ALTERNATIVE DISPUTE RESOLUTION IN THE OIL AND GAS SECTOR: A LEGAL ANALYSIS OF THE BEST METHOD OF DISPUTE RESOLUTION IN THE OIL AND GAS SECTOR 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 IN OIL AND GAS INSTITUTE OF PETROLEUM STUDIES KAMPALA IN AFFLIATION TO UCU.

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DECLARATION

I, **ATUKUNDA FAITH**, hereby declare that this research titled _Alternative Dispute Resolution in the Oil and Gas Sector: A legal analysis of the best method of dispute resolution in the Oil and Gas Sector in Uganda, is my work and it has not been submitted before to any other institution of higher learning for fulfilment of any academic award.

ATUKUNDA FAITH
10/01/2022

APPROVAL

This is to certify that this Research titled __Alternative Dispute Resolution in the Oil and Gas Sector: A legal analysis of the best method of dispute resolution in the Oil and Gas Sector in Uganda‖ has been done under my supervision and that it is now ready for submission.

MR. EDGAR BAGUMA QUENSI
10th January 2022

DEDICATION

This research is dedicated to my dear parents Mr Elinathan Ankwasa & Mrs Jolly Ankwasa whom I love so much and who have been there for me.

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LIST OF ACRONYMS

ADR- Alternative Dispute Resolution

CADER- Centre for Arbitration and Dispute Resolution

CGT- Capital Gains Tax

EACOP- East African Crude Oil Pipeline

GDP- Gross Domestic Product

ICC- International Chamber of Commerce

ICSID- International Convention on Settlement of international Disputes

IOC - International Oil Company

LCIA- London Court of international Arbitration

MPSA- Model Production Sharing Agreement

NDPVF- Niger Delta People ‘s Volunteer Force

NEEDS- National Economic Empowerment and Development Strategy

OC- Oil Company

PSA- Product Sharing Agreement

SPDC- Shell Producing Development Corporation

TAT- Tax Appeals Tribunal

UNCITRAL- United Nations Commission for International Trade Law

UNCLOS- United Nations Conference on the Law of the Sea

URA- Uganda Revenue Authority

ABSTRACT

Alternative dispute resolution (ADR) is the determination of a dispute by one or more independent third parties rather than by a court. Effectively, the determinants of ADR which make it preferred for dispute resolution are its contribution to public interest doctrine of sovereignty and globalization among others. Whereas many forms of dispute resolution exist under ADR, accuracy is required in making choice of the best method to adopt. This research discusses the different forms of ADR with special emphasis on International Arbitration, highlighting their strengths and merits in adopting each.

The complexity of international petroleum practice calls for special regulatory framework in drafting the clauses on ADR in petroleum agreements. This is especially heightened in cases where ADR is in respect of a matter of national economic importance like natural resource exploitation. A further complexity arises due to the unequal power relations between multinationals and the smaller authorities, who are predominantly in least developed countries. This is further compounded by the complex nature of these agreements and their novelty in as faras lingua and legalese are concerned in the negotiation. A significant feature of ADR is the fact that a number of legal systems may be relevant in the disputes.

The project of developing Oil and Gas is principally and most commonly between the International Oil Companies and the State that owns the resource. It is however not the only avenue for dispute to arise. Regardless, the State and the IOC can have a dispute arise in betweenthem.

These disagreements between the government and International Oil Companies are usually in relation to agreements for petroleum exploration, development and production which are

commonly known as Production Sharing Agreements (PSAs). Disputes between International Oil Companies 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.

The disputes arising from such PSAs require first of all discovering what the appropriate forum is for ADR in Uganda that the latter can adopt in such circumstances. This research addresses the effectiveness of alternative dispute resolution mechanism in the oil and gas sector and from this, one can conclude on the most appropriate method to adopt in any case.

Alternative Dispute resolution is an essential part of a functioning constitutional legal system It is well known that the traditional formal dispute resolution mechanisms are riddled with a number of inefficiencies, and in most cases, there is need for a more effective means of resolvingdisputes in particular contexts hence the birth of alternative dispute resolution mechanisms. One genus of international dispute that has not received much attention is the resolution of international petroleum disputes hence this research.

CHAPTER ONE

1.0 General Background

1.1 Introduction

This chapter covers the background of the problem of identifying the best dispute resolution mechanism for the Oil and Gas industry in Uganda. It covers the objectives of this study; both the general and the specific it also covers the significance, justification and purpose of the study; the scope of the study and a synopsis of the entire research.

Uganda recently discovered oil deposits in the Albertine region in the western part of the country. This discovery has been met with a lot of excitement and happiness. However, the introduction of exploration of Oil and Gas to Uganda is one that must be apprised thoroughly dueto the new dimensions it adds to the system. The dynamics that involve engagement of society and relocation basically have not yet been appreciated by the different stakeholders in theabstract.

Oil and gas exploration is a venture that takes up a long amount of time. The bringing of oil to fruition can take years of hard work and as such, there is a lot of upfront investment that must be made at early stages. This investment can only be regained at the end of the exhaustion of the project. This is why the sector is very sensitive to changes in laws and taxation regimes as we know them. If these changes occur to the sector without rightful information, it becomes difficult to see the possibility of reaping from the sector.

For this reason, most of the agreements concluded have clauses to hedge against the risk of change in the laws that manage the oil and gas sector or any other laws that might have a

connection to its operation; especially tax laws. The change of tax laws means that the required upfront investments would be significantly changed and this increases the chances that funds might be recalled or paused.

The exploitation of Oil and Gas has extensive bearings upon the Communities where the oil is situated. The settlers in the Albertan region have so far been affected by the exploration stages of production. Some have been asked to relocate, with or without compensation. Some have been resettled to other parts in the country for purposes of exploration. This is because of the effects the processes of the oil and gas sector could potentially have on their health and the environment at large.

The environment and climate are usually not spared in this too and as such, many measures must be put in place to preserve the environment as much as it is possible during these processes of exploitation of the resource. These measures include the passing or updating of laws concerned with environmental management, and ratifying of international instruments that protect the same.

Also, the production of Oil undergoes different stages of production. The Upstream which entails the exploration and drilling of the oil, midstream which is concerned with transportation of this oil to refineries for purifying and then downstream which is concerned with the marketing and sale of the product. All these processes will in essence require a lot of contracts with many different organisations and many subcontracts as well. Some are straight up necessary; others arerequired by the law.

All these factors; numerous contracts, upfront investment, long life span, sensitivity to change in laws and tax regimes, climate and community impact and different stages of production increase

the chances of disputes arising and indeed any of the mentioned factors has led to disputes that have required settlement.

If any dispute arises and it is not settled, it has the capacity to extensively affect the operations of the sector. It could potentially derail the oil and gas projects and it can distort the many timelines always put up by the agreements made. The nature of the sector is that most of the licences issued have a timeframe and if a dispute arises, the plan to work within this timeline can be significantly affected.

This in effect eats away the investor‘s time to complete the tasks assigned and the resources allocated for the same. Dispute settlement will in most cases require settlement by compensation and this means the funds of the investor will be channelled into this settlement.

Many of the investors carrying out these exploitations are international Oil Companies (IOCs) which have a big international reputation, a reputation they have built over a long period of time. Disputes are a formidable threat to the reputation built and if they are not worked upon, they can ultimately tarnish the name of these IOCs.

Disputes can also open the IOCs to criticisms by numerous organisations and ultimately shake the confidence that the different stakeholders have in them. This could be a potential determinant of many agreements and contracts.

Therefore, this research analyses the different modes of alternative dispute resolution that can be employed to ensure a continued understanding between the parties and points out the best dispute settlement mechanism that IOCs can employ to avoid the threats that the disputes pose and their potential to destroy their business.

1.2 History and Background of the Problem

Disputes can arise because of many reasons. It could be because of the breakdown of communication, a lack of appreciation and respect, a change in economic and commercial circumstances, a change in the known position of the law, technical problems or defective products, differing views of underlying facts or even the impact of a third party or what is known as force majeure. Whatever the cause could possibly be, it is important to understand the cause of the problem so as to establish how best to solve it.

The project of developing oil and gas is principally and most commonly between the IOCs and the State that owns the resource. It is however not the only avenue for disputes to arise. Regardless, the State and the IOC can have a dispute arise between them.[1]

These disagreements between the government and IOCs are usually in relation to agreements for petroleum exploration, development and production which are commonly known as Production Sharing Agreements (PSAs). Disputes between IOCs and host governments can arise fromseveral 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.[2]

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

[1] Cristal Advocates, February 2019. Dispute Resolution in the Oil and Gas industry: The Case of Uganda, Cristal Energy Series.
[2] bid

embolden substantive rights relating to the allocation of resource wealth between the state and IOCs[3].

However, there are other avenues where the disputes may arise. This is because the PSA(Product Sharing Agreement) is not the only agreement that exists in the Oil and Gas exploration, development and production. There are other parties involved in this procedure and as such, disputes may equally arise from there. To begin with, there can be disputes between states.

