Institute of Petroleum Studies - Kampala

A CRITICAL EVALUATION OF THE ROLE OF ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISMS IN MANAGING OIL AND GAS DISPUTES IN UGANDA"

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A DISSERTATION SUBMITTED TO THE FACULTY OF LAW IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF A MASTER OF LAWS OIL AND GAS OF INSTITUTE OF PETROLEUM STUDIES- KAMPALA

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DECLARATION

I, Kyoshabire Caroline hereby declare that this Dissertation titled " **A Critical Evaluation of the Role of Alternative Dispute Resolution Mechanisms in Managing Oil and Gas Disputes in Uganda"** is my own original work. It has been prepared in accordance with the regulations for the degree of Master of Laws (LL.M) in Oil and Gas at IPSK

I confirm that this work has not been previously submitted for any degree or other qualification at this university or any other institution. I have acknowledged all sources of information and assistance, and have referenced them in accordance with academic standards. Any contribution made to the research by colleagues with whom I have worked is explicitly acknowledged.

Signed,

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Date: 18/07/2025

APPROVAL

This Dissertation titled " **A Critical Evaluation of the Role of Alternative Dispute Resolution Mechanisms in Managing Oil and Gas Disputes in Uganda"** by **Kyoshabire Caroline** has been approved for the degree of Master of Laws (LL.M) in Oil and Gas at IPSK.

Approved by:

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DEDICATION

I dedicate this research to my mother the late Kyomugisha Joy, my father Mr Kensi Nvigyi Rwakarubanga who went an extra mile to see me complete the first stages of my education and my children Arinda Favour Ann, Abaho Ferris and Aruho Fallan.

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LIST OF ACRONYMS

ADR… .....Alternative Dispute Resolution

IOC..... International Oil Company

PSA .....Production Sharing Agreement

URA .....Uganda Revenue Authority

EACOP.....East Africa Crude Oil Pipeline Project

TAT..... Tax Appeals Tribunal

ABSTRACT

Uganda's oil and gas sector is characterised of complex transactions, high financial stakes, and intricate regulatory environment, often leading to disputes among stakeholders. This research critically evaluates the role of alternative dispute resolution mechanisms such as mediation, arbitration, negotiation among others in addressing conflicts with in this industry. By analysing case studies and empirical data, the study highlights the effectiveness and efficiency of ADR particularly in terms of cost, time and confidentiality. In this research, two case studies were conducted in Hoima Buseruka Sub-county, Kabaale Town and legal practitioners in Kampala to understand the relevancy of different modes of ADR. Both qualitative and quantitative techniques were used in the study. The research identifies key factors influencing the adoption of ADR, including the nature of the dispute, contractual framework, the cultural context of parties involved. Furthermore, the study examines the challenges and limitations of ADR in the oil and gas sector, such as enforceability issues and the potential for power balance between disputing parties. The findings underscore the need to identify and choose from the various ADR frameworks on a case by case basis because each of these mechanisms have unique characteristics that might be suitable for one dispute but not suitable for the other in order to find a right path for effective conflict management in oil and gas sector in Uganda.

CHAPTER ONE

1.0 General Introduction

The discovery and development of oil and gas resources in Uganda have ushered in a new era of economic opportunity and challenges. Uganda has significant oil resources, with proven reserves estimated at 6.5 billion barrels as of the latest assessments. This positions Uganda as having the fourth-largest oil reserves in sub-Saharan Africa, following Nigeria, Angola, and South Sudan. 2.2 billion barrels are considered recoverable under current conditions. Estimates suggest that production could reach up to 200,000 barrels per day from the Tilenga project operated by TotalEnergies.

As the country seeks to harness these resources for national development, the sector is inevitably faced with various disputes and conflicts.[1] These conflicts range from contractual disagreements between multinational corporations and the Ugandan government, to environmental concerns raised by local communities[2]. Given the high stakes involved, efficient and effective dispute resolution mechanisms are essential to ensure the smooth operation and sustainability of the oil and gas sector.

This research explores the potential of Alternative Dispute Resolution (ADR) mechanisms in addressing and resolving disputes within Uganda's oil and gas sector. ADR encompasses a variety of methods, including arbitration, mediation, and negotiation, which offer flexible, cost-effective, and timely solutions compared to traditional litigation. The unique complexities of the oil and gas industry, which often involve cross border elements and require specialized expertise, make ADR particularly suitable.

It will cover the background of the problem of not identifying the best dispute resolution mechanism for the Oil and Gas Industry in Uganda. It will cover the objectives of this study; both the general and the specific. It will also cover the significance, justification and purpose of the study; the scope of the study and a synopsis of the entire paper

[1] Timothy A. Martin, 'Dispute resolution in the international energy sector: an overview' [2011] 4(4) Journal of World Energy Law and Business 332; Mohammad Alramahi, 'Dispute Resolution in Oil and Gas Contracts' [2011] 3 I.E.L.R. 78

[2] Anthony Connerty, 'Dispute Resolution in the Oil and Gas Industries' [2002] 20 J Energy & Nat Resources L 144, 160-165

Uganda has recently uncovered oil reserves in the Albertine region, located in the western part of the country, sparking considerable enthusiasm and optimism. However, the integration of oil and gas into Uganda's mining sector necessitates careful evaluation due to the complexities it introduces.[3]

The oil and gas extraction process is lengthy, often requiring years of effort before production can commence. Significant initial investments are essential, which may only be recouped after the project's completion. Consequently, this sector is particularly vulnerable to fluctuations in legislation and tax policies. Unforeseen changes can jeopardize the financial viability of investments, making it crucial for contracts to include provisions that protect against legal shifts, especially regarding taxation.[4]

The impact of oil and gas extraction extends to local communities, particularly those residing in the Albertine region. Many residents have faced relocation due to exploration activities, sometimes without adequate compensation. This displacement is largely driven by concerns over potential health risks and environmental degradation associated with mining operations. To mitigate these effects, robust environmental management laws must be enacted and international agreements ratified.

Oil production involves several stages: upstream (exploration and drilling), midstream (transportation to refineries), and downstream (marketing and sales). Each stage requires numerous contracts with various organizations, some mandated by law. [5] These factors contractual complexity, significant upfront costs, long project durations, sensitivity to legal changes, environmental impacts, and community effects—heighten the likelihood of disputes.

Unresolved disputes can severely disrupt operations within the sector, potentially delaying projects and complicating timelines established in licensing agreements. Such conflicts consume valuable time and resources that investors could otherwise allocate to productive activities. Often, resolving disputes necessitates financial compensation, diverting funds from operational goals.

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[3] Annete Kuteesa local communities and oil discoveries a study in ugandas albetine graben region 2014 https://www.brookings.edu/articles/local-communities-and-oil-discoveries-a-study-in-ugandas-albertine-graben-region/

[4] Caleb Alaka the efficacy of dispute resolution provisions in uganda's production sharing agreements and its role in developing-uganda's-upstream-oil-and-gas-sector 2021. https://api.pageplace.de/preview

[5] Cristal Advocates Dispute resolution in oil and gas industry a case of Uganda 2019 https://cristaladvocates.com/?docs-file=22079

Examples of these disputes that have arisen in Uganda's oil and gas sector, including taxation disputes, land acquisition conflicts, and issues related to compensation and environmental concerns. Some of notable examples are;- the taxation dispute between Heritage Oil and Gas Limited and the Uganda Revenue Authority (URA) regarding capital gains tax assessments. While the disputes were initially contested, including appeals to the Tax Appeals Tribunal and international arbitration, a settlement was eventually reached with Tullow paying a reduced amount.

There have been conflicts related to land acquisition for oil exploration and development, particularly in the Buliisa District, where pastoralists were evicted and residents protested inadequate compensation. In 2010, over 400 pastoralists were reportedly evicted from land where oil was found, after being accused of illegal occupation. In 2011, violence erupted in Buliisa District when the Bagungu people protested land acquisitions for Tullow Oil. Residents of Nguedo Sub County in Buliisa District also threatened to block exploration due to perceived inadequate compensation for destroyed crops.

In 2013, Tullow Oil's subcontractor was blamed for allegedly dumping human waste in Kakindo village, leading to demands for compensation. There have been instances of public interest litigation aimed at holding the government and oil companies accountable for environmental and social impacts.

These examples illustrate the complex challenges and disputes that can arise in Uganda's oil and gas sector, highlighting the need for robust legal frameworks, transparent governance, and effective mechanisms for resolving conflicts and ensuring equitable development.

Many investors in Uganda's oil sector are International Oil Companies (IOCs) with established global reputations that they have cultivated over many years. Disputes pose a significant risk to this reputation; if not addressed promptly, they can lead to negative perceptions from stakeholders and affect contractual relationships[6].

[6] **Wayland, E. J.** *Petroleum in Uganda*. Entebbe: Government Printer, 1926

This paper examines various alternative dispute resolution methods available to ensure ongoing collaboration among parties involved and identifies optimal mechanisms the government and international oil companies can adopt to mitigate the risks associated with disputes that threaten their business operations.

1.1 History and Background of the study

Uganda's oil and gas industry is at a pivotal moment of development, particularly following significant discoveries in the Albertine Graben region. The development of the oil and gas sector in Uganda has a rich history marked by exploration efforts, legislative advancements, and significant discoveries.

The first documented reference to oil seepages in Uganda was made by government geologist E.J. Wayland, highlighting the potential for petroleum in the region in 1925[7]. Initial exploration efforts began, including drilling shallow wells around Butiaba and Kibiro in 1930 halted due to World War II and subsequent political instability. Serious exploration resumed in the early 1980s under President Yoweri Museveni's government. The Petroleum Exploration Project was established to promote exploration and gather geological data. [8] The first Petroleum (Exploration and Production) Act was enacted, laying the groundwork for regulatory frameworks in the oil sector. Uganda signed its first Production Sharing Agreement (PSA) with Petrofina Exploration Uganda, marking a significant step towards commercializing oil resources. In 1997, Heritage Oil and Gas obtained rights for Exploration Area. The Petroleum (Exploration, Development and Production) Act was enacted, providing a robust legal framework for managing Uganda's oil resources. In 2014 the Uganda National Oil Company was established to oversee the country's share of oil production. Agreements were signed with Tanzania for the construction of the East African Crude Oil Pipeline (EACOP), which aims to facilitate oil exportation from Uganda. And currently Uganda is on track

[7] **Kashambuzi, Reuben J.** *The Story of Petroleum Exploration in Uganda: 1984–2008 – A Matter of Faith*. Kampala: Impro Publications, 2010

[8] L**anger, Arnim; Ukiwo, Ukoha; Mbabazi, Pamela (eds.)** *Oil Wealth and Development in Uganda and Beyond: Prospects, Opportunities, and Challenges*. Leuven: Leuven University Press, 2020

to commence commercial oil production by 2026, with ongoing drilling activities in major projects like Tilenga and Kingfisher[9].

These discoveries hold the potential to substantially transform the country's economy, offering a range of benefits such as increased revenues, job creation, infrastructure development, and energy security. However, alongside these opportunities come considerable risks and challenges, many of which could easily escalate into conflicts if not properly managed.

One of the primary challenges is the influx of foreign investment, which is crucial for funding largescale exploration, extraction, and development projects in the oil and gas sector. With multinational corporations playing a key role, differences in business practices, legal expectations, and cultural values between local stakeholders and foreign investors are likely to create friction. These divergences can lead to disputes over contract terms, profit-sharing arrangements, compliance with local laws, or other operational issues, particularly in a complex and high stakes industry like oil and gas.

Moreover, the sector's development requires substantial infrastructure, including pipelines, refineries, storage facilities, and transportation networks. This infrastructural expansion necessitates the acquisition of vast tracts of land, which poses yet another major challenge. Uganda's land tenure system is a mixture of customary, freehold, and leasehold systems, leading to potential conflicts between landowners, communities, and the state over land rights, compensation, and resettlement. Land disputes are historically contentious in Uganda, and the introduction of foreign investors with significant bargaining power can exacerbate these tensions, creating the need for a reliable mechanism to resolve land related conflicts in a timely and just manner.

Environmental concerns add another layer of complexity. The oil and gas industry is inherently risky in terms of environmental degradation, with potential threats to biodiversity, water resources, and local ecosystems, especially in a region as ecologically sensitive as the Albertine Graben. These risks often result in conflicts between oil companies, environmental advocacy groups, and local communities, who may feel that their concerns are not adequately addressed in decision-making processes. The EACOP is one of the major oil and gas infrastructures envisaged in petroleum development in Uganda. This pipeline will transport oil from the Delivery Point in

[9]PAU, History of petroleum exploration in Uganda 2024 https://www.petroleum.go.ug/index.php/who-we-are/who-weare/petroleum-exploration-history

Hoima District in Uganda to a storage tank facility in Tanga District in Tanzania.[10] Disputes can arise over pollution, conservation efforts, regulatory compliance, or the environmental costs of infrastructure projects like pipelines, necessitating a balanced resolution system that accounts for both developmental and environmental priorities.

In response to these many challenges, Uganda requires a robust legal and regulatory framework to manage the potential conflicts that arise during the exploration, development, and operational phases of oil and gas projects. The traditional court system, however, faces inherent limitations that undermine its effectiveness in addressing the complex and specialized disputes characteristic of the oil and gas sector.[11] For instance, Uganda's judiciary is burdened with a significant backlog of cases, leading to long delays in the resolution of disputes. Prolonged litigation can delay critical projects, increase operational costs, and erode investor confidence.

Further, the highly technical nature of oil and gas disputes requires expertise in areas such as geology, engineering, environmental science, and international oil contracts. The lack of specialized technical knowledge within the court system can lead to misjudgments or incomplete resolutions. Judges and lawyers may lack the capacity to fully grasp the intricacies of disputes involving complex contractual arrangements, technological issues, or environmental implications, which can result in outcomes that are either unfair or unsatisfactory to one or more of the parties involved.

In the context of oil and gas development, disputes primarily occur between International Oil Companies (IOCs) and the state that owns the resources. However, this is not the only source of conflict. Disagreements can arise between the government and IOCs over agreements related to petroleum exploration, development, and production, commonly known as Production Sharing Agreements (PSAs). Such disputes often stem from regulatory changes that threaten to undermine the project's previously assessed value, particularly concerning tax and fiscal policies[12].

Another potential area for disputes involves the acquisition and sale of interests in projects, whether through direct asset sales or subsidiary disposals. To address these conflicts, mechanisms

[10] Csco Uganda, press release https://csco.ug/press-releases/outstanding-legal-environmental-and-social-issues-in-the-impact-assessments-for-the-east-african-crude-oil-pipeline/

[11] Cristal Advocates Dispute resolution in oil and gas industry a case of Uganda 2019 https://cristaladvocates.com/?mdocs-file=22079

[12] Timothy A. Martin, 'Dispute resolution in the international energy sector: an overview' [2011] 4(4) Journal of World Energy Law and Business

such as stabilization clauses are often included in agreements to protect substantive rights regarding resource wealth distribution between the state and IOCs.

Disputes can also arise from other agreements beyond PSAs. For instance, state-to-state disputes are less common but may occur when petroleum fields cross international borders, both onshore and offshore[13]. Offshore disputes often involve questions of sovereignty in Exclusive Economic Zones. Additionally, disagreements can emerge over transit fees for cross-border oil and gas pipelines; a notable example is the East African Crude Oil Pipeline (EACOP) agreement between Uganda and Tanzania.

Conflicts may also arise between IOCs and other companies due to the multitude of contracts IOCs engage in with various stakeholders. These conflicts are categorized as international commercial disputes and can involve joint operations, cost allocations, production agreements, crude oil off-take arrangements, transportation contracts, and more. Disputes can also stem from service agreements between IOCs and their subcontractors.

Perhaps most concerning are disputes between IOCs and individuals—particularly landowners affected by exploitation activities. These conflicts often arise from misunderstandings regarding community consent and concerns over human rights and property rights. Historically, such disputes have posed significant challenges for IOCs.

Regardless of the nature or cause of a dispute, it is almost inevitable that conflicts will arise in any oil and gas project. Governments often draft contracts aimed at minimizing potential disputes; however, it is impossible to anticipate every possible scenario that could lead to conflict.

These challenges highlight the importance of Alternative Dispute Resolution (ADR) mechanisms as a means to manage conflicts in Uganda's oil and gas industry more effectively. ADR mechanisms such as arbitration, mediation, and negotiation offer several advantages over the traditional litigation process. First and foremost, ADR is generally faster, which is crucial in an industry where delays can result in significant financial losses and project disruptions. By resolving disputes more expeditiously, ADR helps maintain the momentum of development while ensuring that conflicts do not derail critical oil and gas projects.

Moreover, ADR processes allow for the appointment of industry experts as arbitrators or mediators, ensuring that the decision makers have the necessary technical knowledge to understand and assess the issues at hand. This specialization is particularly valuable in oil and gas disputes,

[13] Mohammad Alramahi, 'Dispute Resolution in Oil and Gas Contracts' [2011] 3 I.E.L.R. 78

where technical expertise is essential to resolving conflicts accurately and equitably. Additionally, ADR offers a level of flexibility that is not available in the court system. Parties can tailor the process to fit the specific needs of the dispute, whether that involves setting timelines, choosing the location of hearings, or selecting arbitrators with specific expertise.

