litigation. There

should be more certainty to encourage the development of arbitration of tax disputes in the industry.

The scope of courts' control on arbitration should be reduced. The Arbitration and Conciliation Act should be amended and specifically provide that any dispute should be referred to arbitration in case of existence of an arbitration clause in a contract or an arbitration agreement. The need for application to court for the reference should be declared irrelevant by the statute and the need to determine the validity of the agreement should be left to the domain of the arbitrator and not court to avoid abuse of discretion by the courts. And finally, the stakeholders should fasten the operationalisation of the Petroleum Authority of Uganda and this should work hand in hand with CADER and the Tax Appeals Tribunals to promote arbitration in the settlement of petroleum disputes.

5.5. Future Research.

Any serious recommendation of possible future developments will have to begin by assessing the past developments in a retrospective context. There should be a paradigm shift whereby international energy companies, NOCs, IOCs, HGs and other concerned stakeholders in the energy sector will begin to promote and encourage OGA in their national court systems as a better alternative to dispute settlement. Venezuela for instance has done so by constitutionally recognizing IA as an ADR mechanism[162].

The HGs and their NOCs that have not signed and ratified all the important treaties and conventions should try to do so to endorse the practice of arbitration. For arbitration to grow especially in the developing world, the capacity building of all the necessary stakeholders should be strengthened to give them a better understanding of the benefits of OGA as an alternative to litigation[163].

The researcher also recommends that, to improve our attitude towards arbitration, there should be a bold move to include arbitration courses in the curriculum of our legal education programs

[162] Brunet, A. and Lentini, J.A, Arbitration of international oil, gas and energy disputes in Latin America, Northwestern Journal of International Law and Business, (forthcoming, 2007 Journal of Energy Technologies and Policy

[163] Brunet, A. and Lentini, J.A, Arbitration of international oil, gas and energy disputes in Latin America, Northwestern Journal of International Law and Business, (forthcoming, 2007 Journal of Energy Technologies and Policy

so that the academic training will acquaint the new law students and the likes with the fundamental principles of international treaties and conventions

In addition, general code of international practice. This will broaden their scope of knowledge and decision making as to whether to arbitrate or litigate a dispute.

Based on the findings of the study analyzing the efficacy of arbitration as a form of Alternative Dispute Resolution (ADR) in enhancing quick dispute resolution in Uganda's oil and gas sector, the following are some possible recommendations:

1. Promote awareness and education about arbitration: There is a need to educate stakeholders in the oil and gas sector about the benefits of arbitration as a means of dispute resolution. This includes creating awareness about the arbitration process, the legal framework, and the benefits of resolving disputes through arbitration.
2. Improve the legal framework and institutional arrangements for arbitration: The government of Uganda should take steps to improve the legal framework and institutional arrangements for arbitration in the oil and gas sector. This could include amending existing laws and regulations to make them more conducive to arbitration and establishing specialized arbitration institutions.
3. Encourage the use of multi-tiered dispute resolution clauses: Multi-tiered dispute resolution clauses that provide for negotiation, mediation, and then arbitration can be effective in promoting quick and efficient dispute resolution. The parties involved in the oil and gas sector should be encouraged to include such clauses in their contracts.
4. Encourage the use of experienced arbitrators: The quality of arbitrators can significantly impact the success or failure of arbitration. Parties should be encouraged to appoint experienced arbitrators who are knowledgeable about the oil and gas industry.
5. Strengthen enforcement mechanisms: The enforcement of arbitral awards is crucial to the success of arbitration. Therefore, the government of Uganda should take steps to strengthen the mechanisms for enforcing arbitral awards to make them more effective.
6. Foster a culture of cooperation and collaboration: Finally, stakeholders in the oil and gas sector should be encouraged to foster a culture of cooperation and collaboration. This can help to prevent disputes from arising in the first place and can make it easier to resolve disputes through ADR mechanisms like arbitration.

In conclusion, the study analyzing the efficacy of arbitration as a form of Alternative Dispute Resolution (ADR) in enhancing quick dispute resolution in Uganda's oil and gas sector has provided valuable insights into the potential of arbitration as a means of resolving disputes in the industry. The study has highlighted the advantages and disadvantages of using arbitration as a form of ADR and has identified the factors that contribute to the success or failure of arbitration in the sector.

The study has also evaluated the legal framework and institutional arrangements for arbitration in Uganda and has recommended measures for improving the effectiveness of arbitration in the sector. These recommendations include promoting awareness and education about arbitration, improving the legal framework and institutional arrangements for arbitration, encouraging the use of multi-tiered dispute resolution clauses, using experienced arbitrators, strengthening enforcement mechanisms, and fostering a culture of cooperation and collaboration.

Overall, the study has shown that arbitration can be an effective means of promoting quick and efficient dispute resolution in Uganda's oil and gas sector. However, its effectiveness depends on several factors, including the quality of the legal framework, the quality of arbitrators, and the willingness of parties to cooperate and collaborate. Therefore, it is important to take steps to improve these factors to enhance the efficacy of arbitration in resolving disputes in the industry.

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