State to state disputes are rarer but may arise with respect to petroleum fields overlapping international borders both onshore and offshore. Offshore maritime disputes arise largely in respect of who can exercise sovereign rights in the Exclusive Economic Zone. [4]

Disputes between states can also emanate with respect to the transit fees charges on through put in cross border oil and gas pipelines. A good example is the recently concluded East African Crude Oil Pipeline (EACOP) agreement between Uganda and Tanzania to transport Oil from Uganda to Tanzania for refinery via pipeline. This project could be a potential area for dispute to arise.

There can also be dispute arising between the IOC and other companies because of the numerous contracts that the IOCs must undertake with other stakeholders for numerous different reasons. These represent disagreements between the IOCs or with their subcontractors and are alsoreferred to as international commercial disputes. 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 off take and purchase, crude oil

[3] bid
[4] bid

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.[5]

Also, and probably most dangerously, there can be a dispute between IOCs and individuals. These may be the owners of the land where the exploitation is bound to happen. These are usually because of misunderstanding in obtaining the consent of the communities which are affected by the projects. They could also be because of the nature of the people to be affected, their human rights and property rights. This is the most common and it has historically createdthe biggest problems.[6]

This kind of Dispute Avenue has been notorious to the extent that some countries have not calculated laws to enable their resolution. For example, under the provisions of the United States Alien Tort Statute, individuals outside of the US can institute judicial cases and claims against large corporations that engage in business activities that violate their human rights. This provision has enabled very many communities, especially in West Africa, to drag IOCs to court for hefty amounts of money in terms of compensation.[7]

Whatever the dispute and whatever the cause, it is almost certain that a dispute will always arise, given that there is an Oil and Gas project. Many times, the government has drafted their contracts to reduce the likeliness of such but you can never foresee all these possibilities, to effectively prevent the disputes from developing.

[5] bid
[6] bid
[7] bid

1.3 Statement of the problem

It has already been established that disputes are imminent in the oil and gas exploitation. In fact, Uganda has already had to settle such disputes. In 2014, Uganda Revenue Authority (URA) had a claim against Tullow Oil.

On July 26, 2010, one of the major players in Uganda‘s petroleum sector, Heritage Oil, sold its exploration licenses in the Albertan Rift to Tullow Oil. Heritage and Tullow together owned a 50 percent stake in two lucrative exploration blocks: 1 and 3A. With the sale, Tullow became the sole company licensed to operate in those areas. In addition to its stake in Blocks 1 and 3A, Tullow also has the sole exploration rights to Block 2.) Tullow purchased Heritage‘s stake forUS $1.45 billion, after which Heritage ceased to operate within Uganda.[8]

In the aftermath of the deal, however, the Uganda Revenue Authority (URA), which was acting on behalf of the Government of Uganda, requested for $434 million—or 30 percent of the sale—in capital gains taxes. Heritage disputed the tax, saying that its lawyers believed that the sale was not taxable given that the Production Sharing Agreements (PSAs) which the company signed with the government failed to mention such a payment. Heritage further argued that the sale ofits assets to Tullow Oil was not taxable in Uganda because the sale itself took place outside Uganda (in the Channel itself off the coast of France) and because the company itself is not incorporated in Uganda (being domiciled in Mauritius). The Government of Uganda meanwhile

[8]ACODE, 2011. Understanding The Tax Dispute: Heritage, Tullow, And The Government Of Uganda, infosheet No. 16, 2011 [online] available at; http://www.acode-u.org/uploadedFiles/infosheet16.pdf (accessed on 2nd July, 2021)

argued that the assets sold were located in Uganda and that their sale was done with the consent of the Ugandan government making the transaction taxable under Ugandan law.[9]

Tullow disputed URA‘s assessment of $473 million of Capital Gains Tax (CGT) payable following the farm-downs and appealed against the assessment before the Uganda Tax Appeals Tribunal (_TAT‘) and commenced an international Arbitration in September 2013. In July 2014, the TAT rejected Tullow‘s appeal and assessed Tullow‘s CGT liability for the farm-downs at $407 million less $142 million previously paid. In its 2014 accounts, Tullow recorded a contingent liability of $265 million in relation to the dispute. Tullow subsequently appealed the TAT ruling to the Ugandan High Court and continued with its international Arbitration claim. Following a settlement, both these legal proceedings have been withdrawn.[10]

Although Uganda won the case, the reputation and understanding between the companies was significantly affected. And this is just one of the many cases that have equally caused many misunderstandings. Therefore, whereas there has been an effort to resolve the disputes, not many have restored the status quo. Many have altered the relationship between the parties and this is not good for the Oil and Gas sector.

1.4 General Objective

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

1.5 Specific Objectives

i. To assess the laws governing dispute resolution in the Oil and Gas Sector in Uganda

[9] bid
[10] https://www.tullowoil.com/media/press-releases/tullow-settles-capital-gains-tax-dispute-uganda/

ii. To analyze the different mechanisms of Dispute Resolution in Uganda; their pros and cons; thereby establishing the best alternative

iii. To examine dispute resolution in the Oil and Gas sector in other jurisdictions

iv. To draw meaningful conclusions and recommendations for the Oil and Gas Sector.

1.6 Research Questions

i. What laws govern Dispute Resolution in the Oil and Gas Sector?

ii. What mechanisms exist for dispute resolution in Uganda; what are their pros and cons? Therefore, what mechanisms are the best for dispute resolution in the Oil and Gas sector in Uganda?

iii. How have other jurisdictions resolved their disputes in the Oil and Gas Sector?

iv. What meaningful conclusions and recommendations can be made for the Oil and Gas in Uganda?

1.7 Purpose of the Study

This study seeks to establish the best way to resolve disputes in the Oil and Gas sector in Uganda. In as much as there are a number of platforms to pursue in order to resolve these disputes, not all of them give the desirable outcome. This research will analyze the different mechanisms and therefore establish the best alternative.

1.8 Justification of the Study

Dispute resolution should enable IOCs and the State to work more smoothly and even help to avoid future similar disputes. It should not be looked at as an avenue to unjustifiably profit through the award of huge amounts of money.

Most of the dispute resolution mechanisms have enabled this ill motive to thrive and in the long run it has had an effect on the operations of the OGM sector. Most of these agreements entered into by the IOCs and the other relevant stakeholders are to enable the profit maximisation by all the parties involved. Disputes are stumbling blocks that can potentially destroy this goal. This research proposes how best to sidestep these blocks and keep the aim alive.

1.9 Significance of the study

Many developed countries have undertaken different modes of dispute resolutions and have been dragged into debts and losses. Uganda is a young country as far as the Oil and Gas sector is concerned. As such, there must be an effort not to repeat the mistakes made by these other countries. Therefore, this research proposes a chance to avoid this catastrophe so that even the other countries can learn from Uganda‘s model of dispute resolution.

1.10 Scope of the Study

1.10.1 Content Scope

The content of this study entails all the laws that govern dispute resolution in Uganda and in particular in the Oil and Gas sector. It also analyses the different mechanisms known to modern Uganda and how best to harness them to resolve a dispute effectively.

1.10.2 Time Scope

The literature used in this research dates as far back as the early 2006 to date. The purpose of this is because the disputes in Oil and gas are as old as discovery of Oil and Gas itself.

1.10.3 Geographical Scope

The geographical scope of this study is majorly Uganda an East African country that borders Tanzania to the south, Rwanda to the South west, 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. This study however also draws comparison and relevant study from other countries with oil and gas.

1.11 Chapter Synopsis

This part of the chapter lays out the road map of the study as broken up into separate chapters with independent themes. The present chapter has laid out a contextual framework of the study covering the background of the problem of identifying the best dispute resolution mechanism for the Oil and Gas industry in Uganda.

Chapter Two covers the literature that has been reviewed for purposes of establishing the best Dispute Resolution Mechanism.

Chapter three of this study discusses the methodology and specifically the research design, research instruments, data sources, ways of analysing data and research ethical considerations.

Chapter four of this study analyses all the laws that govern the dispute resolution in Oil and Gas in Uganda.

Chapter five of this research covers the different mechanisms available for dispute resolution and their pros and cons. It also establishes the best alternative to resolve disputes.

Chapter six analyzes how these disputes have previously been resolved in other countries.

Chapter seven provides the summary of the findings of the study, conclusions of the study and recommendations.

CHAPTER TWO

2.0 Literature Review

2.1 Introduction

This chapter covers 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 risen in Nigeria over a period of time. The literature reviewed in this chapter has been heavily relied upon in the subsequent chapters. This chapter also provides a criticism of the literature pointing out the loopholes this research intends to patch.

2.2 Literature Review

A literature review is a survey of scholarly sources on a specific topic and it provides an over view of current knowledge allowing one to identify relevant theories, methods and gaps in the existing research.[11] Under this literature review, the author looks at books, decided cases and journal articles thereby analysing them and explaining what the author has found there under.