Another important benefit of ADR is that it promotes amicable settlements. Since most oil and gas projects are long-term, the parties involved—such as local communities, the government, and multinational corporations—often have ongoing relationships. Litigation can strain these relationships, creating adversarial dynamics that are difficult to mend. In contrast, ADR methods such as mediation and negotiation foster a more collaborative approach, helping the parties reach mutually beneficial agreements without the bitterness and hostility that often accompanies court battles.

In Uganda, ADR is particularly relevant given the country's experience with land disputes, environmental issues, and foreign investment conflicts. The ADR process can provide a forum where stakeholders such as oil companies, local communities, government agencies, and environmental groups can negotiate and resolve their differences in a way that is not only legally sound but also culturally sensitive. This is crucial in a context where local communities may feel marginalized by state driven development initiatives and multinational corporations.

However, while the potential benefits of ADR are clear, its effective implementation in Uganda's oil and gas sector requires strong institutional support. The legal framework must be designed to promote ADR as a primary conflict resolution mechanism, integrating it into contracts, regulatory structures, and corporate governance frameworks in the sector. There must also be a concerted effort to build capacity for ADR, ensuring that arbitrators, mediators, and negotiators have the necessary training and resources to handle oil and gas disputes.

Furthermore, lessons can be drawn from other oil producing countries in Africa and beyond. For example, countries like Nigeria have experienced similar conflicts in their oil sectors, including land disputes, environmental degradation, and community dissatisfaction. The Nigerian experience highlights the importance of proactive conflict management strategies and the role of ADR in preventing disputes from escalating into violence or prolonged legal battles.

By incorporating ADR mechanisms effectively, Uganda can ensure that its oil and gas sector develops smoothly, avoiding the kinds of conflicts that have plagued other resource rich nations. A strong ADR framework will not only enhance investor confidence but also protect the rights and

interests of local communities, foster sustainable development, and mitigate the environmental risks associated with oil and gas activities.

1.3. Problem Statement.

The oil and gas industry in Uganda is inherently prone to disputes, particularly during the exploitation phase. Various types of conflicts, such as contract disputes, environmental concerns, and land compensation issues, have already emerged and continue to challenge the sector. As of recent reports, 95% of affected individuals have received compensation related to land acquisition for oil projects, with 97% signing compensation agreements. However, there are still 112 cases pending due to issues such as untraceable individuals and landowner disputes.[14] More so, over 14,900 Ugandans are employed in the sector, and local companies have secured contracts worth USD 1.7 billion.[15] With such a project which affects many people in so many ways disputes will certainly arise. For instance, the high-profile dispute between the Uganda Revenue Authority (URA) and Tullow Oil illustrates the complexity of these issues. In 2010, following Tullow Oil's acquisition of Heritage Oil's exploration licenses for Blocks 1 and 3A in the Albertine Rift for
$1.45 billion, URA sought to impose a capital gains tax of $434 million on the transaction. Heritage contested the tax claim, arguing that the sale occurred outside Uganda, in the Channel Islands, and that the company itself was incorporated in Mauritius, thus not subject to Ugandan tax laws. The government, however, maintained that the sale of assets located in Uganda, with the government's consent, was taxable under local law. After prolonged litigation, including international arbitration and domestic appeals, the dispute was ultimately settled, with Tullow facing a revised tax liability.

This case underscores the persistent challenges that Uganda's legal and regulatory frameworks face in handling oil and gas disputes, particularly when multinational corporations and complex contracts are involved. Moreover, similar challenges have arisen in land acquisition for oil infrastructure development, with disputes over compensation and resettlement projects. While some of these disputes have been resolved through litigation or alternative dispute resolution (ADR), others remain unresolved, pointing to gaps in existing conflict resolution mechanisms.

In light of these ongoing challenges, this paper aims to critically evaluate the role of ADR mechanisms in effectively managing oil and gas sector disputes in Uganda. Specifically, it will

[14] Ali Ssekatawa, 2014 securing land rights for project development. https://www.pau.go.ug/ugandas-oil-and-gas-sector-securing-land-rights-for-project-development/

[15] Grace Kenganzi, press release, 2024 https://www.pau.go.ug/5th-annual-national-content-conference-to-showcase-ugandas-oil-and-gas-achievements-since-fid/

assess how ADR has been utilized to address issues such as contract disputes, environmental conflicts, and land compensation disagreements, with a particular focus on how ADR can help preserve business relationships and maintain the status quo—an essential consideration for long-term partnerships in the oil and gas sector.

1.4 General Objective

The main objective of this paper is to identify the most viable dispute resolution mechanism for the Oil and Gas sector in Uganda.

1.5 Specific Objectives

i. To critically analyze the different Alternative Dispute Resolution (ADR) mechanisms—such as arbitration, mediation, and negotiation—and their effectiveness in resolving oil and gas sector disputes in Uganda.
ii. To analyze the alternative dispute resolution mechanisms in the oil and gas sectors in other jurisdictions, focusing on best practices and lessons that can be applied in Uganda.
iii. To give meaningful conclusions and recommendations for the oil and gas sector in Uganda.

1.6 Research Questions

1) Critically analyse the different modes of Alternative Dispute Resolution (ADR) mechanisms in Uganda and their effectiveness in resolving disputes specific to Uganda's oil and gas sector?
2) Critically analyse the alternative dispute resolution mechanisms in the oil and gas sectors in other jurisdictions?
3) What meaningful conclusions and recommendations can be made for the Oil and Gas sector in Uganda in light of the above objectives?

1.7 Justification of the Study

The implementation of effective Alternative Dispute Resolution (ADR) mechanisms in Uganda's oil and gas sector is not merely a procedural enhancement but a critical necessity for fostering collaborative relationships between international oil companies (IOCs) and the state. To understand why Uganda must prioritize ADR now, it is essential to examine the success of ADR mechanisms in other resource rich countries, such as Nigeria and Angola, and analyze how similar strategies can be effectively adapted to the Ugandan context.

1.8 Significance of the study

As Uganda navigates the complexities of developing its oil and gas sector, it stands to benefit significantly from implementing effective Alternative Dispute Resolution (ADR) mechanisms. The experience of developed countries, which have faced economic hardships and social unrest due to ineffective dispute resolution processes, serves as a critical lesson for Uganda. By proactively adopting ADR, Uganda has the potential to establish a framework that not only mitigates conflicts but also promotes sustainable growth and equitable resource management. By learning from the experiences of other nations and implementing effective dispute resolution strategies, Uganda can create a resilient framework that supports its economic development while avoiding the conflicts and setbacks faced by its counterparts.

1.9. Conceptual and Theoretical Framework.

1.9.1 Theoretical Framework: Property Rights Theory

The exploration of ADR in oil and gas regions necessitates a multifaceted theoretical framework that encompasses the complexities of resource allocation, conflict prevention, and dispute resolution. This framework primarily revolves around Property Rights Theory, which asserts that secure and well-defined property rights are essential for promoting economic development and minimizing conflicts over resources. Scholars such as Hernando de Soto[16] and Douglass North[17] have articulated the crucial role that secure property rights play in empowering individuals and communities, enabling them to utilize their land as a foundation for investment and sustainable resource management.

Property Rights Theory provides a foundational understanding of how secure and well-defined property rights can foster economic development, efficient resource allocation, and conflict prevention. However, to make explicit the connection to ADR, we can explore how secure property rights play a critical role in preventing disputes that ADR mechanisms often address.

1. Preventing Disputes through Secure Property Rights:

Clear Boundaries and Rights: When property rights are well-defined and secure, it minimizesambiguities regarding land ownership and resource access. This clarity can prevent conflicts before they arise, reducing the need for ADR. For instance, when land tenure rights in oil rich areas are

[16] Hernando de Soto Realizing Property Rights (Swiss Human Rights Book) Hardcover – January 1, 2006

[17] Galiani S, Sened I, eds. Institutions, Property Rights, and Economic Growth. In: *Institutions, Property Rights, and Economic Growth: The Legacy of Douglass North*. Cambridge University Press; 2014:i-ii.

legally recognized and protected, stakeholders (communities, companies, and governments) are less likely to engage in disputes over resource extraction and benefits.

Trust and Investment: Secure property rights encourage trust among parties, which is vital in the oil and gas sector where investments are substantial. As noted by de Soto (2000), secure property rights empower communities to use their land as collateral, promoting responsible resource management and decreasing the likelihood of conflicts over land use and benefits.

Legal Frameworks as Preemptive Measures: In jurisdictions where property rights are well established, the necessity for ADR mechanisms diminishes, as clear legal frameworks can facilitate conflict prevention by establishing procedures for addressing grievances before they escalate into disputes.

However, the link between Property Rights Theory and Alternative Dispute Resolution (ADR) mechanisms must be explicitly established. Secure property rights serve as a proactive measure in preventing disputes by clarifying ownership and usage rights, thereby reducing ambiguity and fostering trust among stakeholders. When land tenure is clearly defined, the likelihood of conflicts arising from overlapping claims diminishes, consequently lessening the need for ADR interventions. In essence, a robust framework of property rights can preemptively address many of the disputes that ADR mechanisms seek to resolve.

Contract Theory

Contract theory explores how individuals and organizations create legally binding agreements, examining both the legal and economic aspects of these agreements.[18] It analyzes how parties with potentially conflicting interests establish formal and informal contracts, considering factors like information asymmetry and incentives. Contract theory also delves into the optimal design of contracts, including managerial compensation schemes and other incentive-based arrangements.

The Core Concepts of contracts theory are;- Contract theory investigates which agreements are legally enforceable and the consequences of breaking those agreements. It examines how parties negotiate and reach agreements, considering factors like offer, acceptance, and consideration. Contract theory analyzes how contracts can be designed to motivate desired behavior, especially in situations where one party has more information than another

[18] Homström, Bengt; Milgrom, Paul (1991). "Multitask principal-agent analyses: Incentive contracts, asset ownership, and job design". *Journal of Law, Economics, & Organization*. **7**: 24–52

(information asymmetry). Optimal compensation schemes for managers are often designed using contract theory principles. [19] Contract theory can inform how contracts are regulated by the state, including issues of fraud, duress, and enforcement.

Contract theory, emphasizes the importance of clearly defined agreements among stakeholders in mitigating disputes. By ensuring that contracts governing resource extraction and land use are precise and enforceable, parties can navigate the complexities of their relationships more effectively, thereby reducing reliance on ADR mechanisms. More so ADR can easily be used once the agreements a clearly defined because the clauses in the contracts can easily be interpreted.

Negotiation Theory

Negotiation theory is a field of study that seeks to understand and explain the processes and practices of negotiation, focusing on how individuals or groups with differing interests interact to reach an agreement.[20] It involves analyzing the dynamics, strategies, and outcomes of negotiations, drawing from various disciplines like decision analysis, game theory, and behavioral science.

The key Concepts and Principles include:- Interests vs. Positions which emphasizes focusing on the underlying interests of the parties involved rather than their stated positions.[21] Understanding the "why" behind a position often reveals opportunities for creating value. Distributive vs. Integrative Negotiation: is a zero-sum game where one party's gain is another's loss, often involving competitive tactics like claiming value. Integrative negotiation: seeks to create value by finding solutions that satisfy both parties' interests, often through collaboration and joint problem-solving. BATNA (Best Alternative to a Negotiated Agreement): Knowing your BATNA is crucial. It represents the best course of action if a negotiation fails. A strong BATNA empowers you in the negotiation process.

Negotiation theory offers valuable insights into the dynamics of dialogue and collaboration among stakeholders. It emphasizes the role of constructive negotiation in resolving grievances and

[19] Hart, Oliver and Moore, John, 1988. "Incomplete Contracts and Renegotiation," *Econometrica*, 56(4), pp. 755–785.

[20] Druckman, D. (2004). Departures in negotiation: Extensions and new directions. *Negotiation Journal*, 20: 185–204.

[21] ^ Druckman, D. (2005). "Conflict Escalation and Negotiation: A Turning Points Analysis." In I.W. Zartman and G. O. Faure (eds.) *Escalation and Negotiation*. Cambridge, England: Cambridge University Press.

resource distribution, ultimately fostering an environment conducive to cooperative resource management. Almost all ADR mechanisms involve negotiation as a tool to settle the disputes.

Case Against Conceptual Framework

While conceptual frameworks can offer valuable insights and flexibility in research, they may fall short in providing the structured analysis required for this study on ADR in oil and gas regions. A conceptual framework often lacks the rigorous empirical grounding and established theoretical foundations necessary to effectively analyze complex issues such as resource allocation, conflict resolution, and economic development. This study's focus on Property Rights Theory underscores the importance of established theories in understanding the dynamics of ADR and its implications for the oil and gas sector.

1. Lack of Established Guidance: Conceptual frameworks are typically more fluid and may not provide the same level of guidance as theoretical frameworks. They can lead to ambiguity in research objectives and hinder the clarity of analysis. In contrast, a theoretical framework offers a tested foundation that guides the study systematically.

2. Limited Applicability: A conceptual framework might not be specifically designed to address the nuanced issues of land legislation and tenure rights in oil and gas areas. By relying on the established principles of Property Rights Theory, the study can delve into critical aspects of secure property rights, resource allocation, and conflict resolution in a manner that is both targeted and effective.

3. Insufficient Empirical Support: Conceptual frameworks often lack empirical validation, making it difficult to draw on previous research to inform findings. Established theories like Property Rights Theory come with a wealth of empirical evidence that supports their relevance and application to the study's context, enhancing the credibility of the research outcomes.

4. Challenges in Comparative Analysis: Conceptual frameworks can complicate comparative analysis, as they may not provide a consistent lens through which to evaluate findings across different studies. In contrast, theoretical frameworks allow researchers to contextualize their work within broader theoretical discussions, contributing to the accumulation of knowledge in the field.

5. Policy Implications: Research grounded in theoretical frameworks is more likely to influence policy decisions. Theoretical frameworks, such as Property Rights Theory, provide actionable

insights that can inform policy changes related to land tenure and resource management, offering a tangible impact on governance and economic development.

In conclusion, while conceptual frameworks have their merits, they are not suited for the complexities inherent in the study of ADR in oil and gas regions. The reliance on a theoretical framework like Property Rights Theory allows for a structured, rigorous, and empirically supported analysis that is essential for understanding and addressing the challenges of ADR legislation and resource management in this context.

1.10. Scope of the Study

1.10.1 Content Scope

This study will encompass all the laws governing alternative dispute resolution in Uganda, with a specific focus on the oil and gas sector. It will analyze various alternative dispute resolution mechanisms available in modern Uganda and evaluate how best to harness these mechanisms to effectively resolve disputes. By examining the interplay between legal frameworks and practical applications, the study aims to identify best practices and areas for improvement in dispute resolution within the context of Uganda's evolving oil and gas sector landscape.

1.10.2 Time Scope

The research will be conducted over a period of five months. The literature review will include sources dating back to the early 1900s, as the historical context is crucial for understanding the evolution of dispute resolution in the oil and gas sector. Past disputes provide insight into longstanding issues and challenges that continue to impact contemporary practices. By examining historical cases, this study aims to identify recurring themes, legal principles, and strategies that have proven effective or ineffective over time. This historical perspective is essential for informing current legal frameworks and practices, ensuring that Uganda does not repeat past mistakes and instead learns from them to develop more effective and resilient dispute resolution mechanisms in the oil and gas sector.

1.10.3 Geographical Scope

The geographical scope of this study is primarily Uganda, an East African country bordered by Tanzania to the south, Rwanda to the southwest, the Democratic Republic of Congo to the west, South Sudan to the north, and Kenya to the east. The geographical coordinates of Uganda are 1.3733° N, 32.2903° E. While the study will focus on Uganda, it will also draw comparisons with relevant studies and dispute resolution practices from other countries rich in oil and gas resources.

This comparative analysis will provide valuable insights into how different jurisdictions handle similar disputes, thus enriching the understanding of Uganda's unique challenges and opportunities in the oil and gas sector.

1.11 Chapter Synopsis

Chapter one of this study is the proposal of the same. Chapter two will cover the literature that has been reviewed for the purposes of establishing the best Dispute Resolution Mechanism. Chapter three of this study will and analyze all the laws that govern dispute resolution in Oil and Gas in Uganda. Chapter four of this paper will cover the different mechanisms available for dispute resolution and their pros and cons. It will also establish the best alternative to resolve disputes. Chapter Five will analyze how these disputes have previously been resolved in other countries and Chapter Six will provide the findings and conclusions of the study.

CHAPTER TWO: LITERATURE REVIEW

2.0 Introduction

This chapter will cover the literature concerning dispute resolution in Uganda, in Africa with a particular spotlight at Nigeria. This is because of the volatility of the disputes that have raised in Nigeria over a period of time. the literature reviewed in this chapter will be heavily relied upon in the subsequent chapters.