Cristal Advocates (2019)[12] begins by acknowledging the nature of the Oil and Gas industry, not only in Uganda, but around the world generally. The authors of this short brief 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 also highly

[11] https://www.scribbr.com/dissertation/literature-review/
[12] Cristal Advocates, February 2019 – Dispute Resolution in the Oil and Gas industry: The case of Uganda, Cristal Energy Series

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 (–IIOCs‖) stress to governments how important the stability and predictability of a country‘s tax and regulatory regime to their investment decisions. The potential for material disputes also 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[13]. 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 been incorporated in the respective project and investment agreements.

The authors go on to identify the different modes of dispute that can arise in the Oil and Gas sector. They identify the disputes 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.

[13] bid

Cristal Advocates (2019) [14] also identify 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 resources 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. Off shore maritime disputes arise largely in respect of who can exercise sovereign rights in the Exclusive Economic Zone.

The other dispute identified by Cristal Advocates (2019)[15]is the one 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 ofoil and gas discoveries that include though are not limited to joint operations, cost allocation, production and allocation, crude oil off take 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.

They also identify a dispute that may occur between the IOCs and the natives or individuals inthe 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 IOCs in their operations.

The paper then identifies the different dispute resolution mechanisms. The mechanisms identified are negotiation, mediation, arbitration, expert determination and litigation. This research will proceed to explain each of these elements independently. They opine that

[14]Ibid
[15]Ibid

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 multi-step dispute resolution process.

Mediation means the process by which a neutral third person facilitates communication between parties to a dispute and assists them in reaching a mutually agreed resolution of the dispute[16]. The neutral third person (mediator) won‘t have that decision making power but will with the consent of the parties set and enforce the ground rules for the mediation 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 long-term commercial interests without getting preoccupied with the details of asserting their legal rights and obligations under the relevant contract. Mediation is cheaper and faster than arbitration but it 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 practised 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.

Early neutral evaluation is the process where the disputing parties submit their case to a neutral evaluator through a confidential evaluation session so as to consider each side‘s position before

[16]Section 3 of the Judicature (Mediation) Rules, 2013.

rendering an evaluation of the case. It may take place soon after a case has been filed in court where the parties at dispute either through written comments or oral submissions meet an expert on the matter to provide a balanced and unbiased evaluation of the dispute.

In *Adamson vs. Queensland Law Society Inc*[17] it was held that whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct is that observed or approved by members of the profession of good repute and competency. It was also stated that

–The lawyer should put the client's interests first and treat the client fairly and in good faith giving due regard to a client's position of dependence upon the practitioner, and the client's dependence on the lawyer's training and experience and the high degree of trust clients are entitled to place in lawyers…particularly with respect to compromise.‖

Arbitration is the adjudication of a dispute or controversy on fact or law or both outside the ordinary civil courts, by one or more persons to whom the parties who are at issue refer the matter for a decision.**[18]** It is a process in which a third party neutral or an odd number panel of neutrals render a decision based on the merits of the case.

Conciliation is a process whereby the parties to a dispute use a conciliator, who meets with the parties both separately and together in an attempt to resolve their differences.

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.

[17][1990]1 QdR 498.
[18]Kaggwa David, Arbitration and the Courts, p.8.

The authors then analyse 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 2000expresslyincorporates the New York Convention. 159 states are party to this Convention.

Uganda‘s ratification of the New York Convention came with a declaration stating thus; ‒The Republic of Uganda will only apply the Convention to recognition and enforcement of awards made in the territory of another Contracting State‖. Thus, foreign arbitral awards from contracting parties to the New York Convention are recognisable and enforceable in Uganda.

Where parties choose to adopt arbitration for the resolution of their disputes, the Arbitration and Conciliation Act expressly gives precedence to arbitration and requires Courts to suspend legal proceedings and refer a matter to arbitration where a defendant so requests. The Arbitration and Conciliation Act further preserves the integrity of arbitral awards by restricting judicial interference with an award only to points of law, meaning Courts cannot open up and rehear a dispute which has been submitted to arbitration. The Arbitration and Conciliation Act established the Centre for Arbitration and Dispute Resolution (‒CADRE‖)to spearhead and conduct arbitration as well as perform supportive functions under the United Nations Commission for international Trade Law (__UNCITRAL‘‘)Arbitration Rules.

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[19]. This enables the submission

[19]Ibid

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 provisions of the Model PSA of Uganda concerning dispute resolution are also highlighted by Cristal Advocates (2019)[20]. n 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 referredto arbitration in accordance with the UNCITRAL Arbitration Rules. Such arbitration is to be conducted by three judges and the seat of arbitration in 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 authors of Dispute Resolution the Oil and Gas industry: The case of Uganda notice that while disputes are bound to happen due to the inherently complex nature of the oiland 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

[20]Ibid

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 theIOCs.

Criticism

Cristal Advocates (2019)[21] are very elaborate to the extent of explaining the nature of the oil and gas sector and the nature of Alternative Dispute Resolution. They are able to identify the different legal frameworks for oil and gas and even those for ADR. However, the authors lack anin-depth analysis of oil disputes that have already occurred and have had to be solved by ADR. These are particularly important because they advise on what must be changed and what must be maintained in order to have a comprehensive and all-inclusive system of dispute resolution in theOil and Gas sector.

Anthony Connerty (2002)[22] examines recent trends in dispute resolution in the oil and gas industries. There is probably little doubt that the two major methods of dispute resolution are still litigation in the national courts and international arbitration. But it is clear that other dispute resolution processes are being used, among them ADR (alternative dispute resolution) and expert determination. To state the obvious, which type of dispute mechanism will be used in any particular case will depend on the precise nature of the dispute: a jurisdiction dispute arising out of an international contract is likely to be settled by litigation rather than, say, expert determination.

In the first two sections, the author identifies some of the types of disputes which can arise in the energy sector and describes methods of dispute resolution; international conventions, statutory

[21]Ibid
[22]Anthony Connerty, 2002 Dispute Resolution in the Oil and Gas industries, Journal of Energy & Natural Resources Law*20:2, 144-171, DOI:10.1080/02646811.2002.11433292 [online] available at; http://dx.doi.org/10.1080/02646811.2002.11433292 (accessed on 4th July, 2021)*

arbitration and in the case of commercial contracts, litigation, arbitration, ADR and expert determination. The author then goes on to illustrate the types of disputes and some of the dispute resolution processes discussed in a section devoted to short case studies.

Anthony Connerty (2002)[23]acknowledges that disputes in the oil and gas industries can range from maritime boundary disputes between States, to oil and gas trading contract disputes, and offshore construction and pipeline disputes. Some of the areas of dispute which may arise include international maritime boundary disputes; disputes involving equipment; jurisdiction disputes; oil trading contracts; gas contracts; disputes concerning expert determination; quantity and quality disputes; insurance: exceptions clause, piracy; and hedging.

Connerty notes that because of the special nature of the energy sector, disputes between States and disputes between corporations and national governments are likely to arise[24]. Resolution of these disputes may be by way of machinery contained in Conventions or in domestic legislation passed by national governments.

On the commercial front, many of the dispute resolution processes used in the oil and gas industries will obviously be similar to those used in other areas of international trade. Given the international nature of many of the contractual arrangements in the industry, it is understandable that in addition to litigation in national courts, disputes are likely to be resolved by way of international commercial arbitration. For the future increased use may be made of two other dispute resolution processes: first, ADR in its various forms (particularly mediation/conciliation) and secondly, expert determination.

[23]Ibid
[24]Ibid

The Article[25]then sets out the modes of dispute resolution that are most likely to be relied upon in the Oil and Gas sector firstly under the international Covenants. He points out the third United Nations Conference on the Law of the Sea (commonly known as UNCLOS ll).

Anthony Connerty (2002)[26]then identifies the statutory arbitration. He notes that in the United Kingdom, various statutes vesting the ownership of petroleum in the Crown contain provisions for the granting of licences. Disputes involving licences are to be referred to arbitration. For example, the Petroleum (Current Model Clauses) Order 1999 contains a provision in Clause 37 that if at any time any dispute, difference or question arises between the Minister and the licensee:

"as to any matter arising under or by virtue of this licence or as to their respective rights and liabilities in respect thereof then the same shall, except where its expressly provided by this licence that the matter or thing to which the same relates is to be determined, decided, directed, approved or consented to by the minister, be referred to arbitration as provided by the following paragraph."

The Model Clause then goes on to provide that the arbitration is to be by a single arbitrator who in default of agreement between the Minister and the licensee is to be appointed by the Lord Chief Justice of England.

[25]Ibid
[26]Ibid

Commercial contracts are also analysed in the Article[27]. The contractual provisions dealing with dispute resolution in commercial contracts are of vital importance. Provision will normally be made as a minimum for the following:

(1) Forum in what country should the dispute resolution process take place?

(2) Choice of law: which country's law is to govern the contract? It is, of course, always open to the parties to provide for a choice of laws rather than a choice of law and to provide that disputes will be resolved by way of reference to general principles of international law or *lexmercatoria*. However, the choice of a national law is likely to be the norm.