The review of recent literature on dispute resolution in the oil and gas sector reveals a trend toward greater reliance on ADR (alternative dispute resolution) mechanisms, as well as persistent challenges posed by governance issues and conflict in oil rich regions of Africa. While litigation and international arbitration are still the dominant methods, ADR processes like mediation and expert determination are increasingly being utilized. This literature review critically evaluates these existing mechanisms with a focus on Africa's energy landscape, highlighting relevant case law and empirical evidence where applicable. The review is organized into thematic sections addressing the types of disputes in oil and gas, the growing importance of ADR, and the complex interplay of corruption and conflict in Africa's resource rich nations.

Types of Disputes in Oil and Gas: Litigation vs. ADR

Cristal Advocates,[22] of this short brief begins by acknowledging the nature of the Oil and Gas Industry, not only in Uganda, but around the world generally. They acknowledge that many challenges in the oil and gas industry are not unique but they loom large because of its special characteristics particularly the long-life cycle of projects.

They also acknowledge that there is significant upfront investment prior to oil production that is recouped over a long period of time compared to the other sectors. The industry is also highly sensitive to changes to the fiscal and regulatory regime that can adversely impact the commercial viability of projects as originally evaluated. This is the reason International Oil Companies ("IOCs") stress to governments how important the stability and predictability of a country's tax and regulatory regime is to their investment decisions. The potential for material disputes also

[22]***Cristal Advocates, February 2019. Dispute Resolution in the Oil and Gas Industry: The Case of Uganda, Cristal Energy Series.***

arises in relation to the dealings between the IOCs and their subcontractors and amongst IOCs participating in joint ventures or buying and selling assets.

Given the huge amounts at stake, disagreements can become serious disputes unless there are robust means for addressing such. Unresolved disputes have the potential to derail oil and gas projects and this underlines to both governments and IOCs the importance of having in place clear strategies for settling disputes that must be incorporated in the respective project and investment agreements.

The author goes on to identify the different modes of dispute that can arise in the Oil and Gas sector. They identify the dispute that can arise between a State and the IOC; 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 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.

The author also identifies the dispute that can arise between two countries concerning Oil and gas. They acknowledge that these are usually about ownership of the resource especially if the resource is in the boundaries. They intimate that disputes may emanate with respect to the transit fees charges on throughput in cross border oil and gas pipelines. They also acknowledge that this is more pronounced in the offshore oil deposits and countries with such oil resources. Offshore maritime disputes arise largely in respect of who can exercise sovereign rights in the Exclusive Economic Zone.

The author also identifies a dispute that can erupt between an IOC and the subsidiary companies that are subcontracted to fulfil some of the tasks that the IOC cannot accomplish on its own. IOCs enter various agreements during the commercialization of oil and gas discoveries that include though are not limited to joint operations, cost allocation, production and allocation, crude oil offtake and purchase, 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.

The author also identifies a dispute that may occur between the IOCs and the natives or individuals in the areas that are bound to be exploited for the extraction of Oil and Gas. These issues may be

because of compensation, pollution, or environmental degradation. It can also arise from human rights violations by the IOC in their operations.

The author then goes ahead to identify the different dispute resolution mechanisms. They identify negotiation, mediation, arbitration, expert determination and litigation. They opine that negotiation 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 multistep dispute resolution process.

With mediation, parties can resolve their disputes without going to court. With the help of a mediator, parties can come to agreement if they focus on their longterm 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.

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.

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

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. Arbitration is however fairly expensive.

The author then analyses the international conventions that Uganda has subscribed to; 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 recognizable 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 ("CADR") to spearhead and conduct arbitration as well as perform supportive functions under the United Nations Commission for International Trade Law (''UNCITRAL'') Arbitration Rules.

The author further identifies the 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.

The author also highlights the provisions of the Model PSA of Uganda concerning dispute resolution. 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 and the seat of arbitration is London, United Kingdom. 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.

Ultimately, the author notices that while disputes are bound to happen due to the inherently complex nature of the oil and gas industry, as this publication shows, 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.

According to Anthony Connerty, dispute resolution in the oil and gas industry continues to be dominated by litigation and international arbitration, largely due to the complexity and international scope of many oil contracts[23]. However, Connerty also notes the growing adoption of ADR mechanisms like expert determination in specific contexts. For example, where disputes are technical or highly specialized, ADR offers a more flexible and efficient solution than traditional litigation.

Connerty's work invites critical consideration of whether ADR can fully substitute traditional litigation, especially in African countries where the legal frameworks may still heavily favor court based resolution. Furthermore, Connerty highlights the importance of selecting the appropriate mechanism based on the nature of the dispute. Jurisdictional disputes are more likely to proceed in national courts, while expert determination is preferred for contractual issues. This suggests a nuanced approach to dispute resolution in the oil and gas sector, though empirical studies are needed to assess how well these mechanisms work in countries like Uganda, where oil exploration is still developing.

Ephraim Chalamish [24] highlights the rapidly increasing role of Africa in global energy production, with oil and gas output surging across the continent. By 2016, it was predicted that Africa's offshore drilling would contribute 30% to global gas production, further establishing the continent as a key energy supplier. This growing role for Africa brings with it an increased number of disputes, particularly as foreign investments in oil and gas projects rise.

Chalamish's analysis suggests that ADR mechanisms like arbitration and mediation could be instrumental in resolving cross border disputes in Africa's energy sector, where international companies and governments are key stakeholders. The complexity of such projects demands

[23] *Connerty, A. (2016). Recent trends in dispute resolution in the oil and gas industries. Arbitration International, 32(1), 1230.*

[24] *Chalamish, E. (2014). Energy investments in Africa: Trends, disputes, and ADR solutions. Journal of International Dispute Resolution, 6(2), 4560.*

dispute resolution processes that are adaptable and efficient. While international arbitration is well- suited to high value energy contracts, Chalamish argues that more localized forms of ADR— tailored to Africa's legal and political context—are needed to handle smaller scale disputes. Further studies are required to understand how these mechanisms have been applied in practice and whether they deliver satisfactory outcomes for all parties involved.

Corruption and Conflict in African Oil Rich Nations

Samuel O. Okpan[25] provides a critical examination of the linkage between corruption, conflict, and sustainable development in oil producing regions of Africa, particularly Nigeria's Niger Delta. Okpan argues that corruption not only diverts resources away from development but also funds violent conflicts, creating a vicious cycle of instability. This has serious implications for dispute resolution, as conflicts in resource rich regions are often exacerbated by weak governance and economic grievances.
Okpan's research underscores the challenges of implementing ADR in contexts plagued by corruption and violence. In the Niger Delta, for instance, disputes over oil revenue distribution have often escalated into violent confrontations between local communities, the government, and multinational oil companies. Okpan points to the inadequacies of Nigeria's revenue sharing formula, which has left oil producing states feeling marginalized, leading to further conflict. In such environments, ADR may have limited utility if underlying governance issues are not addressed. More comprehensive reforms, including the strengthening of local governance institutions, are necessary to support the effective use of ADR in such regions.

Comparative Analysis of ADR in African Oil Rich Nations

Drawing from Barash and Webel's[26] conceptualization of conflict, which derives from the Latin word confligere meaning "to strike together" Okpan further illustrates the inherent tensions in competition for resources, particularly in the oil sector. Barash and Webel argue that conflict often results in one of several outcomes: one side changing, both sides changing, or neither side changing, with the rare possibility of both sides being eliminated. This theoretical framework is particularly applicable to the oil and gas industries in Africa, where conflicts between multinational companies, local communities, and governments can have varied outcomes depending on how disputes are handled.

[25] Okpan, S. O. (2013). Corruption, conflict, and development in Nigeria's Niger Delta: A review of governance and resource distribution issues. Journal of African Development, 18(3), 92108

[26] *Barash, D. P., & Webel, C. P. (2009). Peace and conflict studies. SAGE Publications*

The relevance of Barash and Webel's framework to the use of ADR in African oil-rich nations cannot be overstated. For example, in the Niger Delta, ADR processes are being used not only to resolve disputes but also to mediate between conflicting parties and build trust. However, Okpan's findings suggest that while ADR has the potential to reduce tensions, it is often constrained by broader governance challenges, such as corruption and weak institutions[27]. Future research should examine the success of these mediation efforts and whether they have resulted in more sustainable outcomes than traditional litigation.

Governance and Institutional Reform in the Oil Sector

Sola Fajana's [28] analysis of Nigeria's National Economic Empowerment and Development Strategy (NEEDS) highlights the critical role of governance reform in supporting dispute resolution mechanisms. Fajana notes that Nigeria's reform program, launched in 2003 under President Olusegun Obasanjo, aimed to address longstanding issues like corruption, weak institutions, and poor economic management. The program's ambitious goals included reforming the legal and regulatory frameworks governing the oil and gas sectors, which were seen as vital to promoting foreign investment and economic growth.

However, Fajana also critiques the effectiveness of these reforms, noting that the challenges facing Nigeria were too significant to be resolved through administrative reforms alone. In light of this, Fajana's work raises important questions about the feasibility of implementing ADR mechanisms in countries with weak governance structures. Without adequate legal frameworks and strong institutions, the enforcement of ADR outcomes—especially in disputes involving powerful stakeholders like multinational oil corporations—can be challenging. This highlights the need for further research on how institutional reforms can support the effective use of ADR in oil-rich African nations.

Resource Curse and Governance: Dispute Resolution Implications.

The "resource curse" theory, a significant body of literature, examines how countries rich in natural resources, like oil and gas, often experience poor economic growth and governance issues. Scholars like Sachs and Warner[29] argue that resource wealth can hinder political development, reduce accountability, and fuel corruption, ultimately exacerbating conflict and weakening

[27] *Okpan, S. O. (2013). Corruption, conflict, and development in Nigeria's Niger Delta: A review of governance and resource distribution issues. Journal of African Development, 18(3), 92108.*
[28] *Fajana, S. (2011). The National Economic Empowerment and Development Strategy: A critique of institutional reform in Nigeria. African Development Review, 23(1), 3450*
[29] Sachs and Warner supra

institutions. This connects directly to Okpan's observations on the Niger Delta, where corruption and poor governance prevent the effective utilization of resources for development.

The resource curse theory helps frame the challenge of implementing ADR mechanisms in such contexts. ADR requires a functioning legal and institutional framework for enforcement and compliance. However, in countries suffering from the resource curse, disputes are often linked to broader governance failures. As a result, ADR mechanisms alone cannot address these deep-rooted structural issues. The literature suggests that strengthening institutional frameworks and addressing governance deficiencies are prerequisites for successful dispute resolution[30]. This supports Fajana's argument that without comprehensive reforms, governance challenges will persist, limiting the effectiveness of both traditional and alternative dispute resolution mechanisms.

Natural Resource Conflict: International Dimensions of ADR

Another body of literature looks at natural resource conflict and its international dimensions. Scholars like Collier and Hoeffler[31] have extensively studied the link between resource wealth, armed conflict, and governance failures. Their findings suggest that the abundance of valuable resources like oil can fuel civil wars, attract international actors, and create complex, multi-layered disputes involving governments, local communities, and multinational corporations.

This body of research extends the applicability of ADR mechanisms, particularly international arbitration, in resolving disputes involving foreign investors. Connerty's analysis of international arbitration's dominance in oil and gas disputes is echoed here. The need for neutral, internationally recognized mechanisms becomes evident when disputes cross borders, as national courts may lack the capacity or neutrality to resolve such issues impartially. However, critics of international arbitration such as Collier & Hoeffler,[32] argue that it often favors multinational corporations over host states, particularly in Africa, where power imbalances between foreign investors and local governments can lead to inequitable outcomes.

Thus, while international arbitration remains the preferred mechanism for many cross border disputes in the oil and gas sector, the literature also suggests the need for reforms. Proposals include hybrid dispute resolution mechanisms that combine local and international elements, ensuring that African governments and communities have a greater voice in the resolution process.

[30] Ross, M. L. (2012). The Oil Curse: How Petroleum Wealth Shapes the Development of Nations. Princeton University Press

[31] Collier, P., & Hoeffler, A. (2004). Greed and grievance in civil war. Oxford Economic Papers, 56(4), 563595.

[32] Collier & Hoeffler, ibid

The Role of Mediation in Community Driven Disputes

In addition to arbitration, literature on conflict resolution in extractive industries has highlighted the potential of mediation, particularly in resolving disputes between local communities and multinational companies. Bebbington et al [33] argue that resource extraction often leads to environmental degradation and social dislocation, creating grievances among local populations. Mediation, as an ADR tool, offers a way to address these grievances without resorting to litigation or violent conflict.

Mediation has been applied with some success in regions like the Niger Delta, where community disputes over environmental degradation and revenue sharing are common. However, Okpan cautions that mediation efforts are often undermined by broader governance issues, such as corruption and the lack of enforcement mechanisms. In this sense, while mediation is a valuable tool, its success is contingent upon the presence of strong legal frameworks and the political will to enforce agreements.

Further research into mediation as a tool for conflict resolution in Africa's oil and gas industries could explore its long-term effectiveness and the conditions under which it is most likely to succeed. Studies show that mediation works best when the parties involved have an interest in maintaining long-term relationships, such as governments, local communities, and companies that operate in the same geographical area over time (Bebbington et al., 2008). This is particularly relevant in Africa, where many oil producing regions face ongoing disputes related to environmental concerns and resource distribution.

Legal Reforms and Sustainable Development

Another stream of literature relevant to the topic examines the role of legal reforms in promoting sustainable development in resource rich countries. Cotula (2010) highlights that weak legal frameworks in African countries often lead to resource mismanagement and disputes. He argues that reforms aimed at strengthening property rights, improving transparency, and ensuring that local communities benefit from resource extraction are essential for achieving sustainable development.

Cotula's findings align with Fajana's critique of Nigeria's NEEDS program, which sought to address these very issues but was deemed overly ambitious and poorly implemented[34]. While legal

[33] Bebbington, A., et al. (2008). Contention and Ambiguity: Mining and the Possibilities of Development. Development and Change, 39(6), 887914.

[34] Fajana, S. (2011). The National Economic Empowerment and Development Strategy: A critique of institutional reform in Nigeria. African Development Review, 23(1), 3450.

reforms are crucial for supporting sustainable development and effective dispute resolution[35] emphasizes that these reforms must be tailored to local contexts and supported by strong institutions. Without such reforms, ADR mechanisms are unlikely to succeed, as they rely on a robust legal framework for enforcement and compliance.

Comparative Studies on ADR in Extractive Industries

Comparative studies on the use of ADR in the oil and gas sectors of different African countries provide further insights into the effectiveness of these mechanisms. For example, Gadzala[36] compares the use of arbitration in oil disputes in Nigeria and Angola, finding that while both countries have adopted international arbitration for high value contracts, Angola has been more successful in enforcing arbitration awards due to stronger institutional frameworks.

Gadzala's comparative approach highlights the importance of context in determining the success of ADR mechanisms. In countries like Uganda, where the oil industry is still in its early stages, establishing strong legal and institutional frameworks will be key to ensuring that ADR mechanisms can function effectively. This also resonates with Chalamish's argument that Africa's growing role as an energy producer will require the development of localized dispute resolution mechanisms that are sensitive to the continent's unique legal and political context[37].

Conclusion

The literature reviewed reflects a growing recognition of the importance of ADR mechanisms in resolving disputes in the oil and gas sector. However, the effectiveness of these processes depends heavily on the legal, political, and institutional contexts in which they are applied. In countries like Nigeria and Uganda, where governance issues like corruption, weak institutions, and unequal resource distribution persist, ADR may offer only a partial solution. As Connerty and Chalamish suggest, ADR's flexibility makes it well-suited to complex, cross border disputes, but more empirical research is needed to assess its utility in Africa's unique legal and political environment. Moreover, as Okpan and Fajana emphasize, addressing the underlying governance challenges in oil producing regions is essential to ensuring that ADR processes deliver equitable and sustainable outcomes. Moving forward, policymakers and legal practitioners must focus on building stronger

[35] Cotula, L. (2010). The International Political Economy of the Global Land Rush: A Critical Appraisal of Trends, Scale, and Drivers. Journal of Peasant Studies, 37(2), 227247.

[36] Gadzala, A. (2011). Oil, Disputes, and the Rule of Law: A Comparative Study of Angola and Nigeria. African Journal of International and Comparative Law, 19(3), 445461.

[37] Chalamish, E. (2014). Energy investments in Africa: Trends, disputes, and ADR solutions. Journal of International Dispute Resolution, 6(2), 4560.

institutions and legal frameworks that support ADR, while also addressing the broader political and economic grievances that often underpin disputes in the extractive industries.

CHAPTER THREE

3.0 METHODOLOGY

3.1 Research Design

The methodology employed in this study aligns with the research topic by utilizing a qualitative doctrinal legal research design. This approach is particularly effective for analyzing legal frameworks related to ADR in the context of oil and gas activities in Uganda.

3.1.1 Rationale for the Chosen Methods.

This study adopts a mixed methods approach that combines qualitative doctrinal legal research with interviews. This dual approach is justified for several reasons:

In-depth Legal Analysis: The qualitative doctrinal legal research component facilitates a thorough examination of legal doctrines, statutes, case laws, and institutional structures relevant to ADR mechanisms. By scrutinizing legal texts, historical judgments, and statutory provisions, the study aims to understand the practical application of ADR legislation in ensuring effective dispute resolution.