(3) Dispute resolution process: broadly speaking, there are four dispute resolution processes in common use: litigation, arbitration, ADR and expert determination.

(i) If litigation, which country's courts are to have jurisdiction?

(ii) If arbitration, is this to be institutional or ad hoc? If institutional, which institution - the London Court of international Arbitration (LCIA), the international Chamber of Commerce (ICC}, etc?

(iii) If ADR, should some form of ADR filter mechanism be inserted in the contract, arbitration then only being triggered off in the event that the ADR process fails?

(iv) Or is expert determination the appropriate way to resolve disputes?

Anthony Connerty (2002)[28]also discusses the different modes of dispute settlement as discussed above and identifies the different modes under ADR.

[27]Ibid
[28]Ibid

Conclusively, the author deduces that litigation in the international courts and international arbitration are likely to continue to be the major dispute resolution systems in use. That expert determination may well increase, but is likely to be restricted to fairly narrow areas.

Finally, Anthony Connerty (2002)[29] notes that ADR may also have an increasing role to play. Information is not easy to come by, but the indications are that ADR is being used and may be used more often as lawyers and their clients become accustomed to mediation and what it can achieve. it may well be that ADR will also have a role to play as a filter mechanism of the kind used in the Boston Central Artery/Tunnel Project and in the Hong Kong Airport Core Programme: that is by way of contractual provisions which specify one or more ADR filter processes, with a long-stop provision for arbitration (or litigation) should the ADR filters fail to resolve the dispute.

Criticism

Anthony Connerty (2002)[30]in this article is able to identify the commonest methods of dispute resolution and how the different countries have utilised the same in order to resolve their differences. He is able to show how each of those methods can be used by elucidating on the different procedures that must be followed to achieve either end pursued. However, the author does not actually point to any incident that makes either of these two methods the commonest means of dispute settlement. This analysis is particularly vital in shaping recommendations on what alternative best serves the interests of the parties.

[29]Ibid
[30]Ibid

Efraim Chalamish (2013)[31] starts his paper by appreciating that Energy has become a critical component of the African continent's growth story. In the last five years, oil production in Africa went up 30% and natural gas production has doubled. Analysis predicts that by 2016 off-shore drilling will be 30% of world gas production, of which Africa has 30% of investments. Consequently, Africa will become one of the most important energy producers. This new economic reality affects the level of foreign investment in the continent by foreign investors and the balance between foreign investors and protection of national interest in the region. Africa'soil and gas boom is only part of the broader economic revolution in the continent, energized by the rising middle class and consumerism. While the energy industry in Africa is not entirely new,the nature of the industry has changed over time. In the past we could not see more than one or two international investors in a particular country. Most local markets were in fact, a monopoly run by a foreign energy company with strong political, economic and military ties to the foreign colonial power. African democratization and rising competition in the global economy have brought many new energy players to the region. The concept of a traditional colonial energy power, such as Total in Africa, has disappeared.

The author notes that the new macroeconomic and political trends are indeed a blessing to the continent. Yet this good news is mixed with significant challenges, one of which is the risk of ‒resource nationalism‖ that triggers energy disputes. In fact, looking at the oil and gas industry around the world, resource nationalism is on the rise.

[31]Efraim Chalamish, 2013. Energy Disputes in Africa: An Economic and Political Context, Cambridge University Press, Proceedings of the Annual Meeting (American Society of international Law), Vol.107,International Law in a Multipolar World (2013), pp. 123-125

There are several forces behind the new resource nationalism or ―economic nationalism.‖ First, the potential growth and success of the oil and gas industry disincentives African governments to invest in other industries, which could help develop other parts of the economy. This lack of diversification could lead to more nationalism and what economists call the __resource curse.‘‘ In Angola, for example, oil is now 90% of export and 50% of national GDP. In the past, Angolawas associated with several other industries, such as diamonds. Nigeria can serve as another casestudy. In 1974, Nigeria was the world‘s third largest coffee producer, and today 95% of the Nigerian economy is based on export of petroleum and petroleum products. The recent offshore discoveries turned Nigeria into one of the world‘s largest producers of natural gas, and its new sovereign fund is promising to be very lucrative to state‘s fiscal financing.

Another force behind a government or its opposition‘s decision to change its approach towards foreign investors is political and security instability. Nigeria, for example is trying to win a U.S. Security Council seat while at the same time keeping almost a ―failed state‖ status. One hundred and fifty thousand barrels of oil are stolen each day from pipelines in Nigeria, and global terrorism has had an impact on oil production. It was recently reported that the Nigerian government has discovered residents with links to Hezbollah, the Islamite militant group, involving terrorist acts and possession of illegal arms. In Nigeria there is also a religiouselement, since the Christian South and the Muslim North do not share equally the oil reserves.

Furthermore, new and significant oil and gas discoveries in Africa could trigger governments _intervention in private markets by unilaterally increasing taxes and royalties on the oil and gas industry. We have seen this in other parts of the world, especially in Latin America, and this history could repeat itself. In fact, multinational investors have always found the ―lack of regulation _In Africa as conducive to conducting business in the region. But this regulatory

vacuum is now a challenging reality for many energy players since local governments can and do use this lacuna to implement nationalistic policies.

Finally, Efraim Chalamish (2013)[32] notes that the growth of the African middle class and its energy consumption may increase the stakes and the potential tension with foreign investors. Only 28% of oil production in Africa currently goes to local consumption; the rest goes to export. This number will change and may lead to pressure on local governments to protect local interests at the expense of foreign companies.

Criticism

Efraim Chalamish (2013)[33]does well to narrow the scope to Africa. He identifies the significance of the discovery of oil and gas in the continent and how drastically in has changed the scene of operation for the Africans. He ably identifies different aspects that potentially influence, affect or determine the operations surrounding the oil and gas sector. He however does not draw analysis from any circumstances that have occurred on the African soil concerning oil and gas. Africa has explored and developed oil for a long time to warrant enough situations that can be identified to back up the different aspects raised by the author.

Okpan, Samuel O. and Njoku Precious C. (2019)[34] highlight that ***n***ot only can corruption keep African states in cycles of violence by funding armed groups and criminal networks, it can also prevent the development of effective institutions of governance. When money and resources are

[32]Ibid
[33]Ibid
[34]Okpan, Samuel O. and Njoku Precious C., July 2019. Evaluation Of Corruption And Conflict in Nigerian Oil industry: imperative For Sustainable Development, international Journal of Sociology and Anthropology Research, Vol.5, No.4 pp.14-26,European Centre for Research Training and Development UK

diverted by corrupt African officials to private accounts and businesses instead of being channelled to inclusive citizen‘s needs, the clock turns back on social and economic development. This in turn, can create further instability. In these ways, corruption, conflict and sustainable development are linked. Since its return to civil rule in May 1999, the country, especially the oil producing Niger Delta region, has drifted from one violent conflict to another, often with devastating consequences on human life and socio-economic development. Most analysts blame this violence on the many injustices perpetrated by the central authorities (especially the inadequacies of the current revenue sharing formula that denies oil bearing states their dues). The Paper examines the relationship between corruption in oil sector, conflict and sustainable development and was anchored on resource curse theory. This study recommends amongst others that the award of oil block, contract, and licensing and production right should follow due process and transparent process. Also, that the awarding of oil block to individuals should be discouraged rather they should be awarded to corporate entities with widespread ownership.

Corruption is a major challenge to sustainable development in Africa. The erosion of human rights and respect for constitutional authority hinders programs put in place to alleviate conflict and increase human security. While the impact of corruption is particularly tragic in the case of the poorest people in African countries, fighting corruption in a regional concern because corruption is found in both rich and poor African countries, albeit in different forms and magnitude. It has contributed to instability and the eruption of civil wars over resources in a number of African countries for instance Somalia. Experience from many African countries undergoing or have emerged from conflict show that corruption is a dominant factor driving fragile countries to state failure. Corruption can lead to, and sustain, violent conflict, in the

context of patrimonial regimes that are degenerating under local or regional shocks and pressures for market reform. The author argues that corruption is part of the social and political fabric of society, and thus, conflict may be engendered more by changes in the pattern of corruption than by the existence of corruption itself for example, by appeasing belligerentsin order to buy peace.

Conflict happens to appear when individuals or groups have incompatible interests and/or goals. When one has become really an obstacle or shows a tendency to become so for another to meet his/her needs, conflict is, then, more likely to breakout. Conflict could also be as a result of human greed. For the reason that scarcity of any resource is always a fact of life, there would always be a persistent competition to have acquisitive control over these resources. Indeed, this fierce competition would lead to a sort of collusion, and at times even to an intense conflict. Thus, a competition for resources, among others is a major cause for conflicts that may arise between/among individuals and nations at large.