Understanding Perspectives: The integration of interviews allows for capturing the perspectives of key stakeholders involved in or affected by oil and gas activities. By incorporating insights from government officials, legal experts, and community members, the study ensures a holistic understanding of the challenges and opportunities related to alternative dispute resolution (ADR) in this sector.

3.2 Research Approach

Employing a deductive approach, the study commences with established legal principles and systematically applies legal reasoning to evaluate the effectiveness of ADR mechanisms in solving disputes in Uganda oil and gas industry. Deductive reasoning involves moving from general principles to specific conclusions. In the realm of legal research, it entails starting with established legal principles and systematically applying logical reasoning to derive specific assessments and conclusions[38].

This deductive approach ensures a systematic and logical examination of the ADR mechanisms, enabling an assessment of the alignment between established legal principles and the practical implications within the specific legal context of Uganda oil and gas industry. It assists in

[38] Edward E. Smith, the case for rules in reasoning, 1992

identifying potential gaps, inconsistencies, or areas for improvement in the legal framework governing ADR.

3.3 Research Methods

The data collection strategy encompasses a dual approach, leveraging the depth of secondary sources while embracing the richness of qualitative methods. Secondary sources form the backbone, offering a comprehensive repository of legal texts, case laws, statutes, reports from committees, and policy documents related to ADR mechanisms. These sources provide a robust foundation for doctrinal analysis, allowing for an in-depth examination of established legal principles, historical judgments, and statutory frameworks, enabling an understanding of the evolution and current state of ADR mechanisms laws within Uganda.

Complementing this foundational approach, qualitative methods such as interviews and focus group discussions play a pivotal role in capturing nuanced perspectives and lived experiences related to ADR mechanisms.[39] Interviews facilitate engagements with key stakeholders, legal experts, and community members directly involved in ADR mechanisms, offering insights beyond the confines of legal texts. Focus group discussions create interactive spaces for collective dialogue, unveiling communal perspectives and potential discrepancies between legal frameworks and ground level realities. This dual methodology, integrating doctrinal analysis with qualitative insights, aims to achieve a holistic understanding of the legal landscape's practical implications on ADR mechanisms in Uganda.

3.4 Data Collection

The extensive array of secondary sources forms a mosaic of diverse perspectives and legal foundations critical to this study. Textbooks, periodicals, law journals, and legal history serve as reservoirs of established legal doctrines, providing historical and theoretical contexts for understanding land tenure rights. Judgments, law reform reports, and parliamentary materials offer insights into legal precedents, legislative changes, and governmental perspectives shaping the legal landscape concerning land rights in Uganda's Albertine region. The inclusion of online resources expands the scope, facilitating access to up-to-date information and scholarly discourse, enriching the doctrinal analysis by incorporating contemporary viewpoints[40].

[39] Alison P. Brown Qualitative method and compromise in applied social research, 2010

[40] ibid

Ethical considerations underpin the research's integrity, centered on obtaining informed consent and safeguarding confidentiality[41]. In adherence to ethical protocols, the study prioritizes the protection of participants' rights and privacy. Thirty individuals will be selected for interviews and focus group discussions, comprising representatives from the Ministry of Land, Oil and Gas Companies, and local citizens residing in the Albertine area, with ten individuals from each group. This deliberate selection ensures diverse perspectives from key stakeholders, legal experts, and communities involved in oil and gas industry. Through informed consent procedures and confidentiality measures, the research aims to maintain ethical standards while capturing a broad spectrum of insights and experiences crucial to understanding the multifaceted dynamics of ADR mechanisms.

3.5 Sampling Strategy

The sampling strategy intertwines meticulous selection processes for legal documents and purposive sampling for interviews, ensuring a robust representation of perspectives. Legal texts, case laws, and policy documents relevant to ADR mechanisms. This stringent selection process aims to capture comprehensive and pertinent legal frameworks, enabling a nuanced doctrinal analysis and a thorough examination of the legal landscape governing ADR.

In parallel, for interviews and focus group discussions, a purposive sampling method will be employed to select thirty individuals, encompassing representatives from the Ministry of Land, Oil and Gas Companies, and local citizens residing in the Albertine area, with ten individuals from each group. This purposive sampling approach ensures the inclusion of participants based on their knowledge, expertise, and direct experiences related to land tenure rights impacted by oil and gas activities. By deliberately selecting individuals with specialized insights, the research aims to capture diverse perspectives, fostering a holistic understanding of the complexities surrounding ADR mechanisms legislation and its implications on affected communities within the Albertine region.

3.6 Data Analysis

The analysis methodology revolves around a rigorous and systematic examination of legal propositions, statutes, and case laws which have involved ADR mechanisms. This methodological

[41] ibid

approach aims to delve deeply into the legal framework's efficacy and functionality in safeguarding these crucial rights[42] use the proper form of citation as in your research manual

Through meticulous scrutiny and interpretation, the analysis focuses on comprehensively understanding the roles played by legal propositions, statutes, and case laws within the context of land tenure rights affected by oil and gas exploration [43] . The examination process involves assessing the extent to which these legal instruments effectively protect and uphold the rights of local communities in the face of oil and gas activities. It also entails discerning any discrepancies or shortcomings within the legal framework and identifying areas for potential improvement or reform to enhance the protection of land tenure rights[44].

This analytical framework seeks to unveil the practical implications and limitations of legal propositions and statutes, using case laws as illustrations to highlight the application and interpretation of these legal principles in real-world scenarios [45] . By dissecting and critically analyzing legal mechanisms, the study aims to provide comprehensive insights into the strengths and weaknesses of the existing legal framework concerning land tenure rights in the context of oil and gas exploration in the Albertine region.

3.7 Data Validity and Reliability

The research methodology places a significant emphasis on meticulous scrutiny and validation of legal sources and interpretations to ensure the accuracy, reliability, and integrity of the information used in the study[46]. Given the inherent complexities and potential limitations within legal texts, the approach acknowledges the presence of biases or gaps that might exist within these sources while actively seeking measures to mitigate their impact.

Efforts are directed towards validating legal sources by cross-referencing multiple authoritative texts, case laws, and legislative documents to corroborate information. Additionally, critical analysis and careful consideration of different perspectives contribute to evaluating the reliability and accuracy of legal interpretations. Acknowledging potential biases or gaps within legal texts, the methodology adopts a cautious approach, aiming to mitigate these shortcomings through

[42]Jain, 1975; Singh, 2013

[43]Smith, 2008

[44]Brown, 2010

[45]Jain, S. Research methodology in arts, science and humanities. Oakville;society publishing 2019

[46] Jain supra 28

thorough examination and comparison of diverse legal sources. This stringent validation process ensures a robust and credible foundation for the research findings, promoting a more nuanced understanding of the legal landscape surrounding land tenure rights in the Albertine region affected by oil and gas exploration.

3.8 Ethical Considerations

The researcher will obtain informed consent from participants before conducting interviews or focus group discussions. This process will involve providing participants with comprehensive information about the study's purpose, procedures, potential risks, benefits, and their rights. By seeking informed consent, the study will demonstrate a commitment to respecting participants' autonomy and ensuring their understanding of their involvement.

Confidentiality and Anonymity: Throughout the study, the researcher will uphold strict confidentiality standards. Participant identities and personal information will be kept confidential, and data collected will be anonymized. Any identifying information will be removed or replaced with pseudonyms to safeguard participants' privacy and anonymity.

The study will ensure that participants engage in interviews and focus group discussions voluntarily, without any pressure or coercion. Participants will be explicitly informed that their participation is entirely optional, and they can withdraw from the study at any point without facing adverse consequences.

Recognizing the potential emotional, psychological, or social risks that participants might face, the researcher will take proactive measures to minimize harm. If participants express distress during discussions, appropriate support and resources will be offered to address their concerns and wellbeing.

The researcher will exhibit cultural sensitivity throughout the study. Cultural norms, values, and sensitivities will be respected at all times, and efforts will be made to avoid misunderstandings or misinterpretations that could arise due to cultural differences.

CHAPTER 4: THE DIFFERENT ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN UGANDA.

4.0Introduction

This chapter will discuss the various laws in Uganda that govern Alternative dispute resolution mechanisms in Uganda oil and gas sector. It is essential to recognize that disputes in the oil and gas sector are similar to those arising in other areas of society. Consequently, the general mechanisms for resolving disputes are applicable to the oil and gas industry as well. The chapter will go ahead and analyze both the general mechanisms employed in resolving disputes and the others that are specific to the Oil and Gas Sector

4.1Laws governing alternative dispute resolution mechanisms in the oil and gas sector in Uganda.

4.1.1The Constitution of the Republic of Uganda, 1995, as amended.

The constitution is the supreme law and all other laws derive their legitimacy from it.[47] It is one of the laws that spell out mechanisms of dispute resolution and establishes the different courts in Uganda.

Article 28 of the Constitution provides for the right to a fair hearing. Further, Article 42 provides for a right to just and fair treatment in administrative decisions. It provides that any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

The constitution establishes a system of courts under Chapter eight. Article 126 clearly provides that judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people. More specifically it provides under article 126(d) and (e) that reconciliation between parties shall be promoted and that substantive justice shall be administered without undue regard to technicalities respectively.

[47] Article 2 of the 1995 Uganda Constitution as amended.

It is crucial to highlight that a key aspect for the oil and gas sector is Article 126(2)(d), which emphasizes reconciliation between parties. Given that much of the work in this sector is conducted under Production Sharing Agreements (PSAs) or Joint Venture Agreements, ongoing cooperation is essential even after disputes arise. The courts established under Chapter 8 are tasked with facilitating this reconciliation to the greatest extent possible.

The constitution has been very effective in promoting ADR because it grants parliament powers to enact laws. This power has been utilized parliament to enact laws that promote alternative dispute resolution mechanisms such Arbitration and Conciliation Act 2024. Examples of disputes that have been solved using ADR in oil and gas in Uganda include the following;-

- Tullow and Uganda Revenue Authority settled a CGT dispute over Tullow's 2012 sale of its Ugandan stakes to CNOOC and Total. Tullow agreed to pay US $250 million in installments, replacing the URA's initial US $473 million assessment. Tullow also withdrew an ICSID claim over a VAT dispute after reaching a settlement with the Ugandan government
- Total's Dutch affiliate and Uganda asked ICSID to discontinue arbitration over stamp duty on an oil block near Lake Albert. They reached a settlement, ending the dispute around taxation/alignment for oil licensing
- Uganda took legal action at the East African Court of Justice and Kenyan courts after Kenya initially refused UNOC fuel import licenses and pipeline access. Both countries withdrew lawsuits: Kenya granted UNOC fuel import licenses and access to pipeline/transit routes via Mombasa/Kenya Pipeline Co.,
- Settling the dispute Uganda has largely completed land acquisition for Tilenga, Kingfisher, and EACOP pipeline projects—with 99%+ of Project-Affected Persons compensated by late 2024. Remaining hold-outs (under 120 PAPs in court) were taken to court in Masaka, Hoima, and Kyankwanzi districts to enforce vacant possession and finalize compensation While these cases are still winding through court, most issues have been resolved or are close to settlement.

4.1.2The Judicature Act Cap 13, Laws of Uganda

This is a statutory law that was promulgated to consolidate and revise the Judicature Act to take account of the provisions of the Constitution relating to the judiciary. This is because there was a Judicature Act that existed before the Constitution came into force and as such, it was modified to correspond to the new provisions of the Constitution.

The Act generally lays out the courts provided for by the Constitution, their constitution and powers. The jurisdiction; either original or appellate that each court has. The court also provides the scope of law that can be applied by the courts in administering justice or resolving disputes.

Specifically, Section 26 of the Act provides for references to Referees hence gives court powers to refer a case to another forum. Section 27 further provides that;

Where in any cause or matter, other than a criminal proceeding—

(a) all the parties interested who are not under disability consent;

(b) the cause or matter requires any prolonged examination of documents or any scientific or legal investigation which cannot, in the opinion of the High Court, conveniently be conducted by the High Court through its ordinary officers; or

(c) the question in dispute consists wholly or partly of accounts,

the High Court may, at any time, order the whole cause or matter or any question of fact arising in it to be tried before a special referee or arbitrator agreed to by the parties or before an official referee or an officer of the High Court.

This provision in essence allows the high court to refer a case to Alternative Dispute Resolution especially where the matter is technical and it would significantly take large amounts of time to settle. The Oil and Gas matters can be said to fall under this ambit given their complexity and technicality.

The Act gives the arbitrator or referee the same powers as the powers of the Judge of the High Court. Section 28 provides that; *In all cases of reference to a referee or arbitrator under this Act, the referee or arbitrator shall be deemed to be an officer of the High Court and, subject to rules of court, shall have such powers and conduct the reference in such manner as the High Court may direct.*

Therefore, alternative dispute resolution is a recognized and acknowledged forum for settling disputes other than court.

In Uganda Courts has used this power to refer various disputes to ADR mechanism especially where matters a deemed complex and require specialized knowledge in a particular field

4.1.3The Civil Procedure Rules SI 711 (as amended) (CPR)

Under Order 12 rule 2 of the CPR, the law provides that where parties do not reach an agreement under rule 1(2) of order 12, the court has the power to order for ADR if it is of the view that the case has a good potential for settlement. Courts can therefore use the Civil Procedure Rules to refer any matter for ADR where it deems it appropriate

This law has been effective because most of the courts as of today prefer and have gone ahead to send matters for ADR before formal court processes are done. This has led to resolution of many disputes at that that stage before proceeding to court litigation.

4.1.4The Arbitration and Conciliation Act, Cap 4, Laws of Uganda (ACA). With the onset of colonization, Uganda adopted numerous laws from England, which were later consolidated following independence. The promulgation of the 1995 Constitution necessitated modifications to many existing laws to ensure compliance with constitutional principles. Consequently, this Act was enacted to amend legislation related to domestic arbitration, international commercial arbitration, and the enforcement of foreign arbitral awards. It also aims to define the legal framework for dispute conciliation and includes additional provisions related to these matters.

This Act outlines the framework for both domestic and international arbitration, specifying what issues can be arbitrated and establishing relevant timeframes. It also addresses the enforcement of international arbitral awards, including those governed by the New York Convention and the ICSID Convention.

Additionally, the Act provides guidelines for conciliation, detailing its structure, procedures, and eligibility for parties wishing to utilize this method of dispute resolution.

The Act also establishes the Centre for Arbitration and Dispute Resolution. Section 67 of the Act provides thus;

> *(1) There is established a body to be called the Centre for Arbitration and Dispute Resolution.*
> *(2) The centre shall be a body corporate with perpetual succession and a common seal and shall be capable of suing or being sued in its corporate name and may borrow money, acquire and dispose of property and do all such other things as a body corporate may lawfully do.*

The Act further lays out the functions of this body under section 68 which provides that;
The functions of the Centre shall, in relation to arbitration and conciliation proceedings under this Act, include the following—

(a) to perform the functions referred to in sections 11, 12, 13, 14, 15 and 51;

(b) to perform the functions specified in the UNCITRAL Arbitration Rules of 1976;

(c) to make appropriate rules, administrative procedure and forms for effective performance of the arbitration, conciliation or alternative dispute resolution process;

(d) to establish and enforce a code of ethics for arbitrators, conciliators, neutrals and experts;

(e) to qualify and accredit arbitrators, conciliators and experts;

(f) to provide administrative services and other technical services in aid of arbitration, conciliation and alternative dispute resolution;

(g) to establish appropriate qualifications for institutions, bodies and persons eligible for appointment;

(h) to establish a comprehensive roster of competent and qualified arbitrators, conciliators and experts;

(i) to facilitate certification, registration and authentication of arbitration awards and conciliation settlements;

(j) to establish and administer a schedule of fees for arbitrators;

(k) to avail skills, training and promote the use of alternative dispute resolution methods for stakeholders;

(l) to do all other acts as are required, necessary or conducive to the proper implementation of the objectives of this Act.

The Functions of the body are quite elaborate, but ultimately this cements the fact that Alternative dispute resolution is a recognized forum of settling differences and this is also applicable to the Oil and Gas sector.

Uganda's Arbitration and Conciliation Act (ACA)—based on the UNCITRAL Model Law—is generally viewed as a solid legal foundation for arbitration in oil & gas, with robust provisions for party autonomy, arbitrator appointment, minimal court interference, and clear grounds for enforcement. As a signatory to both the New York and ICSID Conventions, Uganda treats foreign arbitral awards as court decrees, allowing enforcement domestically. Courts have also endorsed parallel enforcement and strictly limited public policy grounds for refusal strengthening confidence in arbitration. The Commercial Court now has an Arbitration Registry, streamlining award enforcement. Arbitration filings (especially in energy, infrastructure, finance) are rising ~15% annually since 2022

Uganda's ACA provides a strong legal basis and enforcement environment for arbitration in oil & gas. However, recent institutional restructuring, legal gaps in petroleum-specific laws, and capacity limitations have dampened its full effectiveness. For arbitration to thrive as a dispute resolution tool in Uganda's booming oil & gas sector, the system needs targeted reforms and capacity support.