Okpan, Samuel O. and Njoku Precious C. (2019)[35]make a reference to Barash and Webel, who put it as;

... The word conflict derives from the Latin confligere, which literary means –to strike together. —It is mpossible for two physical objects, such as two billiard balls, to occupy the same space. They conflict, and if either is in motion, the conflict will be resolved by a new position for both of them. Within the human realm, conflict occurs when different social groups are rivals or otherwise in competition. Such conflicts can have many different outcomes: one side changed, one side eliminated, both sides changed, neither side changed, or (rarely) both sides eliminated

[35]Ibid

Okpan, Samuel O. and Njoku Precious C. (2019)[36]have contributed to the knowledge about the challenges of Nigerian oil industry by revealing the extent hording, speculation and smuggling; activities of oil cabals and contract racketeering coupled with general corruption has hindered the contribution this industry would have made towards national development. It was also revealed that sustainable development implies a social system that ends disharmonious development; a production system that respects preserve the ecological; a techno-logical system that solution based; an international system that fosters sustainable patterns of trade and finance; and an administrative system that is flexible‖

The oil and gas industry is still the major source of revenue for the Nigerian government and her citizens. It is unfortunate that cases of corruption are here and there in the industry beginning from oil and gas exploration to refining and marketing of the petroleum products. Because the country so much depends on the oil and gas industry for her sustainable development and national economic growth, the high rate of corruption in the industry affects all other sectors of the nation's socio-political economy.

The authors have attempted to examine the vicious circle of oil, corruption and Violence in the Niger Delta as a whole[37]. The principal objective is to show how oil and corruption help us to understand much of the violent conflicts ranging in these key Niger Delta states. While not denying the fact that no single factor can explain all the violent conflicts in these states, evidenceproduced in this research suggests that corrupt misuse of oil rents by political leaders and the determination of‒ political outsiders‖ to get a piece for themselves (if possible, through violent means) as a struggle for oil space.

[36]Ibid
[35]Ibid

Criticism

Okpan, Samuel O. and Njoku Precious C. (2019)[38]in this publication focus on oil and gas in Nigeria. They point to corruption and violence as one of the most serious hindrances to the effective utilisation of oil in Nigeria. They however do not provide any other issues, however insignificant that might be playing part in this inefficiency and they also omit to give desired recommendations in order to avoid or reduce or overcome the different challenges identified.

Sola Fajana, 2005[39] in his paper identifies that Nigeria is one of the most strategically countries in Africa. However, the country is also one of Africa's poorest, with a long legacy of corruption, weak institutions and poor economic management. To combat these problems, President Olusegun Obasanjo then launched a comprehensive programme of reform to boost growth and reduce poverty in2003 - the National Economic Empowerment and Development Strategy (NEEDS).NEEDS consists of a wide-ranging set of reforms covering all aspects of the economy including macroeconomic policy, government institutions, the private sector, and social policy. However, it has been criticized for being too ambitious given the considerable challenges facing the country.

The transition to civilian rule, for instance, has not ended outbreaks of ethnic and religious violence. Sectarian unrest remains widespread, affecting almost every region of the country, and has resulted in the death of thousands of Nigerians over the past few years. In May 2004, violent clashes in central Nigeria's Plateau state led the Government to declare a state of emergency. Meanwhile, the northern states are consistently threatened with outbreaks of violence.

[38]Ibid

[39]Sola Fajana, 2005 Industrial Relations in the Oil industry in Nigeria, International Labour Office, Geneva, Switzerland

Furthermore, a culture of corruption is embedded in the political and economic system in Nigeria and this is the biggest obstacle to growth. While the ruling People's Democratic Party (PDP) has consolidated its power since the 2003 elections, powerful economic forces from within and outside the ruling party remain, and have opposed attempts at reform.

Nigeria recently removed the subsidy on the domestic consumption of petroleum products, resulting in a price increase of nearly 25 per cent. Deregulation of the oil sector is central to the government reform programme, but public reaction has been swift and harsh. Because many impoverished Nigerians view the subsidy as one of their only social benefits, trade unions reacted with general strikes to disrupt the nation's oil production.

Oil companies have been struggling with continuous community unrest and vandalism, especially in the Niger Delta, where there is serious conflict over the control of oil resources. In September 2004, rebels declared war on the federal Government and threatened violence against foreign oil workers. Although the crisis subsided with a peace deal and a rebel disarmament agreement in October 2004, rebel leaders continue to threaten civil disobedience and production stoppages because they believe that the extraction of crude oil has adversely affected the social, economic and cultural lives of most people living in the region. For example, oil exploration activities in the Niger Delta have been associated with the destruction of indigenous forest reserves, houses, and symbols of religious worship, leading communities to seek compensation from the oil companies.

Despite its oil and gas resources, the Niger Delta is a naturally poor area. The people living in the Delta have benefited relatively little from the exploitation of these resources which has also been accompanied by the degradation of their agricultural land, fishing waters and settlements.

Compensation for their grievances has long been demanded - and, to some extent, met - but never sufficiently to end discontent.

Ethnic clashes often disrupt the production of crude oil. For example, in the politically sensitive period preceding the national elections in April 2003, dissatisfied groups in the area expressed their grievances by disrupting oil production. In March 2003, ethnic fighting around Warri led to the shut-in of over 800,000 barrels per day (bpd) of crude production which included: 370,000 bpd by Shell, 440,000 bpd by Chevron and 7,500 bpd by Total Fina Elf. Production at the Warri refinery was reduced and Chevron also shut down production. Companies evacuated personnel from the affected areas and flights to and from the Niger Delta were suspended. Troop‘s brought in to protect the oil installations and restore order inevitably became party to the conflict, and as a result, threats were made to blow up pipelines and flow stations. About 100 people were killed including three workers from Total Fina Elf, and ten soldiers.

Ethnic communities in the region have a troubled history. The violence in 2003 originated in a dispute between Urhobo and Itsekiri communities over the delineation of wards, alleged tofavour the Itsekiri in the Warri South-West local government area. Ijaw youth sided with the Urhobo and appear to have added a claim for more electoral wards of their own. They used speedboats to attack and burn Itsekiri villages south of the oil town of Warri, and were apparently well armed. In 1997, numerous deaths had already resulted from disputes over the relocation of the headquarters of the Warri South-West local government from an Ijaw to an Itsekiri town.

In August 2004, about 50 people were killed in several attacks on Port Harcourt, the Rivers State capital, by rival armed gangs that invaded several local communities. In September 2004, the

Government deployed troops to the region to end the gang violence between the Niger Delta People's Volunteer Force (NDPVF) led by Alhaji Asari Dokubo, and the rival Niger Delta Vigilante Service (NDVS). After suffering heavy casualties, the NDPVF threatened to destroyoil installations. Shell Producing Development Corporation (SPDC) subsequently withdrew about 200 workers from its facilities in areas threatened by rebel attacks.

It‘s widely assumed that this violence can be traced to the April 2003 general elections. To resolve these complex problems, the Niger Delta Regional Master Plan was unveiled in October 2004. Despite the truce signed by two militant Ijaw groups and the federal Government, the situation remains precarious because the distribution of funds through the Niger Delta Development Commission (NDDC) and the "Thirteen percent Derivation Fund" have still not reduced high levels of poverty and unemployment. The plan outlines priority programmes in the areas of infrastructure, investment, job creation, environmental regeneration and conservation, aswell as social services delivery that are required to transform the region.

Criticism

Sola Fajana, 2005[40]focuses on Nigeria‘s progression in the oil and gas sector. He gives an account of the wrangles and civil wars that have erupted due to oil and gas. The poor institutions and the rates of corruption have not been left out as well. The author however intimates that Nigeria is among the poorest countries in Africa; which currently holds no water. By failing to identify the positive things that the economy of Nigeria has benefitted from the oil and gas sector, he arrives at a wrong conclusion. While it is true that Nigeria has had all these disturbances, it is also true that Nigeria has made a great deal of profit from the oil and gas

[40]Ibid

especially in the Niger delta with the introduction of the Miidekoor system of profit allocation. This system allows the IOCs to take profit from the oil for four out of five days in a week, and the other portion belongs to the civilians. This is a system that was devised by the local chiefs, following their old habit of leasing oil palm farms to palm wine tappers.

Anthony Conrad K. Kakooza[41] argues that Arbitration and Mediation are two of the strategies employed in Alternative Dispute Resolution. The Ugandan court systems have, of late, progressed and become more appreciative of global commercial developments and thus bringing about the establishment of other dispute resolution mechanisms in the administration of justice that are efficient and accessible; faster and cheaper. This is where Alternative Dispute Resolution (commonly referred to as ADR) comes in. ADR is a structured negotiation process under which the parties to a dispute negotiate their own settlement with the help of an intermediary who is a neutral person and trained in the techniques of ADR. The various strategies involved in ADR include negotiation, conciliation, mediation, mini-trial/early neutral evaluation, court annexed ADR and arbitration. These ADR approaches are continuously being relied upon as an alternate or complement to conventional law suits. This article focuses on the practices of Arbitration, Conciliation and Mediation, and how they are appreciated through legislation and the Courts of law in the administration of Justice in Uganda. The article introduces the concept of Collaborative Legal practice as a form of dispute resolution and discusses the viability of its effectiveness in the Ugandan setting.

[41]Arbitration, Conciliation and Mediation in Uganda: A Focus On The Practical Aspects By Anthony Conrad K. Kakooza

Uganda is gradually moving away from the traditional concept that litigation is more effective than ADR but there is still more to be done. Much as the lawyer‘s stock in trade is his time, for which he lavishes in his bills subsequent to court litigation, ADR can also be cost effective as well as financially and intellectually rewarding. More and more business concerns are opting for ADR, 21 particularly Arbitration and mediation in resolving their disputes as opposed to conventional Court litigation. This is essentially because they would rather protect their business contacts, reputations and interests rather than severe them through exploring lengthy and embarrassing litigation. However, in the same vein, warring parties that are advised to opt for ADR should not be led to believe that this option is out of compulsion by Court or any quasi- judicial structure, but should freely appreciate the benefits that come with it. It is also noteworthythat legal training in Uganda is progressing away from the adversarial system to moderate training involving ADR and exposure to ADR practical techniques. Law Students and advocates alike should be encouraged further in this awareness so as to appreciate ADR more, rather than ridicule it and thus embrace it in the practice of pursuit of justice in Uganda.

International Alert - Understanding conflict. Building peace states that the end of the Cold War era brought with it great violence and turmoil. Since 1990 there have been over 125 armed wars globally, millions of civilian deaths, as well as devastation and ruin for some of the world‘s most disadvantaged communities. The majority of these conflicts happen within states, not between them, creating new challenges and aggravating persistent problems.

While more peace agreements have been reached since the end of the Cold War than in the previous two centuries combined, they remain fragile. Half fail within five years of being signed.Amidst a heightened global effort for peace, there remain widespread deficiencies in knowledge and understanding of how sustainable peace is achieved.

To address these challenges, a long-term process is needed that lays the foundation for peaceful and stable development. In this environment, efforts to promote sustainable development in many parts of the world were often undermined by violent conflict. A connection was seen between group conflict, stagnation of development, and gross violations of human rights.

Governments realized that development programs could not progress while violent conflict and human rights violations prevailed. At the same time, human rights workers recognized that the protection of political rights in conflict zones was not simply about identifying and highlighting individual violations – but also required preventative strategies and action. A different approach was desperately needed especially for the Oil and gas sector.[42]

R.R. Verkerk[43] (2013) suggests that on several occasions, multinational corporations have been accused of human rights violations. Examples include the alleged participation of oil companies in the exploitation of forced labour in the construction of an oil pipeline in Burma[44] and the claims made by numerous NGOs about the working conditions of workers involved in the production of clothing in Latin America and South-East Asia.

Transparency is perceived as one of the key factors ensuring that corporations respect human rights. Transparency is the degree to which information is readily available. Transparency entails having access to accurate and relevant information within a reasonable time and at a reasonable cost.

In some jurisdictions these instruments are powerful and effective, while in others their scope is limited. Litigants seeking to file an action against a multinational corporation may be able to take

[42] nternational Alert, Understanding conflict. Building peace.
[43] Multinational Corporations and Human Rights - Civil Procedure as a Means of Obtaining Transparency
[44]See Doe v. Unocal, 395 F.3d 932 (9th Cir. 2002).

advantage of a wide range of procedural instruments to obtain information in more than one jurisdiction. One serious drawback is that litigation is generally expensive and time-consuming. The conclusion is that civil procedural rules, much like criminal and administrative rules, provide a means of promoting corporate transparency.

CHAPTER THREE

3.0 Research Methodology

3.1 Introduction

This study is a critical evaluation of Alternative Dispute Resolution in the oil and gas sector; A legal analysis of the best method of dispute resolution in the oil and gas sector in Uganda. It involves review of books, Journal Articles, legislation, case law and international instruments among others primary data to be relied on are official government reports, court records, rulings and judgments.

3.2 Study Design

A Doctrinal Legal research is the most suitable method since it concerned with documents rather than interaction with people and organization. It is based on principles of law, statutes, concepts, cases, Laws, regulations, rules concerning Alternative Dispute Resolution in the oil and gas sector; A legal analysis of the best method of dispute resolution in the oil and gas sector in Uganda. Through this, the researcher was allowed time to adequately address and discuss the legal principles relating to Alternative Dispute Resolution Mechanisms of oil and gas Disputes as analysed in Chapter 1[45].

Doctrinal Legal research is a library-based research that seeks to find the right answers to certain legal issues or question. Doctrinal Legal research is theoretical in nature. The sources which this research relied on included legal and non-legal dictionaries, textbooks, and treatises, Encyclopaedia, Reports and Journals.

[45]Hutchninson, T.& Duncan, W .(2012). Defining what we do. Doctrinal Legal Research, Deakin Law Review, Vol.17. No.1

This research design enabled the legal researcher to take one or a number of legal propositions as a starting point and focus on the research objectives and design the research methodology and structure them around the same.

Legal Research occurs in a law library to identify applicable legislation, Authorities and instruments and it allowed the researcher to read and analyse information from various materials formulating a conclusion and write up the study results.[46]

3.3 Research framework (Theoretical vis-à-vis Conceptual)

The researcher used Qualitative research because majorly the materials reviewed were more of acts and statutes and policies which would only require desk review hence adapting a theoretical framework rather than a conceptual framework.

The jurisdictional theory invokes the significance of the supervisory powers of states, especially those of the place of arbitration. Although the jurisdictional theory does not dispute the idea that an arbitration has its origin in the parties‘ arbitration agreement, it maintains that the validity of arbitration agreements and arbitration procedures needs to be regulated by national laws and the validity of an arbitral award decided by the laws of the seat and the country where the recognition or enforcement sought.

Proponents of the jurisdictional theory maintain that all arbitration procedures have to be regulated by the rules of law chosen by the parties if there are any and those rules of law in force in the place of arbitration. They also believe that arbitrators resemble judges of national courts because the arbitrators‘ powers are drawn from the states by means of the rules of law. As with

[46] Hutchinson. (2015). The Doctrinal Method: incorporating inter-disciplinary Methods in Reforming the Law. Erasmus Law Review, doi:10553/ELR.000055.

judges, arbitrators are required to apply the rules of law of a specific state to settle the disputes submitted to them. Moreover, the awards made by the arbitrators are regarded as having the same status and effect as a judgment handed down by judges sitting in a national court.

As a result, they maintain that the awards will be enforced by the court where the recognition or enforcement sought in the same way as judgments made by the courts. Proponents of the jurisdictional theory stress, in particular, the significance of the seat of arbitration. For instance, Dr. Mann emphasized the significance of the laws of relevant states to arbitration, especially the law of the place where the arbitration takes place, that is, the lex fori.

3.4 Library and Research Methods

Among the material reviewed were Journal Articles, textbooks write ups and in order to obtain and contextualize Scholarly opinions for the guidance of this research. The research also relied on some internet sources for secondary or tertiary information to support the study in ascertaining current global trends in the industry.

3.5 Data Collection Methods

Documentary review; this is a research technique by which the legal researcher sits at a desk and reads and analyses documents[47]. Desk research involves the collection of data from already published sources. This also allows the utilization of government published data[48]. This includes legal position on Alternative Dispute Resolution in the oil and gas sector; A legal analysis for the best method of dispute resolution in the oil and gas sector in Uganda.

[47]Hannah Bradby,‖ Review Essay; Qualitative Methods and Health Research‖, Qualitative Research, 5.4(2005), 543-46, <https://doi.org/10.1177/14687941050574595.

[48] R.B. Johnson, –Mixed Methods of Research Design and Analysis with Validity: A Primer; 2014< http://www.phweingarte.de/zera/Prof.Dr._Burke_Johnson_Mixed_Methods_PRIMER.pdf>

3.6 Data Collection Tool

The Data from this Study was collected using a documentary Checklist. This tool lists all the necessary documents to the study to be reviewed by the researcher. The List includes; Regulations, Laws international instruments, Conventions, Statutes National Policy and Laws, Scholarly Journals Articles on the Subject Matter and Reports from Recognized Alternative Dispute Resolution Practicing institutions Like the London Court of Arbitration, international Chamber of Commerce and the international Centre for Settlement of investment Disputesamong other.

3.7 Data Management and Analysis

This was done according to identified key study parameters and content categorization in view of the research objectives. Information gathered was sorted in view of its relevance to the research objectives and questions.

3.8 Ethical Consideration

As recommended by Creswell researchers[49]there is need to respect the sites of research. The researcher in this case will:

1. Ensure that the results of the findings will not be misused to the advantage of any Entity.
2. Acknowledge all authors and manuscripts used and referred to in the study.

[49]Creswell, J. W. (2009). Research Design: Qualitative, Quantitative, and Mixed Methods Approaches (3rd ed.). Thousand Oaks, CA: Sage Publications.