4.1.5The Judicature (Mediation) Rules SI No. 10 of 2013

These rules were made in reference to Section 41 of the Judicature Act which gives the Chief Justice the power to make such rules. Originally under Rule 4 of the rules, all civil matters were to undergo mediation. This position was however changed by the amendment to the Civil Procedure Rules with the introduction of Summons for Directions.

This does not take away the mandate of the other provisions of the Rules in as far as mediation is concerned. The rules lay out the procedure to be followed during mediation and the required documents to be tendered in. It describes the different roles of the mediators appointed to oversee the mediation and the efficacy of the decision reached by the parties in the same transaction.

This has been enhanced by the recent guidelines by the chief justice of Uganda on remuneration of mediators in a bid to establish a robust ADR mechanism in Uganda.[48]

4.1.6Uganda Model PSA

The PSA is a contract entered into by the government with the licensee or an IOC for the exploration, development and production of Oil and Gas. This Contract covers very many areas of the project including, human rights, the environment, labour rights, health and safety to mention but a few.

The Model PSA for Uganda has an elaborate article on Dispute resolution which I have reproduced for easy reference.

ARTICLE 24

Dispute Resolution

24.1. Subject to Article 13 and paragraph 25.2, a dispute arising under this Agreement, except disputes relating to taxation, health, safety and environment, which cannot be settled amicably

[48] Chief Justice Instruction No.1/2024

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. Judgement 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.

24.2. Any matter in dispute between the Government and Licensee arising under paragraphs 14.1 and 12.2, 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 the Licensee. 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, unless the Parties otherwise agree. 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.

The Article lays out the forum of dispute settlement to be referral of the dispute to a Dispute Settlement Body using UNICTRAL model of rules. This reference is in London and the award given becomes enforceable between the parties. This is arbitration.

The general laws governing alternative dispute resolution mechanisms work hand in hand with the following laws that govern oil and gas activities.

4.2 Alternative Dispute Resolution as a Concept.

Alternative Dispute Resolution (ADR) is defined as the other processes of resolving disputes apart from litigation.[49]ADR processes are in most cases collaborative in nature and this allows the parties involved to understand each other's positions[50]. ADR encompasses various methods that are generally more flexible, informal, and efficient than conventional legal proceedings. The primary goal of ADR is to provide disputing parties with mutually acceptable solutions while saving time and resources

Many ADR methods involve a neutral third party, such as a mediator or arbitrator, who facilitates communication, suggests solutions, or makes binding decisions based on the evidence presented. The neutrality of the third party helps ensure an unbiased resolution. ADR procedures can be tailored to the needs of the parties involved. This flexibility allows for customized resolutions that may not be possible in a rigid court setting. Parties can choose the method, the timeline, and the rules governing the process.[51]

It often involves partnering where disputants meet and agree on how to resolve their conflicts and a system design of the processes to undertake in instances that the conflicts arise. The different forms of ADR include: negotiations, mediation, arbitration, early neutral evaluations, and conciliation among others.

4.5Arbitration.

Arbitration is a form of Alternative Dispute Resolution (ADR) in which a dispute is submitted to one or more neutral third parties (called arbitrators) who make a binding decision on the matter. It is often used as an alternative to litigation in court and is designed to provide a more streamlined, efficient, and private method for resolving disputes.[52]

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[49] Dennison & Tibihikira, Legal Ethics and professionalism: A handbook for Uganda,Globethics.net African Law 2, pg.220

[50] What is Alternative Dispute Resolution,www.Findlaw.com 8th October ,2020, https://www.findlaw.com/hirealawyer/choosingtherightlawyer/alternativedisputeresolution.html 23rdNovember,2020.

[51] What is ADR?,www.arbresolutions.com,21st August,2020 https://www.arbresolutions.com/whatisadr/ 23rd November,2020

[52] Tweedale A, and Tweedale K, 2007, Arbitration and Commercial Disputes, Oxford, p.34

The Arbitration and Conciliation Act regulates arbitration in Uganda. Additionally, Uganda ratified the New York Convention on February 12, 1992, and adopted the provisions of the UNCITRAL Model Law. Arbitration developed as a customized method for resolving commercial disputes before a neutral third party (the arbitrator) without resorting to the courts. Initially, arbitration was a consensual process requiring an agreement between the parties to resolve their conflicts through this method, allowing either party to initiate proceedings.

In contrast, investor-state arbitration is a somewhat "asymmetrical" form of dispute resolution, where only an investor can file an investment claim against the host state, contingent upon the host state consenting to arbitration in accordance with the relevant international investment agreement. For example, the International Centre for Settlement of Investment Disputes (ICSID) Convention states that consent to arbitrate can be granted through a contract, investment treaty, or legislation.

Many International Investment Agreements, including Bilateral Investment Treaties, free trade agreements with an investment chapter (such as the North American Free Trade Agreement), and other multilateral agreements (like the Energy Charter Treaty), establish rules that allow investors to bring claims directly against states. Traditionally, only states possessed rights and obligations under international law, which is why foreign investors often relied on diplomatic protection to resolve their disputes.[53] International investment agreements are made by state parties to mutually protect their national investors as third-party beneficiaries.

Statistics from UNCTAD indicate that, according to an analysis of publicly accessible cases, states have generally been more successful than investors in investor-state disputes. By the end of 2014, there were a total of 356 such disputes. Currently, there is an increasing agreement on the potential role that investment dispute resolution mechanisms can play in promoting sustainable development, provided that comprehensive and ongoing reforms are implemented to consider the interests of all stakeholders involved.

One key advantage of arbitration is its confidentiality, which is particularly valuable in cases involving trade secrets. However, this confidentiality means that disputes resolved through arbitration do not receive the same level of public attention as those settled in court. Additionally, arbitration typically allows parties to choose their arbitrators. Furthermore, the arbitration process is generally faster and more flexible than public litigation. On the downside, arbitration often

[53] https://www.lexisnexis.co.uk/legal/guidance/institutional-arbitration-an-introduction-to-the-key-features-of- institutional-arbitration

incurs higher costs than public litigation, primarily due to the substantial fees charged by arbitrators.

There are two main forms of arbitration: ad hoc arbitration and arbitration facilitated by permanent institutions.

Ad hoc arbitration.

Ad hoc arbitration operates independently of institutional influence and follows the rules selected by the parties involved. In this process, arbitrators are appointed on a case-by-case basis, typically by the parties themselves. One possibility is for the parties to choose an appointing authority that will designate the arbitrators for the case.[54] The tribunal's composition can range from a single arbitrator to multiple arbitrators, depending on the applicable procedural rules.

Institutional Arbitration

Contracting parties seeking to resolve their disputes with the help of a specialized institution must specify one or more institutions in an arbitration clause to manage the arbitration process. Numerous arbitration institutions exist, offering both a forum and procedural guidelines for the arbitration proceedings.[55] The International Centre for Settlement of Investment Disputes (ICSID) is the most notable in investor-state arbitration, followed by the International Chamber of Commerce (ICC), the Permanent Court of Arbitration (PCA), and others, each specializing in different areas such as commercial, investment, and regional disputes.[56] Some of the international arbitration institutions include among others London Court of International Arbitration (LCIA), American Arbitration Association (AAA), EuroArab Chambers of Commerce (EACC), Netherlands Arbitration Institute(NAI), Stockholm Chamber of Commerce(SCC), International Chamber of Commerce(ICC), United Nations Commission on International Trade Law(UNCITRAL). Specifically in Uganda there is Center for Arbitration and Dispute Resolution of Uganda (ICAMEK)

Institutional arbitration provides the benefit of administrative support from the chosen institution, which includes access to a list of arbitrators, established rules including a standard arbitration

[54] Bayuasi Nammei Luki and Nusrat Jahan Abubakar, 'Dispute Settlement in the Oil and Gas Industry: Why is International Arbitration Important?' [2016] 6(4) Journal of Energy Technologies and Policy, 33

[55] Born, G. B. (2021). *International commercial arbitration* (3rd ed.). Kluwer Law International.

[56] Redfern, A., & Hunter, M. (2015). *Law and practice of international commercial arbitration* (6th ed.). Sweet & Maxwell.

clause, and facilitates a more efficient and timely resolution.[57] This option may be preferred unless the parties have concerns regarding costs.

An arbitration is considered ad hoc if it is conducted without the involvement of an institution. While this approach may not always be ideal for the long-term nature of petroleum transactions, ad hoc arbitration is generally more cost-effective than institutional arbitration. Additionally, the costs associated with institutional arbitration often rise in relation to the size of the dispute or the time invested by the institution and arbitrators. Notable investment disputes resolved through ad hoc arbitration in the past include the Libyan expropriation cases, British Petroleum v. Libya, Liamco v. Libya, and Texaco/Calasiatic v. Libya.[58]

In an ad hoc arbitration, the parties have the flexibility to establish their own procedural rules or refer to the law of the forum where the arbitration is taking place. However, the forum's law may not always adequately cover all aspects of the proceedings. In such instances, if ad hoc arbitration is selected, parties can refer to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The UNCITRAL Rules offer a comprehensive set of procedural guidelines that parties can agree upon for conducting arbitral proceedings stemming from their commercial relationship and are commonly utilized in both ad hoc and administered arbitrations.

The International Institute for Conflict Prevention and Resolution is another organization that provides guidelines for ad hoc arbitration. Its provisions encompass the management of the arbitration process by the Arbitral Tribunal and counsel, eliminating the need for a separate administering body.[59] This institute also offers tailored services, such as selecting arbitrators and handling challenges to their appointments.

In francophone West African nations, the Organisation for the Harmonisation of Business Law in Africa (OHADA) facilitates ad hoc arbitration through its Uniform Act on Arbitration (UAA). Adopted in 1999, these rules apply to any arbitration taking place in an OHADA Member State and are generally non-mandatory, allowing parties the freedom to modify them.[60] Despite being

[57] Mistelis, L. (Ed.). (2015). *Concise international arbitration*. Kluwer Law International.

[58] Van den Berg, A. J. (1999). The New York Convention of 1958: Reflections on the judicial interpretation and application. In *Enforcement of arbitration agreements and international arbitral awards* (ICCA Congress Series No. 9). Kluwer

[59] Lew, J. D. M. (1985). Comparative international commercial arbitration: Institutional and ad hoc procedures. *Arbitration International*, 1(3), 232–250.

[60] United Nations Commission on International Trade Law. (2013). *UNCITRAL arbitration rules* (2013 rev.). United Nations

ad hoc, the procedure requires an arbitration agreement, impartial arbitrators, and specific drafting requirements for awards.[61]

In 2004, the Association of International Petroleum Negotiators created a Model Dispute Resolution Agreement that can serve as an arbitration agreement or be included in contracts as part of the dispute resolution clause. This model aims to offer parties a choice between detailed or simplified dispute resolution processes, providing alternative opt-out options and a list of available institutional arbitration choices. Additionally, it includes a waiver of sovereign immunity.

Advantages of arbitration

One advantage of arbitration compared to litigation and other alternative dispute resolution modes is its international enforceability. Arbitration is more effective because arbitral awards are recognized and can be enforced globally under the New York Convention, as previously discussed**.**

Arbitration typically leads to quicker resolutions compared to litigation, which can be prolonged due to court schedules and procedural complexities. Disputes can often be settled within a few months, allowing parties to move on more rapidly.

Arbitration is generally less expensive than court proceedings. Although there are fees associated with arbitrators, the overall costs are often lower due to reduced discovery processes and shorter timelines. This makes arbitration particularly beneficial for parties looking to manage their legal expenses.

Arbitration proceedings are typically confidential. This privacy is crucial for businesses that wish to keep sensitive information and dispute details out of the public eye.

Parties have the option to select arbitrators with specific expertise relevant to their dispute. This can be particularly advantageous in complex or technical matters, ensuring that decisions are informed by knowledgeable individuals.

Arbitration allows for greater flexibility in terms of procedures and timelines. Parties can agree on various aspects of the arbitration process, including the number of arbitrators and the location of hearings, which can lead to a more efficient resolution tailored to their needs.

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61 United Nations Commission on International Trade Law. (2013). *UNCITRAL arbitration rules* (2013 rev.). United Nations

One of the defining features of arbitration is that it offers limited grounds for appeal, making the arbitral award generally final and binding. This aspect provides certainty and closure for both parties, reducing the likelihood of prolonged disputes.[62]

The parties involved usually have a say in selecting their arbitrator(s), which can enhance their confidence in the impartiality and fairness of the process. This contrasts with litigation, where judges are assigned without input from the parties.[63]

Disadvantages of Arbitration

During my research, the legal practitioners stated that arbitration has mostly been effective with state-international oil companies disputes because of the following reasons:
High Costs and Lengthy Processes. Arbitration can be significantly more costly than other dispute resolution methods. The fees associated with arbitrators, legal counsel, and administrative expenses can accumulate quickly, making it a burdensome option for parties involved in disputes.

Some lawyers interviewed decried prolonged arbitration process can take years to resolve disputes, which is particularly problematic in the fast-paced oil and gas industry where timely decisions are crucial for project viability some of them equated it to court processes. One of the interviews stated that the amount of time taken is the same as in court proceedings or even worse.

They also cited limited judicial oversight stating that in Uganda, judicial intervention in arbitration matters is limited. Courts can only interfere under specific circumstances defined by the Arbitration and Conciliation Act. This restriction may prevent parties from seeking redress in cases of perceived unfairness or bias in the arbitration process.

They also emphasized enforcement challenges that although arbitral awards are generally enforceable internationally, challenges usually arise when trying to enforce these awards domestically due to conflicts between local public policy and international standard.

The process of selecting arbitrators can lead to concerns about impartiality. If an arbitrator has a prior business relationship with one of the parties or is chosen from a biased pool, this could compromise the fairness of the proceedings.

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[62] Peter Lovenheim, Mediate, don't litigate: How to resolve disputes Quickly, Privately and Inexpensively without going to court (McGraw Hill Higher Education, 1989), 10; (n 27) 627; (n 3) 339; (n 2)
[63]https://www.mayerbrown.com/-/media/files/news/2012/10/the-pros-and-cons-of-arbitration/files/practice-note_duncan_pros-cons-

They further decried imbalance of power because many arbitration clauses are structured in favor of larger entities, such as international oil companies, which may disadvantage smaller local firms or the government.[64] This imbalance has led to perceptions of inequity in dispute resolution.

That most arbitration clauses lack flexibility with mandatory arbitration clauses which means that parties may not have the option to choose litigation or other forms of dispute resolution that might be more beneficial for their situation. Therefore, one of the interviewees stated that it is un necessarily rigid.

These disadvantages highlight the complexities and challenges associated with arbitration in Uganda's oil and gas sector, suggesting a need for careful consideration when drafting contracts and choosing dispute resolution mechanisms especially for domestic disputes.

Although Arbitration is ideal in cases involving international oil companies and other states in its current state in Uganda it is not ideal for purely domestic matters because compared to other modes of alternative dispute resolution its more complicated and takes long.

This mode of alternative dispute resolution was adopted by Uganda's Production sharing agreement as already stated in chapter 4 of this paper.

In Uganda as already stated the Arbitration and Conciliation Act establishes the Center for Arbitration and Dispute Resolution of Uganda (ICAMEK) with responsibility of facilitating trade and business in Uganda by providing a neutral, independent and impartial venue for resolution of commercial disputes.[65] Also to provide dispute resolution services to the Uganda parties and the international business community who wish to have their disputes resolved outside of the public courtroom by appointing arbitrators and conciliators.
The Uganda Arbitration and Conciliation Act, 2024 governs arbitration and alternative dispute resolution (ADR) in Uganda.

It was enacted to align Uganda's legal framework with international standards such as the UNCITRAL Model Law on International Commercial Arbitration and the New York Convention

[64] https://www.mmaks.co.ug/articles/2024/03/14/key-arbitration-caselaw-developments-uganda-2023-2024

[65] https://cristaladvocates.com/?mdocs-file=22079

on the recognition and enforcement of foreign arbitral awards. The Act is modeled on the UNCITRAL Model Law, making it familiar to international parties and promoting investor confidence. Uganda ratified the New York Convention in 1992, and the Act facilitates recognition and enforcement of foreign arbitral awards.

The Act has a comprehensive scope covering both domestic and international arbitration. It also provides for conciliation as a form of ADR, encouraging amicable dispute resolution.

Emphasizes party autonomy in selecting arbitrators, procedures, and governing law—key to modern arbitration practice.

The courts are empowered to support arbitration (e.g., by appointing arbitrators or enforcing interim measures), but are discouraged from interfering unnecessarily.

Arbitration awards are generally final and binding, reducing the scope of protracted litigation.

Weaknesses and Challenges in the Uganda Arbitration and Conciliation Act 2024.

Despite being based on the 1985 UNCITRAL Model Law, it does not incorporate later revisions (2006), especially regarding interim measures and emergency arbitration. It also lacks clarity on institutional arbitration vs. ad hoc arbitration.

Uganda lacks a strong institutional arbitration body with wide recognition. The Centre for Arbitration and Dispute Resolution (CADER) is still underutilized and lacks capacity and visibility.

Some Ugandan courts have undermined arbitration through excessive intervention or failure to enforce awards efficiently. Weak understanding of arbitration principles among some judicial officers.

Limited provisions on confidentiality and costs. Confidentiality is assumed, but not explicitly guaranteed by the Act. No detailed framework on costs, which creates uncertainty for parties.

Lack of Public Awareness and Expertise. Arbitration and conciliation are not widely understood or accepted among local businesses and practitioners. There is a shortage of skilled arbitrators, especially outside Kampala.

4.5.1Mediation

Mediation is a non-binding method of Alternative Dispute Resolution (ADR). In the oil and gas sector, parties may include mediation provisions in their contracts or enter into a separate agreement to mediate when a dispute arises. It is common for mediation to be part of a dispute resolution clause, serving as an initial step or prerequisite to arbitration or court proceedings.

In mediation, the mediator acts as a facilitator rather than a decision-maker, guiding the parties toward a settlement. The process only becomes binding if the parties agree on a settlement. Mediation can be an efficient and cost-effective way to resolve disputes, provided that both parties are willing to compromise. It is often more suitable for domestic disputes or situations where both parties share similar legal backgrounds or languages.

The mediator's role as a neutral and skilled expert is crucial for exploring the underlying issues of a dispute. While technical knowledge of the oil and gas sector can be beneficial, it is not always necessary for mediators to be industry experts.

Advantages of mediation.

In my research and interviews carried out mediation is regarded by majority as typically timesaving compared to litigation and arbitration. It is a quicker process that focuses on achieving a mutually acceptable agreement between the parties. The mediator helps facilitate discussions in a private and confidential manner, allowing the parties to express their concerns about their interests. The entire mediation process, from initiation to settlement, usually takes less time than litigation, which involves lengthy procedures and numerous legal complexities that can prolong court cases for years. For parties seeking rapid resolution of their disputes, mediation is often the preferred option.

More so, my research established that mediation is more cost-effective than litigation and other ADR mechanisms due to lower service fees and reduced time spent resolving disputes. Prolonged trials in ordinary courts can lead to significant legal expenses for lawyers. In some countries, certain mediation services are offered free of charge, such as those provided by the Malaysian Mediation Centre.

Mediation also facilitates more satisfactory settlements for both parties. With the mediator’s assistance, disputing parties can openly discuss their concerns and interests, leading to compromises that reduce the likelihood of non-compliance with the agreed terms.

Additionally, mediation can help repair relationships between disputing parties. Unlike litigation—which often results in a win-lose outcome dictated by judges—mediation fosters a win- win situation through compromise. This is especially important in cases involving closely related individuals, such as family members or employer-employee relationships, where litigation can create lasting rifts.

Disadvantages of mediation

Mediation in the oil and gas sector in Uganda has several disadvantages that can impact its effectiveness as a dispute resolution mechanism such as:

The non-binding nature of mediation agreements unless the parties choose to formalize them in a subsequent contract. This can lead to situations where one party may not adhere to the agreement, resulting in unresolved disputes that may require further legal action or arbitration. Most lawyers interviewed stated that in their practice areas they have encountered a situation where mediation settlement was reached but later breached by one of the parties hence had to resort to court litigation.

Potential for power imbalance because in cases where there is a significant disparity in bargaining power between parties, mediation may favor the more powerful entity, often leading to outcomes that do not adequately protect the interests of weaker parties, such as local communities or smaller companies. This was specifically brought out during a community engagement with the persons that had been affected by oil and gas activities in Hoima. They stated that although they had reached agreements through mediation with the state regarding compensation they felt that they had been forced into these settlements because they lacked the bargaining power. They still feel they were not adequately compensated.

More so the communities stated that the mediation processes lacked transparency because they conducted privately sometimes with the leaders of those communities. This lack of public scrutiny led to concerns about accountability, particularly when disputes involve significant public interest issues related to resource management and environmental impact.

The success of mediation heavily relies on the willingness of both parties to cooperate and engage constructively. If one party is uncooperative or lacks genuine interest in reaching a resolution, mediation may fail, prolonging disputes and potentially escalating tensions, for example according to petroleum authority Uganda there are still compensation cases pending as a result of failed mediation and now awaiting court processes.

In international disputes, differences in language, legal culture, and geographical distance can hinder the chances of reaching an agreement and may increase time and costs. Legal practioners stated that they have encountered challenges in mediation where the dispute involves different countries.

Additionally, when state parties are involved in oil and gas disputes, the negotiated nature of mediation may create credibility issues for government officials, who might face scrutiny over whether their agreements are adequate or suspect. A legal practitioner in Attorney General chambers stated that many of his colleagues have been investigated for matters they have settled through mediation.

Lastly, the oil and gas sector often involves complex technical and regulatory issues that may require expert input. Mediators without sufficient expertise in these areas might struggle to facilitate effective discussions or propose viable solutions, limiting the effectiveness of mediation as a resolution tool.

However even with the above disadvantages most of the participants leaned in favour of mediation as the most favourable mode of alternative dispute resolution because of the advantages stated above.

4.5.2Conciliation.

Conciliation is a type of alternative dispute resolution in which a conciliator assists the parties in resolving their dispute. The conciliator facilitates this process by identifying the parties' objectives. Unlike arbitration, there is no formal award at the conclusion of conciliation. In Uganda conciliation is governed by Arbitration and Conciliation Act 2013 Part V

Conciliation differs from court proceedings in that the conciliator does not render a judgment or decision as a court would. It also contrasts with mediation because the conciliator takes a more active role in the process. The conciliator engages directly with the parties, asking them to prioritize their objectives and identify which points they are unwilling to compromise on and which issues they can be flexible about.[66] The conciliator then approaches the other party to discuss these objectives, starting with minimal concessions and gradually moving toward larger ones.

[66] https://legalvision.co.uk/disputes-litigation/advantages-disadvantages-conciliation/

While mediation involves a mediator who encourages the parties to take control of their dispute without actively participating in negotiations, conciliation involves direct involvement from the conciliator. Both processes share similarities in that they involve a neutral party working to resolve the dispute, and neither results in a binding outcome. Additionally, both conciliation and mediation proceedings are confidential, meaning that neither party can use information from these discussions in other forums or legal proceedings. This confidentiality ensures that the discussions remain private and cannot be used to support arguments in any other context. Furthermore, like mediation, conciliation outcomes are not legally binding.

Advantages of conciliation

Although Part V of the Arbitration and Conciliation Act provides the process to be undertaken during conciliation majorly conciliation is flexible and informal. It can be tailored to suit various disputes, whether they are large or small. This adaptability allows parties to engage in a process that best meets their needs.

Conciliation typically incurs lower costs compared to litigation and arbitration. By avoiding lengthy court processes, parties can save on legal fees and other related expenses.

The process is designed to be faster, allowing parties to resolve disputes more quickly than through traditional litigation, which can be time-consuming.[67]

Conciliation sessions are confidential, meaning that the details of the discussions and any agreements reached are not disclosed publicly. This confidentiality encourages open communication without fear of reputational damage.

Conciliation is particularly beneficial in the oil and gas sector where ongoing relationships are crucial. It facilitates dialogue that can help preserve or even improve relationships between disputing parties, which is essential for future collaborations.

The parties involved retain control over the resolution process and can withdraw from conciliation at any time without prejudice. This empowerment allows them to negotiate terms that are mutually acceptable rather than being bound by a third-party decision.

[67] https://the-tipc.org/en/advantages-disadvantages-of-conciliation.html

A conciliator acts as a neutral facilitator who can help clarify issues, suggest solutions, and guide discussions without imposing decisions. This non-judgmental approach helps foster a collaborative atmosphere conducive to reaching an agreement.

Conciliation allows for creative problem-solving beyond legal remedies, enabling parties to explore various options that may not be available in court settings. This flexibility can lead to more satisfactory outcomes for all involved.

Disadvantages of Conciliation

Conciliation, while a valuable method for dispute resolution, has several disadvantages that can limit its effectiveness, especially in complex sectors like oil and gas such as;

The success of conciliation hinges on both parties being willing to engage in the process and accept the authority of the conciliator.[68] If either party is uncooperative or lacks the right attitude, the process can become ineffective and may waste time and resources.

Unlike arbitration, conciliators do not have the authority to impose decisions. If parties fail to reach an agreement, they are free to pursue litigation or other avenues, which can lead to further disputes and uncertainty.

The conciliator's active role in identifying weaknesses in each party's case can lead to one party exploiting these vulnerabilities. This dynamic may exacerbate tensions rather than facilitate a collaborative resolution.[69]

The conciliator acts as an intermediary, which can sometimes result in mixed messages or misinterpretations. This risk of miscommunication can hinder effective negotiations and lead to further misunderstandings between parties.

While conducting interviews I established that very few lawyers, and individuals in the community have encountered conciliation most of them mistake it for mediation. But a few who have encountered it stated that it’s a more effective dispute resolution mechanism in sectors like oil and gas, where maintaining relationships and managing costs are critical considerations.

[68] **Margaret-L.-Moses**,2017 *The Principles and Practice of International Commercial Arbitration* (3rd edn, Cambridge University Press 2017)

[69] ibid

4.5.3Expert Determination

Expert determination is another form of alternative dispute resolution in which parties present their dispute to an individual who has the expertise to make a decision based on their knowledge and judgment.[70] This practice has historical roots, originating in societies organized into tribes where tribal chiefs, religious leaders, or other influential figures were regarded as experts. Disputes were brought before these experts, who were expected to deliver a verdict.

While the expert's decision is not legally binding in a court of law, it carries moral authority that encourages the parties to adhere to it. This aspect makes it somewhat similar to court proceedings, where both parties present their arguments and a binding decision is rendered by the court. It also resembles arbitration in that the decision is binding and the procedural rules are more flexible compared to those in court.

In expert determination, parties submit their disputes and receive a verdict, which contrasts with mediation, where no binding resolution is imposed.[71] Unlike conciliation, the outcome of expert determination is binding on the parties involved. However, it differs from court proceedings because the expert's verdict does not hold legal weight in a court of law. Similarly, it is distinct from arbitration since its decision is not enforceable in court as arbitration decisions are.

This method of dispute resolution still exists in various societies around the world, such as Afghanistan, tribal regions of Pakistan, and India, often functioning at the family level. For example, a mother's decision may be respected by her children even though it lacks legal authority; it still carries a certain level of influence or enforcement.

In Uganda the PSA Article 24.2 provides that "A*ny matter in dispute between the Government and Licensee arising under paragraphs 14.1 and 12.2, 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 the Licensee."*

Advantages of expert determination.

Expert determination allows parties to appoint an independent expert with specialized knowledge relevant to the dispute. This expertise can lead to more informed and accurate decisions, especially in complex technical or valuation matters where legal professionals may lack specific industry insight.

[70] **Susan-Blake, Julie-Browne-and-Stuart-Sime**, *The Jackson ADR Handbook* (Oxford University Press 2013)

[71]**Geoffrey-G.-Beresford-Hartwell**,-2001 *Expert Determination* (Chartered Institute of Arbitrators 2001)

The process is generally faster than traditional litigation or arbitration. By avoiding lengthy court procedures and formalities, expert determination can resolve disputes more swiftly, minimizing delays in projects and operations.

Expert determination tends to be more economical than litigation or arbitration due to its streamlined nature. Parties can save on legal fees and other costs associated with formal dispute resolution processes, making it a financially attractive option[72].

The parties have the flexibility to define the procedure and select the expert, allowing them to create a dispute resolution process that is specifically suited to their needs. This adaptability can enhance the effectiveness of the resolution process.

The process is confidential, protecting sensitive information and commercial relationships from public scrutiny. This confidentiality can be particularly valuable in industries like oil and gas, where proprietary information is often at stake.

Decisions made through expert determination are typically final and binding, providing parties with certainty and closure.[73] This finality reduces the likelihood of prolonged disputes that can arise from appeals or further litigation.

Compared to court proceedings, expert determination is less formal, which can create a more conducive environment for open dialogue and negotiation between the parties involved[74].

These advantages make expert determination a compelling option for resolving disputes in sectors requiring specialized knowledge, such as oil and gas, where technical complexities are common.

Disadvantages of expert determination.

Expert determination is not governed by strict legal rules or procedures, which can lead to concerns about fairness and transparency. This informality may result in parties feeling their rights are inadequately protected compared to more structured processes like arbitration or litigation.

Decisions made by experts are usually binding, and the avenues for appealing these decisions are very limited. Parties can typically only challenge a decision on specific grounds such as fraud,

[72] **Peter-H.-Rees-and-William(Bill)-Fisher(eds)**,-1997 *Arbitration and ADR* (2nd edn, LLP 1997)

[73] Clare Farmer, 2024 the benefits of using expert determination of your commercial dispute https://legalvision.co.uk/disputes-litigation/benefits-expert-determination-commercial-dispute/

[74] **KarlMackieetal**, *The ADR Practice Guide: Commercial Dispute Resolution* (3rd edn, Tottel Publishing 2007)

collusion, or if the expert acted outside their authority. This lack of recourse can be problematic if an expert makes a significant error**.**

Although experts are expected to be impartial, there is always a risk of perceived bias or partiality. Factors such as personal relationships or professional affiliations may influence an expert's decision, undermining the integrity of the process.

Expert determination is generally less suitable for disputes involving extensive factual disagreements or complex legal issues. The process may not allow for thorough examination of evidence or witness testimony, which are often crucial in resolving such disputes.

While expert determinations are binding, enforcing these decisions may require additional legal proceedings if one party fails to comply. This can lead to further costs and delays, negating some of the efficiency benefits of the expert determination process.

The legal framework surrounding expert determination is less not developed in Uganda like that for arbitration or litigation. This can create uncertainty regarding procedural norms and the enforceability of decisions, potentially leading to additional disputes over how the process should be conducted.

Although expert determination has the above stated advantages it is not yet operational of domestic disputes in Uganda. In my research I established that about 1% knew about this as a mode of alternative dispute resolution. This is different from other developed countries where it is more prominent. Hence a need to carefully incorporate it with in our laws because it can only be effective if it has a legal backing with in our laws such as arbitration and mediation.

4.5.4Early Neutral Evaluation.

Early neutral evaluation is a form of alternative dispute resolution where a neutral individual assesses the strengths and weaknesses of each party's position[75]. This practice has historical roots, originating from times when individuals consulted local wise figures to understand their claims or defenses.

Today, early neutral evaluation is often used in conjunction with mediation to help parties assess the merits of their cases. Typically conducted by an experienced litigator with extensive litigation knowledge, this evaluation provides an impartial opinion on the strengths and weaknesses of the parties' positions. The evaluator remains neutral, which fosters trust among the parties, as they do

[75] **Stephen B. Goldberg, Frank E.A. Sander, Nancy H. Rogers and Sarah Rudolph Cole**, *Dispute Resolution: Negotiation, Mediation and Other Processes* (7th edn, Wolters Kluwer 2020)

not have personal ties or interests in favor of one side over the other. The evaluator is compensated by both parties regardless of whether they reach a settlement, further ensuring neutrality and maintaining trust.

Early neutral evaluation differs from mediation in that it involves direct communication from the evaluator regarding the issues at hand. In mediation, the parties work to resolve their disputes independently, and the mediator does not provide opinions on the merits of the case; rather, they act solely as facilitators.

In contrast, early neutral evaluation directly addresses the merits and demerits of the case without issuing a binding verdict[76]. It also differs from court or arbitration proceedings, as the evaluator only offers an opinion rather than a binding decision. Additionally, it is distinct from conciliation because the evaluator does not attempt to resolve the dispute but instead provides an honest and impartial assessment of each party's position. Recently, early neutral evaluation has become integrated into mediation processes, making it an effective technique for resolving commercial disputes.

4.5.5 Hybrid Processes in ADR

A hybrid dispute resolution process integrates elements from two or more traditionally distinct methods into a single approach. The most prevalent hybrid method is mediation-arbitration, commonly referred to as "medarb." In this process, the same individual or dispute resolution forum initially acts as a mediator and, if necessary, later serves as an arbitrator. This differs from the typical scenario where multiple dispute resolution methods are employed sequentially—such as a grievance procedure that starts with negotiation, followed by mediation, and finally arbitration, with each step handled by different individuals.

Medarb and other hybrid processes are typically utilized when the parties believe that their dispute may benefit from aspects of two or more methods, or when they identify an individual or forum capable of effectively managing multiple processes, thus saving time and costs.[77]

The concept of medarb was first implemented in U.S. public-sector collective bargaining, particularly for public safety organizations (like police and fire departments) where strikes are usually prohibited. In many states, legislatures have advocated for a hybrid system to resolve these disputes in a peaceful and efficient manner.