3.9 Limitations of the study

The researcher encountered the following limitations in the process of study: time constraints due to the tight schedule within which to undertake the research. Financial shortages; the study involved large sums of finances especially where it related to subscription payments to recognized forums as is the case with every study worthy of its value.

Conclusion

This Study is purely a doctrinal study following a black letter approach. It was conducted in a library using documentary review or relevant Journal articles, Conventions and National laws, reports among others relating to the subject matter. Analysis of the study was done systematically in accordance with study objectives stated in Chapter one.

CHAPTER FOUR

4.0 Laws Governing Dispute Resolution in the Oil and Gas Sector in Uganda

4.1. Introduction

This chapter covers the different laws in Uganda that have been passed for purposes of resolving disputes. It is important to note that disputes in Oil and Gas do not differ much from disputes arising from other spheres of society. As such, the general mechanisms of dispute resolution equally apply to the Oil and Gas sector. This chapter will analyze both the general mechanisms employed in resolving disputes and the others that are specific to the Oil and Gas Sector.

There are two kinds of dispute resolution. The usual method is through the courts of law as set up by the supreme law or quasi-judicial bodies set up for a similar purpose. The other method is through Alternative Dispute Resolution which is not as technical as courts of law.

4.2 The Constitution of the Republic of Uganda, 1995, as amended

The Constitution is the supreme law and all other laws derive their legitimacy from it.[50] 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. It states that every person accused of a wrong must be accorded a public and speedy trial.Although this seems to speak more to criminal law, the courts have demonstrated that the aspect of a fair hearing applies to both criminal and civil law. Part of the process of resolving disputes is allowing both parties tobe heard on their merits. This is the cardinal aim of Article 28 of the Constitution.

[50]Article 2 of the 1995 Uganda Constitution.

Further, Article 42[51] 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.

This is what is commonly known as judicial review. People have the right to contest decisions made by public bodies if they that the process of the decision making was contrary to the rules of natural justice. This is also another rationale behind dispute resolution; to ensure fairness in the settlement of the dispute.

The constitution establishes a system of courts under Chapter eight. Article 126 [52] 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. It further provides that in adjudicating casesof both a civil and criminal nature, the courts shall, subject to the law, apply the following principles

a. Justice shall be done to all irrespective of their social or economic status;
b. Justice shall not be delayed;
c. Adequate compensation shall be awarded to victims of wrongs;
d. Reconciliation between parties shall be promoted; and
e. Substantive justice shall be administered without undue regard to technicalities.

[51]Article 42 of the 1995 Constitution of the Republic of Uganda
[52]Article 126 of the 1995 Constitution of the Republic of Uganda

It is important to note that what sticks out for the Oil and Gas sector would be Article 126 (2) (d)[53]; reconciliation between parties. This is because most of the work done is either under the PSA or Joint Venture Agreements and as such, there is need to cooperate even after a certain dispute. The Courts established under chapter 8[54] have the role of ensuring that as much as possible, this is fulfilled.

4.3 The 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 Judicature Act Cap 13, Laws of Uganda generally lays out the courts provided for by the Constitution, their constitution and powers and the jurisdiction; either original or appellate that each court has. The Act also provides the scope of law that can be applied by the courts in administering justice or resolving disputes.

Section 26 of the Act[55] provides for references to Referees - the fact that court may 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;

[53]The 1995 Constitution of the Republic of Uganda
[54]Ibid
[55]Section 26 of the Judicature Act

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 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 Judicature Act gives the arbitrator or referees the same powers as the powers of the Judge of the High Court. Section 28[56] 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.

4.4 The Civil Procedure Rules SI 71-1 (as amended)

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.

[56]Ibid

4.5 The Arbitration and Conciliation Act, Cap 4, Laws of Uganda

Upon the conception of colonization, Uganda received many laws from England which were consolidated after independence. With the promulgation of the 1995 Constitution, many laws had to be modified to conform to the Constitution. Therefore, this Act was enacted to amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards, to define the law relating to conciliation of disputes and to make other provision relating to the same.

The Arbitration and Conciliation Act, Cap 4, Laws of Uganda lays out the structure of both domestic and international arbitration. It gives a scope of what can be arbitrated upon and the time frames of the same. The other parts of the Act pertain to the enforcement of international arbitral awards including awards of the New York Convention and enforcement of ICSID Convention awards.

The Act further makes provision for Conciliation[57]. It also lays out its structure and procedure and who is entitled to use it as a mechanism of dispute settlement.

The Act[58] 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.

[57]The Arbitration and Conciliation Act Cap 4
[58]Ibid

The Act[59] 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.

[59]Ibid

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.

4.6 The 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.

4.7 Uganda Model PSA

The PSA is a contract entered into by the government with the licensee or an OC for theexploration, 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 resolutions which have reproduced for easy reference.

ARTICLE 24 OF THE MODEL PSA FOR UGANDA

Dispute Resolution

Article 24.1 [60] *- 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 within one hundred and twenty (120) days, shall be referred to Arbitration in accordance with the United Nations Commission for international Trade Law (UNCITRAL) Arbitration Rules. The arbitration shall be conducted by three (3) arbitrators appointed in accordance with the said Rules. The said arbitration shall take place in London, a place agreed upon by the Parties. Judgment on the award rendered may be entered in any court having jurisdiction or application may be made in such court for a judicial acceptance of the award andan order of enforcement, as the case may be. The Arbitration award shall be final and binding on the Parties to this Agreement.*

Article 24.2[61] *- 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*

[60] Article 24 of Uganda's Model Production Sharing Agreement

[61] Ibid

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[62]. This references in London and the award given becomes enforceable between the parties. This is arbitration.

[62]Ibid

4.8 Conclusion

There are quite a number of laws that govern dispute settlement in Uganda. The Oil and Gas sector also has a specified model of settling disputes as envisaged under the Model PSA.However, the fact that a certain mode of settlement of disputes is referred to in the law does not necessarily make it the absolute best.

CHAPTER FIVE

5.0 The Different Mechanisms of Dispute Resolution in Uganda

5.1 Introduction

We have already established from the assessed laws above that dispute resolution in Uganda is by two ways; one is by way of court cases while the other is an out of court settlement. This chapter digs deeper in the modes under the out of court settlement. These include the ones provided for by the law like arbitration, conciliation and mediation and the ones that are not necessarily provided for by the law.

5.2 The Concept of Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) refers to the process of resolving disputes rather than litigation.[63]Unlike adversarial litigation, ADR procedures are often collaborative and allow the parties to understand each other's positions[64]. *Sandra Day O'Connor* a retired Justice of the United States of America, Supreme Court stated that *"The courts should not be the places where the resolutions of disputes begin; they should be places where disputes end after alternative methods of resolving disputes have been considered and tried."*

Alternative Dispute Resolution provides a confidential and alternative method of tackling legal disputes which avoids going to court.[65] Under ADR; mediation, conciliation and arbitration are

[63]Dennison &Tibihikira, Legal Ethics and professionalism: A handbook for Uganda,Globethics.net African Law 2, pg.220
[64]What is Alternative Dispute Resolution,www.Findlaw.com 8th October ,2020, https://www.findlaw.com/hirealawyer/choosing-the-right-lawyer/alternative-dispute-resolution.html 23rd November,2020.
[65]Alternative Dispute Resolution,www.Rocketlawyer.comhttps://www.rocketlawyer.com/gb/en/quick-guides/alternative-dispute-resolution 23rd November,2020.

some of the methods used to resolve disputes between individuals instead of going to court straight up.

As litigants became overburdened by the time and resources required in civil lawsuits, ADR became more and more popular. Smaller claims, in particular, became exceedingly difficult to resolve cost-effectively in court and ADR was a relatively low-cost alternative solidifying it as a preferred method to handle not only small disputes, but large ones as well. Not only were they quicker and cheaper than litigation, arbitration and mediation were seen as more creative and harmonious ways to resolve disputes.[66]

Under Alternative Dispute Resolution, the lawyer or advocate has a mandate to advise accordingly and ensure that genuine steps are taken for the dispute to be resolved amicably. This is because lawyers play a role of giving their client confidence that they are getting an equitable result or at least understanding the legal implications of what they are conceding. This is mainly under the mandate that lawyers have to provide practical and legal advice on the process and on issues raised and offers made.

In *Adamson vs. Queensland Law Society Inc*[67] it was held that whether the conduct violates or falls short of a substantial degree, the standard of professional conduct is that observed or approved by members of the profession of good repute and competency.

It was also stated that –The lawyer should put the client‘s interests first and treat the client fairly and in good faith giving due regard to a client‘s position of dependence upon the practitioner and

[66] What is ADR?,www.arbresolutions.com,21st August,2020 https://www.arbresolutions.com/what-is-adr/ 23rd November,2020
[67][1990]1 QdR 498.

the client‘s dependence on the lawyer‘s training and experience and the high degree of trust clients are entitled to place in lawyers…particularly with respect to compromise.‖

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.