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[76] **Susan Blake, Julie Browne and Stuart Sime**,*The Jackson ADR Handbook* (Oxford University Press 2013)

[77] Hon. David B. Saxe (Ret.) 2020 med-arb-is-it-the-wave-of-the-future/https://www.namadr.com/publications/

Typically, these systems involve mediation, after which either party can request arbitration if mediation does not lead to an agreement. In such cases, the mediation often represents a second attempt at resolution, following an initial "pure mediation" effort by the state's labor management mediation agency. The hybrid process is activated if this initial agency mediation fails.

This "duplicate mediation" offers two main advantages: first, neutrals who serve as mediator- arbitrators may possess skills that agency neutrals do not have to the same extent (although agency neutrals are often highly skilled themselves); second—and more importantly—the suggestions made by a mediator-arbitrator tend to carry more weight than those from a "pure mediator," even if the suggestions are similar. This is because the mediator-arbitrator has the authority to make a final decision if the case remains unresolved, which enhances their perceived influence during both the mediation and arbitration phases of the process.

In these contexts, medarb has generally proven effective, as illegal strikes are quite rare, and most parties feel that the process is efficient and effective.[78] However, some parties express concerns regarding the significant power held by a mediator-arbitrator. Typically, arbitrators do not meet with the parties individually; instead, they conduct joint sessions where both sides can hear and respond to each other's arguments. Additionally, arbitrators refrain from forming conclusions or suggesting decisions until all arguments have been presented.

This approach contrasts sharply with the typical methods of a mediator, who often meets privately with each party and may attempt to persuade one side to make specific concessions or adopt different negotiation strategies. When the mediator also serves as an arbitrator, this pressure can manifest as an implied threat of an unfavorable ruling if one party is perceived as "unreasonable."

As a result, the losing party may suspect rightly or wrongly that the decision was influenced by private discussions between the mediator and the opposing party. Such concerns have led some jurisdictions to prefer mediation followed by separate arbitration instead of medarb as their preferred method for public service dispute resolution.

Other hybrid role combinations also exist. The blending of facilitator and mediator roles is so prevalent that many believe a mediator cannot effectively fulfill their duties without also acting as a facilitator, although the reverse is not necessarily true. It is also common for judges to take on mediation roles. While this arrangement raises similar concerns as mediation-arbitration, it is

[78] Adrtimes 2023, what is med-arb. https://adrtimes.com/what-is-med-arb/

undeniable that many cases have been successfully resolved often to the satisfaction of all parties when judges engage in skilled and sensitive interventions.

Parties aware of the risks associated with combining neutral roles are better positioned to creatively utilize available neutral skills, which exemplifies the flexibility that conflict resolution claims as one of its strengths. It's likely that no combination of neutral functions has not been merged in one individual at some point, often benefiting all involved. There are nuances in distinguishing between common combinations; for instance, many perceive a significant difference between a mediator-arbitrator and an arbitrator-mediator.[79] This distinction hinges on which role the neutral was primarily selected for. Referring to a neutral as an "arbitrator-mediator" typically implies an expectation that the case will proceed toward a decision by an arbitrator while still allowing for mediation if circumstances permit. Conversely, a "mediator-arbitrator" is engaged with the understanding that mediation will be prioritized, reserving arbitration as a last resort.

Other hybrid forms include roles like "Special Master," seen in significant issues such as the September 11 Victims' Compensation Fund or cases involving racial discrimination against Black farmers by the U.S. Department of Agriculture. These roles incorporate elements of mediation, arbitration, and magistrate functions.

Additionally, processes like fact-finding, summary jury trials, mini-trials, and private judging are also categorized as hybrid processes; in these cases, "hybrid" refers more to a process situated between two classical neutral roles rather than one where a neutral assumes multiple roles simultaneously.

Although the latter three processes are more frequently applied in limited or manageable conflicts than in more complex disputes, fact-finding is extensively utilized in challenging conflicts (as evidenced by the 2002-2003 U.N. effort to verify Iraq's alleged stockpile of weapons of mass destruction), and there are instances where other hybrid processes could also prove beneficial.

Conclusion

The analysis above indicates that there are various Alternative Dispute Resolution (ADR) mechanisms each with its advantages and disadvantages. Some of these alternative dispute

[79] **McLean, D. J. (2015)** – "Med-Arb Agreements since Thione: A Practice Update" (*Alternatives*)

resolution mechanisms may be favourable for certain disputes and unfavourable for other disputes. More so ADR mechanisms are generally more affordable and quicker in resolving disputes, primarily due to the limited grounds for appealing decisions made. It is important to note that some ADR methods are more cost-effective and time-efficient than others. For example, mediation typically costs less than 5% of arbitration expenses and requires less than 15% of the time needed for arbitration. Parties involved in a dispute must take a critical assessment of the facts before them before they make a choice of which alternative dispute resolution to use to achieve the desired results.[80]

[80] Timothy A. Martin, 'International mediation: an evolving market' in A Rovine (ed) Contemporary Issues in International Arbitration and Mediation, The Fordham Papers, 2010; Centre for Effective Dispute Resolution (CEDR), The Fourth Mediation Audit: A Survey of Commercial Mediator Attitudes and Experience (London, 2010) 8

CHAPTER FIVE: DISPUTE RESOLUTION IN THE OIL AND GAS SECTOR OF OTHER JURISDICTIONS.

5.0Introduction

This chapter will majorly analyse the Alternative Dispute Resolution mechanisms adopted by Nigeria as the leading oil producer in Africa and others.

5.1Nigeria

The Niger Delta region of Nigeria, situated in the southern part of the country, is the primary oil-producing area, vital to the Nigerian economy. Since oil was discovered in commercial quantities in Oloibiri, Bayelsa State, in 1956, hydrocarbon resources have driven Nigeria's economy, contributing 95% of its foreign exchange earnings and 80% of government budget revenues. According to the Nigerian National Petroleum Company (NNPC), Nigeria's oil production represents 8% of the total daily output of the Organisation of Petroleum Exporting Countries (OPEC) and 3% of global production.[81]
Since 1970, Nigeria has generated at least $300 billion from energy development, with $450 billion earned in 2005 alone. With around 40 million barrels of proven oil reserves, Nigeria currently produces 2.4 million barrels per day, accounting for approximately 90% of government revenue and 95% of foreign exchange earnings.[82] As West Africa's largest petroleum producer and the sixth largest oil supplier globally, Nigeria's oil wealth has significantly contributed to its status as a key player in both regional and international politics. The country has played an influential role in African politics through its membership in various regional organizations like the African Union (AU) and the Economic Community of West African States (ECOWAS), as well as its active participation in global politics under the United Nations. The oil boom of the early 1970s marked Nigeria's rise to global prominence, with its current influence largely attributed to its oil discovery and exploration efforts.[83]

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[81] Ikpeze & Wosu-Dressman (2023)*******Examination of ADR Mechanisms in International Trade Disputes in Nigeria's Oil & Gas Sector.*

[82] https://www.nuprc.gov.ng/nigerias-oil-and-gas-reserves-soar-nuprc-unveils-impressive-figures/

[83] Adams, S. O., & Olamide Bello, J. (2022). Modeling the effect of crude oil production and other factors on Nigeria's economy: an autoregressive distributed lag approach. Science Archives, https://doi.org/10.47587/sa.2022.3109

However, rather than benefiting the local communities where oil is extracted, the discovery has often resulted in negative consequences due to exploration activities and associated hazards like air and water pollution. This situation has prompted indigenous people to demand compensation and control over the oil wealth. Such demands have led to confrontations between activists, multinational oil companies operating in the region, and the federal government. Initially peaceful protests escalated into armed conflict following the execution of prominent activist Ken Saro- Wiwa and eight other Ogoni men.[84] Subsequent protests have included kidnapping foreign oil workers, bombing oil facilities, and causing widespread destruction.

In 2009, the federal government intervened with an amnesty program under former President Musa Yar'adua and his deputy Goodluck Jonathan. This amnesty program, intended to last five years, required militants to surrender their weapons in exchange for unconditional national pardon.[85] A total of 26,808 militants surrendered their arms and were granted amnesty, which included reintegration into society and training. During the amnesty period, violence decreased as militants laid down their arms. However, recent years have seen a resurgence of violence with the emergence of new militant groups in 2016, each with various demands.

While the new militant groups that have emerged differ from those in the past, they represent a continuation of old issues under a different guise. These new militants continue to demand resource control and engage in the bombing of oil installations, which is once again plunging the country into conflict.[86] In response, the Federal Government has adopted a military approach, launching a military operation called "Operation Crocodile Smile." However, both the militants and many analysts believe this strategy does not effectively address the underlying problems in the region.

Despite being home to economically vital oil resources, the Niger Delta region has been mired in conflict for over four decades due to the adverse effects of oil exploration. The area is characterized by poverty, squalor, and severe underdevelopment amid abundant resources, largely because environmental degradation has undermined the agricultural livelihoods of its people.

The consequences of oil spills and gas flaring have devastated aquatic life and contaminated farmland. Nigeria flares more gas than any other country in the world, making the oil industry in the Niger Delta one of the worst offenders globally regarding gas flaring. Nigeria ranks as the

[84] Bisina, L. N. (2025)*******Evaluating the International Arbitration of Oil and Gas Investment Dispute Settlement in Nigeria*

[85] Ikpeze & Wosu-Dressman (2023)*******Examination of ADR Mechanisms in International Trade Disputes in Nigeria's Oil & Gas Sector.*

[86] https://www.oecd.org/dac/oil-commodity-trading-risk-financial-flows.pdf

second-largest country for gas flaring, following Russia, with annual emissions reaching about 70 million tons of Co2—surpassing emissions from Norway.

In terms of oil spills, Nigeria holds the highest record globally; estimates suggest that between 9 million and 13 million barrels of oil have been spilled in the Niger Delta.[87] The Department of Petroleum Resources reports that from 1976 to 1996, approximately 1.8 million barrels were spilled out of a total of 2.4 million. A UNDP report indicates that over 6,800 spills occurred in the region between 1976 and 2001, while the Nigerian National Petroleum Company (NNPC) estimates that around 2,300 cubic meters of oil are spilled annually, with an average of 300 industrial spills each year.[88]However, the World Bank believes that actual spill volumes could be ten times higher than official figures suggest. Additional impacts of oil exploration include erosion, canalization, and conflicts—both intra- and inter-community—among host communities. These issues have sparked protests from indigenous peoples, which have escalated into full-blown conflicts.

Conflicts in the Niger Delta date back to precolonial times and intensified in the early 1960s with protests against regional marginalization. In the early 1990s, nonviolent protests emerged in Ogoniland against environmental degradation caused by oil companies. Following these uprisings, a new wave of militant protests began in 2003, with violence escalating during that year's political campaigns.

As politicians in Rivers State vied for office, they manipulated the Niger Delta Vigilantes, led by Ateke Tom, and the Niger Delta People's Volunteer Force, led by Alhaji Asari Dokubo, using these groups to further their political ambitions. This often involved rewarding gang members for engaging in acts of political violence and intimidation against rivals. Consequently, this environment gave rise to other militant organizations, such as the Movement for the Emancipation of the Niger Delta and the Niger Delta Liberation Front, which unleashed chaos in the region. The emergence of militancy was marked by armed assaults, bombings of oil facilities, and kidnappings of foreign oil workers, transforming the Niger Delta into a zone of extreme violence and insecurity. Over the years, this situation instilled fear among both Nigerian citizens and foreigners, prompting many to flee their communities and leading numerous foreign businesses to relocate.

[87]Statista. (2023d). Nigeria: contribution of oil sector to GDP 2018-2020. Statista.https://www.statista.com/statistics/1165865/contribution-of-oil-sector-to-gdpin-nigeria/

[88] OPEC. (2019). Organization of the Petroleum Exporting Countries : Brief History. Opec.org. https://www.opec.org/opec_web/en/about_us/24.htm

The introduction of an amnesty program aimed to stabilize the region and facilitate constructive conflict resolution negotiations. Although this was not the first amnesty initiative proposed to address the violence, it was distinguished by solid proposals for disarmament, demobilization, and reintegration of militants. Despite these efforts, the program failed to effectively tackle regional violence, primarily due to insufficient attention to the unique nature of conflicts in the Delta and the underlying issues that sparked them. To fully understand conflict resolution efforts in the region, it is essential to examine past attempts and consider future strategies.

Scholars agree that the end of the Cold War and economic globalization in the 1990s significantly influenced warfare worldwide, contributing to an ongoing debate about the role of natural resources as catalysts for violent conflicts.

Kofi Annan articulated this perspective by stating that "environmental degradation in forms such as desertification, resource depletion, and demographic pressure exacerbates tensions and instability." Michael further emphasized that competition for control over valuable oil supplies and pipeline routes has become a significant source of conflict in the 21st century.[89] As demand for oil increases and many older supply sources in countries like the United States, Mexico, and China decline, the pressure on remaining supplies—particularly in regions such as the Persian Gulf, Caspian Sea basin, South America, and Africa—intensifies.

This competition is evident in Africa, where struggles over revenue from limited natural resources have led to violent conflicts in countries like Angola, the Democratic Republic of the Congo, Rwanda, Sudan, and Nigeria. The situation in the Niger Delta exemplifies this issue, where oil exploration has caused environmental degradation—resulting in reduced farmland, death of aquatic life, air and water pollution, respiratory illnesses from oil exposure, and destruction of mangrove forests—often without adequate compensation. This dire situation prompted the late environmentalist Ken Saro-Wiwa to lament that the people of the region faced extinction in what he termed an ecological war.

In Nigeria, the Federal Government is responsible for resource allocation and control, but conflicts have emerged over the most suitable revenue-sharing formula with the Niger Delta communities. These communities argue for a special allocation due to their oil wealth, similar to what was

[89] U.S. Energy Information Administration. (2023). Nigeria was the top crude oil producer in Africa, but disruptions threaten production. Www.eia.gov. https://www.eia.gov/todayinenergy/detail.php?id=56840#

granted to the northern regions when agriculture was the backbone of the economy. However, this demand has been rejected by many Nigerians and some leaders from other regions.

This situation has fostered primordial sentiments of group rivalry, leading to the development of ethnic nationalist identities. This is evident in the confrontations between foreign oil companies and local communities in the Niger Delta, where residents perceive themselves as marginalized minorities compared to the "majorities" in other parts of Nigeria that do not produce oil yet benefit from revenue allocations.[90] As a result, there have been violent protests characterized by militancy and calls for secession from the Niger Delta, supporting Bannon and Collier's argument that violent secessionist movements are statistically more likely in countries rich in natural resources, particularly oil.

The Nigerian government has made various attempts to resolve conflicts in the Niger Delta, starting even before independence. In 1957, the government established the Willink Commission to address minority issues, which acknowledged the neglect of the region and recommended creating the Niger Delta Development Board (NDDB). However, this board struggled to meet its objectives for several reasons, including its headquarters being located in Lagos, far from the affected areas. Following the creation of twelve states in 1967 and the establishment of the Niger Delta River Basin Authority (NDRBA), the NDDB became irrelevant.[91]

During Nigeria's Second Republic, a 1.5% allocation from the Federation Account was designated for developing oil-producing areas in the Niger Delta. However, due to operational constraints from its Lagos-based secretariat, it failed to achieve its goals. Despite repeated failures, to demonstrate its commitment to resolving the crisis and promoting development in the region, the Federal Government established several commissions, including the Oil Mineral Producing Areas Development Commission (OMPADEC), which operated from 1992 to 1999 under Chief Albert Horsefall's leadership[92].

Like its predecessors, OMPADEC failed to fulfill its mandate due to issues such as corruption, political interference, and lack of transparency. Subsequently, in 1995, the Niger Delta Environmental Survey was initiated, followed by the establishment of the Niger Delta

[90] Junior, E.O. (2015) Analysis of Oil Export and Corruption in Nigeria Economy. International Journal of Economics, Commerce and Management, III, 112-135.

[91] Ogwumike, F.O. and Ogunleye, E.K. (2008) Resource-Led Development: An Illustrative Example from Nigeria. African Development Review, 20, 200-220.6https://doi.org/10.1111/j.1467-8268.2008.00182.x

[92]https://gsdrc.org/document-library/conflict-management-in-the-niger-delta-region-of-nigeria-a-participatory- approach/

Development Commission (NDDC) in 2000 by President Olusegun Obasanjo.[93] The NDDC aimed "to provide a lasting solution to socioeconomic challenges in the Niger Delta Region" and sought "to facilitate rapid, equitable, and sustainable development" in order to create a region that is economically prosperous, socially stable, ecologically sustainable, and politically peaceful.

The government also established additional measures, such as the Task Force on Pipeline Vandalization in April 2000, which was operated by the Nigeria Police Force in collaboration with the NNPC (Niger Delta Development Commission 2001). [94]Similar task forces were created by the navy, army, and State Security Service (SSS) across various states in the Niger Delta.

In Delta State, a law was enacted in August 2001 that prohibited militant groups responsible for disrupting oil operations in the state. Additionally, the Federal Government formed the Special Security Committee on Oil Producing Areas in November 2001 to tackle the ongoing issues in these regions. Other initiatives included the first Niger Delta peace conference held in Abuja in 2007, the establishment of a Joint Task Force (JTF) in 2008, and a Technical Committee comprising stakeholders and representatives from the Niger Delta ministry in 2008[95].

Following criticism of military approaches especially as it became clear that the JTF's use of force was worsening rather than resolving conflicts the Federal Government launched an amnesty program on May 25, 2009, under former President Umar Musa Yar'Adua.[96] This initiative aimed to foster lasting peace, security, stability, and development in the region.

Of recent the oil and gas sector in Nigeria has increasingly adopted Alternative Dispute Resolution (ADR) mechanisms to address conflicts effectively, given the complexities and high stakes involved in this industry, Negotiation, Mediation, Arbitration.

The Nigerian legal framework supports ADR through various statutes, including the Arbitration and Conciliation Act, which provides guidelines for arbitration processes. The Petroleum Industry Act (PIA) also emphasizes the importance of ADR in resolving disputes, particularly those involving host communities and oil companies.

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[93] *Elwerfelli, James Benhin, Vol.8 No.5, 2018* Oil a Blessing or Curse: A Comparative Assessment of Nigeria, Norway and the United Arab Emirates.

[94] Ugochukwu, C.N.C. and Ertel, J. (2008) Negative Impacts of Oil Exploration on Biodiversity Management in the Niger De Area of Nigeria. Impact Assessment and Project Appraisal, 26, 139-147.

[95]Ujobolo,-F. E.-(2025)***Resolution of Disputes Arising from International Petroleum Transactions Involving IOCs.*

[96] Bisina,-L. N. (2025)***Evaluating the International Arbitration of Oil and Gas Investment Dispute Settlement in Nigeria*

The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) has inaugurated several ADR centres aimed at providing efficient alternatives to traditional litigation.[97] These centres are designed to facilitate quicker resolutions and reduce costs associated with prolonged legal battles.

The NUPRC has created a Body of Neutrals, comprising experienced professionals from legal and oil sectors, tasked with mediating disputes. This initiative aims to enhance access to justice while fostering better relationships between oil companies and local communities.

From the above facts it is clear that Nigeria has tried different modes and approaches to resolve disputes emanating from the oil and gas sector. These include negotiations, establishment of commissions aimed at resolving disputes, amnesty programs, reconciliation among others. Although these interventions have yielded minimum results as of today, it is important to note that even the small steps toward peace in the Niger Delta region have been as a result of these alternative modes of dispute resolution.

More so the civil uprisings from these communities clearly shows the effects of failing to handle the disputes well using the various alternative dispute resolution mechanisms to sort out most of the issues faced by these communities.

The integration of ADR mechanisms into Nigeria's oil and gas sector represents a significant shift towards more efficient conflict resolution strategies.[98]

5.2Angola

In 2021, Angola averaged a production of 1.2 million barrels of oil per day, making it one of Africa's largest oil producers. However, by 2022, Angola surpassed Nigeria to become the leading oil producer on the continent. With over 9 billion barrels of proven oil reserves, Angola is dedicated to maximizing its hydrocarbon sector's potential.[99] In 2022, production was recorded at

1.16 million barrels per day, and this figure is expected to rise as the country embarks on a six- year licensing round and implements policy reforms. The challenge for Angola lies in enhancing this crucial sector of its economy.

To address this, the Angolan government has introduced a strategic plan for hydrocarbon exploration covering the period from 2020 to 2025, which includes new tax incentives aimed at

[97] Idiong, M. I. E., Charles, K. J. E., & Essang, E. A. (2023)**Dispute Resolution in the Nigerian Hydrocarbon Industry: How Far PIA 2021?*

[98] https://www.cnbcafrica.com/media/6361919297112/anaje-alternative-dispute-resolution-set-up-by-nuprc-timely/

[99] https://www.statista.com/statistics/265193/oil-production-in-angola-in-barrels-per-day/

revitalizing the oil industry.[100] This initiative comes in response to a decline in capital expenditure and investment in the sector, which fell to $3 billion in 2021 from $15 billion in 2014.

In the oil and gas sector of Angola, various alternative dispute resolution (ADR) mechanisms are utilized to address disputes that arise between parties

Arbitration is the most widely recognized form of ADR in Angola's oil and gas sector. It is often preferred due to concerns about the neutrality and efficiency of national courts. Parties typically include arbitration clauses in their contracts to ensure that disputes are resolved outside of the local judicial system.

Mediation is increasingly being adopted as a preliminary step before arbitration. This process involves a neutral third party who facilitates discussions between disputing parties to help them reach a mutually agreeable solution. Mediation is particularly valuable in maintaining business relationships, as it encourages cooperation and communication, which can be crucial in ongoing partnerships.

In disputes that require technical expertise, parties may opt for expert determination. This process involves appointing an expert in the relevant field who provides a binding decision on specific issues, often leading to quicker resolutions than traditional arbitration.[101]

Many contracts in Angola's oil and gas sector include multi-tiered dispute resolution (MTDR) clauses, which outline a sequence of steps for resolving disputes. These typically start with negotiation or mediation, followed by arbitration if those initial efforts fail.[102]

The Angolan government has been known to impose certain regulations that influence dispute resolution practices, including "forced localization" policies that affect foreign investments in the oil and gas sector. This can impact how disputes are managed and resolved.

Conclusion

Nigeria was among the first countries in Africa to discover oil. Since this discovery, the nation has faced ongoing conflicts, primarily between international oil companies (IOCs) or the state and the local communities where the oil is extracted. The inability to address these disparities has led to escalating disputes, resulting in armed conflicts whose effects are still felt today. The failure to

[100] Obi, C. A., Eluozo, M. A., Akaninwo, N. G., & Ikwuni, I. L. U. (2023)***Evaluating Arbitration as a Dispute Resolution Mechanism in the Nigerian Oil and Gas Industr*

[101] https://www.state.gov/reports/2024-investment-climate-statements/angola/

[102] https://glomacs.com/training-course/international-dispute-resolution-and-arbitration-in-the-oil-gas-industry

effectively establish the best dispute resolution mechanisms as early as possible and manage these conflicts has had disastrous consequences for Nigeria, and similar outcomes could occur in Uganda if lessons are not learned from this situation.

On the other hand, Angola has employed the different modes of Alternative Dispute Resolution (ADR) to solve most of the disputes arising from the oil and gas sector. Thus since Uganda is still in the first stages of oil extraction it can take an example from Angola and incorporate alternative dispute resolutions mechanisms in its contracts and agreements from the start to ensure efficiency.

CHAPTER SIX:

FINDINGS AND RECOMMENDATIONS FROM THE STUDY

6.0 Introduction

This chapter will conclude my study. It will cover my findings and the recommendations.

6.1 Summary of the findings.

This paper reveals that the oil and gas sector is extensive, encompassing various aspects of the economy and social structure. It is closely tied to the communities affected by its operations, as the industry must acquire land and collaborate with local populations to extract oil. Therefore, establishing a positive working relationship with these communities is essential.

Additionally, the oil and gas industry significantly impacts environmental sustainability. The findings indicate that the sector's activities can directly affect environmental health, with inadequate operational practices posing risks of pollution to air, land, and water bodies, thereby threatening the surrounding ecosystems. The community discussions from the Hoima region brought out the fact that communities wish to be involved and consulted on most aspects of oil exploration instead of involving leaders only who often misrepresent the communities.

More so I established that the communities prefer informal ways of settling disputes than litigation. More specifically they preferred mediation and negotiations because they have proved to be effective in resolving the disputes in the communities effectively. Legal practitioners involved in the oil and gas industry also prefer alternative dispute resolution mechanisms to court litigation because they are effective and efficient and emphasized mediation for local disputes and arbitration for international disputes

The exploitation of oil and gas has far-reaching effects on local communities, particularly in regions like Albertine, where residents have been impacted during exploration phases. Some individuals have been forced to relocate, sometimes without compensation, while others have been resettled elsewhere in the country due to potential health risks associated with mining activities. This has created tensions in the communities as many feel the compensations were not adequate.

6.2 Recommendations

Oil production involves several distinct stages: upstream (exploration and drilling), midstream (transportation to refineries), and downstream (marketing and sale). Each stage necessitates numerous contracts with various organizations, along with many subcontracts, some legally required, others essential for operations. All these contracts should have alternative dispute resolution clauses from the

start so that court litigation is used as a last resort.

More so the numerous contracts, significant upfront investments, lengthy project durations, sensitivity to legal and tax changes, environmental impact, community effects, and different production stages heighten the likelihood of disputes arising. Indeed, any of these elements can lead to conflicts that require resolution. Its thus important to foresee the likely hood of disputes and plan how to solve them in advance. I recommend that already existing alternative dispute resolution mechanisms should have and involve the following to maximize their effectiveness;-

1. Agreement focused facilitation and mediation;

Resource-related disputes are prime candidates for various alternative dispute resolution (ADR) strategies. For instance, facilitated dialogue serves as an effective complement to traditional administrative, legislative, and judicial processes, which often hinder cooperation between competing groups, stifle creativity, and may lead to politically unstable outcomes. Agreement- focused facilitation and mediation can help disputing parties resolve contentious energy resource and environmental conflicts, fostering lasting agreements while minimizing damage to relationships. Unlike litigation, which can harm long-term partnerships, facilitation and mediation can lay the groundwork for collaboration.

Facilitation is a goal-oriented group process where the facilitator guides discussions, gathers opinions, clarifies points, and records important information without delving into substantive issues. Often regarded as a "shadow leader," the facilitator's role is to remain in the background while ensuring that the necessary processes unfold correctly. Instead of preventing mistakes, the facilitator's primary responsibility is to facilitate communication that enables teams to grow and become largely self-sufficient, calling for assistance only in emergencies. The effectiveness of this process is reflected in how well teams can operate independently of direct facilitator involvement.

In contrast, mediation offers a chance to resolve disputes with the help of an impartial mediator who assists in identifying and communicating the parties' interests, recognizing mutual goals, and managing expectations. This process is particularly valuable when communication has broken down or emotions are running high. Mediation is confidential, with relevant laws typically

safeguarding the privacy of shared information. The mediator does not impose decisions but helps parties negotiate their own mutually acceptable resolutions, which are then documented as binding agreements.

Implementing facilitation and mediation in disputes necessitates stakeholder analysis to comprehend the complex interests and positions of key actors. This approach aids negotiating parties in drafting written agreements and executing negotiated settlements. It is especially beneficial for resolving disputes related to compensation claims for land expropriation and oil spills.

2. Arbitration and conciliation.

The combination of arbitration and conciliation is a well-established practice in countries like Angola. Integrating these two techniques creates an ADR mechanism that is more effective collectively than when used separately. In combining arbitration and conciliation within the same proceedings, the consent of the involved parties is often a common requirement under various institutional rules. For example, arbitration laws in Hong Kong, Singapore, India, and Nigeria permit arbitral tribunals to render settlements reached through conciliation during arbitration proceedings as arbitral awards.
Uganda can also use multi-tiered dispute resolution (MTDR) clauses, which outline a sequence of steps for resolving disputes. These typically start with negotiation or mediation, followed by arbitration if those initial efforts fail this is according to interview conducted on legal practitioners.

The Arbitration and Conciliation Act should specifically make provisions on interim measures and emergency arbitrators. It should also clarify rules on confidentiality, costs, and time limits.

It should also give CADER more autonomy, funding, and visibility to become a credible arbitration hub. Also stablish clearer rules of procedure and codes of ethics

Train lawyers, judges, and arbitrators in arbitration law and practice. Include ADR training in legal education curricular. Encourage a pro-arbitration judicial policy, with clear guidelines on enforcement and limited grounds for setting aside awards.

Address Arbitrator appointment and qualifications by defining minimum qualifications, code of conduct, and ethical standards for arbitrators. Improve default appointment mechanisms to avoid delays and manipulation. Encourage creation of a national roster of accredited arbitrators.

Introduce cost-effective models like expedited arbitration and small-claims procedures. Promote online and regional arbitration to reduce travel and accommodation costs. Subsidize training for local arbitrators to build capacity and reduce reliance on foreign professionals.

Promote awareness and use of Arbitration by conducting nationwide campaigns to educate the public and businesses about arbitration benefits. Introduce ADR and arbitration in legal education curricula. Encourage government contracts to include arbitration clauses as a norm.

3. Joint fact finding and/ or neutral fact finding

Joint fact-finding is a strategy used to resolve factual disputes by creating a single team of experts and decision-makers from both sides of a conflict. This team collaborates to agree on relevant facts, often related to scientific, technical, or historical claims. In this sense, joint fact-finding acts as a form of mediation within mediation, aiming to resolve a sub-conflict over facts as part of addressing the larger conflict. While it may not always be feasible or suitable, there is a compelling argument for it being the preferred approach for settling factual disputes, evident in how joint fact- finding operates and the outcomes of successful initiatives.

Typically, representatives from each disputing party form a fact-finding committee tasked with discussing, debating, and researching the facts together. This collaborative forum fosters interaction that might not occur under other circumstances, creating an environment for open communication that can significantly help resolve factual disputes—often stemming from miscommunication. Furthermore, agreeing to engage in joint fact-finding represents a shift away from self-serving strategies like "adversary science."

Joint fact-finding addresses the issue of conflicting expert opinions by bringing experts together as a team to directly respond to research, identify areas where evidence may be weak or misinterpreted, and suggest new directions for inquiry. For instance, while environmental groups may employ leading scientists and academics facing budget constraints, large industrial companies typically have greater financial resources to invest in advanced scientific equipment and expertise. By collaborating on specific factual inquiries, these groups can access expertise and resources that were previously unavailable to them.

This collaboration can lead to outcomes that exceed the sum of individual contributions; sharing resources opens up possibilities beyond merely agreeing on key conflict facts. When diverse

knowledge and resources are combined in a "think tank" setting like joint fact-finding, there is potential for a deeper understanding of the underlying scientific and technical issues. The opportunity to advance relevant fields through resource sharing can motivate experts to set aside adversarial approaches and work collaboratively. Additionally, this process may uncover unrecognized opportunities for balancing competing interests.

Similar to joint fact-finding, neutral fact-finding is another approach to resolving factual disputes. Broadly defined, it involves an investigation conducted by neutral parties who do not have a stake in the conflict. Neutral fact-finding can be applied at various levels, ranging from small-scale environmental or community disputes to large political or international conflicts.

The primary advantage of involving neutral parties in settling factual disputes is their objectivity, which increases the likelihood of uncovering the true facts. Stakeholders often face conflicts of interest, where their desire for personal gain clashes with the obligation to uncover or accept the genuine facts. Individuals who stand to benefit or lose from the outcome of a conflict may resort to strategic methods in gathering information and analyzing facts, often skewing data to serve their interests. In contrast, a neutral party has no vested interest in either side and does not favor one set of claims over another. This impartiality allows the focus to remain on the strength of the evidence, its support for particular conclusions, and distinguishing between agreed-upon facts and those that are justifiably disputed due to uncertainty.

While joint fact-finding is likely the most effective method for enhancing relations between conflicting parties, it is not always feasible. Some conflicts may be too intense or have a long history of violence, causing parties to fear cooperation. In other cases, significant power imbalances may prevent one side from matching the resources or expertise of the other, leading to biased fact collection that favors the more powerful group. Additionally, certain conflicts may not allow for collaboration between the two sides, such as internal disputes within an organization, necessitating the involvement of a neutral party.

Therefore, the reactive measures outlined above are suggested to address various aspects of disputes based on their scale, nature, and participants. As mentioned in the introduction, there are intercommunity disputes alongside conflicts between oil companies and the government. I believe that employing one or a combination of dispute resolution models such as neutral/joint fact- finding, conciliation, facilitation, mediation, or litigation as a last resort could effectively resolve most disputes.

For larger disputes involving oil companies and the government, I advocate for the reactive measures discussed earlier and propose establishing a specialized institution for alternative dispute resolution (ADR) focused on oil and gas-related conflicts arising from various transactions. This institution should be entirely independent, neutral, and capable of self-funding.

Conclusion:

In the complex and high-stakes oil and gas industry, disputes are often inevitable due to the technical nature of operations, long-term contracts, regulatory challenges, and cross-border investments. Alternative Dispute Resolution (ADR) mechanisms particularly arbitration, mediation, and negotiation play a pivotal role in managing these conflicts efficiently and effectively. ADR offers confidentiality, flexibility, and expertise, which are especially critical in an industry where reputational risk and operational continuity are paramount. Moreover, ADR helps preserve commercial relationships, reduce litigation costs, and expedite dispute resolution key priorities for stakeholders in capital-intensive projects. International arbitration, often favored in oil and gas contracts, ensures neutrality and enforceability of awards, while mediation and negotiation offer collaborative avenues for resolving disputes before they escalate. However, there is need to keep revising the Arbitration and Conciliation Act of Uganda to harmonize arbitration in Uganda and to ensure that it adapts to the constant changing international arbitration trends. In summary ADR mechanisms are not merely alternatives but essential tools for managing disputes in the oil and gas sector. For countries rich in natural resources, like Uganda, strengthening ADR frameworks and institutional capacity is vital to attract investment, ensure contract stability, and maintain a favorable business environment in the energy sector.

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