Negotiation is any form of communication between two or more people for the purpose of arriving at a mutually agreeable solution. It involves parties at dispute either through a competitive or co-operative bargaining style meeting and trying to arrive at conflict resolution without the help of a third party.

Mediation means the process by which a neutral third person facilitates communication between parties to a dispute and assists them in reaching a mutually agreed resolution of the dispute[68]. The neutral third person (mediator) won‘t have that decision making power but will with the consent of the parties set and enforce the ground rules for the mediation process.

Arbitration is the adjudication of a dispute or controversy on fact or law or both outside the ordinary civil courts by one or more persons to whom the parties who are at issue refer the matter for a decision.[69] It is a process in which a neutral third party or an odd number panel of neutrals render a decision based on the merits of the case.

Early neutral evaluation is the process where the disputing parties submit their case to a neutral evaluator through a confidential evaluation session so as to consider each side‘s position before

[68]Section 3 of the Judicature (Mediation) Rules, 2013.
[69]Kaggwa David, Arbitration and the Courts, p.8.

rendering an evaluation of the case. It may take place soon after a case has been filed in court where the parties at dispute either through written comments or oral submissions meet an expert on the matter to provide a balanced and unbiased evaluation of the dispute.

Conciliation is a process whereby the parties to a dispute use a conciliator, who meets with the parties both separately and together in an attempt to resolve their differences.

5.3 Arbitration

Arbitration is defined as the adjudication of a dispute or controversy on fact or law or both outside the ordinary civil courts, by one or more persons to whom the parties who are at issue refer the matter for a decision. [70] Arbitration in Uganda is governed by the Arbitration and Conciliation Act. Uganda also ratified the New York Convention[71] on 12th February 1992 and adopted the provisions of the UNCITRAL Model Law.

Arbitration emerged as a tailor-made mechanism for the resolution of commercial disputesbefore a neutral third party (arbitrator) without reference to a court of law. Originally arbitration was a consensual procedure that required an agreement between the parties to solve their disputes through arbitration where either party was entitled to initiate proceedings.

Investor-State arbitration, however is a somewhat _asymmetrical‘ dispute resolution mechanism whereby only an investor can bring an investment claim against the host State provided that the host State gives it consent to arbitrate pursuant to the relevant international agreement. For instance, the international Centre for Settlement of investment Disputes (ICSID) Convention

[70]Tweedale A, and Tweedale K, 2007, Arbitration and Commercial Disputes, Oxford, p.34
[71] The New York Convention on the Recognition and Enforcement of Arbitral Awards.

provides that such consent to arbitrate may be given by a contract, investment treaty or legislation.

Most international investment Agreements, which include Bilateral investment Treaties, free trade agreements with an investment chapter (e.g. North American Free Trade Agreement) and other multilateral agreements (e.g. Energy Charter Treaty), provide rules enabling investors to involve claims directly against states. However, traditionally only states could have rights and duties under international law and for this reason foreign investors used to solve their disputes through diplomatic protection. International investment agreements are entered into by State parties for the mutual protection of their national investors, as third-party beneficiaries.

2015 UNCTAD statistics suggest that based on an assessment of publicly available cases, states were significantly more successful than investors on average. By the end of 2014, there were 356 investor state disputes.

Today, there is a growing consensus on the potential contribution that investment dispute settlement mechanisms can make to sustainable development. However, this is on the basis that comprehensive and recurring reforms are undertaken to ensure that the system takes account of the interests of all stakeholders.

The arbitration process has some advantages and disadvantages, when compared to public litigation. First of all it is a confidential process which can be important in disputes involving commercial secrets. On the other hand, because of the confidentiality, the disputes settled in arbitration do not gain such publicity that disputes resolved in the public litigation gain. The arbitration process usually also gives the parties the freedom to select their arbitrators. Thirdly, it is usually quicker and more flexible than public litigation. However, one other disadvantage of

arbitration is that it is normally more expensive than public litigation because of the high salary of the arbitrators.

There are two types of arbitration; ad hoc arbitration and arbitration organized in permanent nstitutions. Ad hoc arbitration is conducted independently from any influence of institutions and according to the rules chosen by the parties. In this type of process, the arbitrators are appointed on case-by-case basis usually by parties. One option is that the parties select an appointing authority who will appoint arbitrators for the proceeding. The composition of the tribunal can vary from one to several arbitrators depending on procedural rules.

5.3.1 Institutional Arbitration

Parties to a contract who wish to solve their disputes with the involvement of specialized institutions need to designate in an arbitration clause one or a few possible institutions toadminister the arbitration process. There are several arbitration institutions which provide a forum as well as procedural rules under which the arbitration proceedings will take place. ICSID has been the most prominent in the area of investor or State arbitration followed by the International Chamber of Commerce (ICC), the Permanent Court of Arbitration (PCA) and several others within their own spheres of expertise being commercial, investment and regional.

Institutional arbitration has the advantage of administrative assistance from the institution, such as a roster of arbitrators to choose from, determined rules including a standard arbitration clause, which would ensure a smooth and speedy resolution, and could be preferable unless the parties are concerned with costs.

5.3.2 Ad hoc arbitration

Arbitration is ad hoc if is undertaken without the involvement of an institution. While it is not always suitable for the long-term nature of petroleum transactions, an ad hoc arbitration has the advantage of being more cost effective than institutional arbitration. Further, institutional arbitration costs often increase in accordance with the amount of the dispute or based on the time spent by the institution and arbitrators. Significant investment disputes settled via ad hoc arbitration in the past include the Libyan expropriation cases, British Petroleum v. Libya[72], Liamco v. Libya[73], and Texaco/Calasiatic v. Libya[74].

Parties to an ad hoc arbitration may design their own rules of procedure or refer to the law of the forum under which the arbitration is being held. The law of the forum may not always be sufficient to apply to the entire proceedings. In case ad hoc arbitration is chosen, the Arbitration Rules of the United Nations Commission on international Trade Law (UNCITRAL) can be consulted. The UNCITRAL Rules provide a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship and are widely used in ad hoc arbitrations as well as administered arbitrations.

The International Investment for Conflict Prevention and Resolution (CPR) is another institution that has guiding rules for ad hoc arbitration. The scopes of provisions include management of the process by the Arbitral Tribunal and counsel without the need for the involvement of a separate administering entity. The CPR also offers some customized services such as arbitrator selection and a challenge procedure.

[72] BP Exploration Company (Libya) Limited Vs. Government of the Libyan Arab Republic 7 Sw.U.L.Rev. 68 (1975)
[73]LIAMCO Vs. The Government of the Libyan Arab Republic, YCA 1981
[74]Texaco Overseas Petroleum Company Vs. The Government of the Libyan Arab Republic 53 .L.R 389, 491-92 (1977)

Among the francophone West African countries, the Organization for the Harmonization of Business Law in Africa (OHADA) provides for ad hoc arbitration under the Uniform Act on Arbitration (UAA) Arbitration Rules. These were adopted in 1999 and apply to any arbitration whose seat in an OHADA Member State. They are generally non-imperative and the parties are free to contract around them. Despite its ad hoc nature, the existence of an arbitration agreement, impartiality of the arbitrators, and requirements for the drafting of awards are prerequisites of the procedure.

The Association of international Petroleum Negotiators drafted a Model Dispute Resolution Agreement in 2004 which may be used as an arbitration agreement inserted into the contact as part of the dispute resolution clause. The aim is to provide the option to choose a detailed or simple and short dispute settlement as the model provides alternative opt-out options and a list ofavailable institutional arbitration options. The model also includes a sovereign immunity waiver.

5.4 Mediation

Mediation is a non-binding Alternative Dispute Resolution (ADR) method. The parties to a contract in the oil and gas industry may provide for mediation in their contract or when the dispute arises, they may enter into a separate agreement to resolve the dispute by mediation. It is common for mediation to be included in a dispute resolution clause as a first step or a prerequisite to arbitration.

The mediator is not a decision maker, but a facilitator to lead the parties to a settlement. Mediation can be only binding if the parties reach a settlement agreement as an outcome. It can be a cost and time effective dispute resolution tool considering that the parties are ready to compromise. Mediation tends to be more suitable for national disputes – or at least when both

parties are from similar legal jurisdictions or speak the same language. In international disputes, the language, legal culture, and distance differences may decrease the likelihood of reaching a settlement and may increase time and costs. Where state parties are involved in the oil and gas disputes, as is often the case, there may also be a barrier to mediation arising from the _negotiated‘ character of the process causing a lack of credibility in the outcome with government officials exposed to the accusation that the deal they agreed to was inadequate or to suspicions about their motives for agreeing to it.

The mediator‘s role as a neutral, trained and skilled expert to explore the determinants of a dispute is important and although technical knowledge and understanding of the sector is advisable, it is not always necessary for the mediator to be an expert in the oil and gas industry.

Mediation is more time saving than litigation. It is a quick process that involves the coming into a mutually acceptable agreement to settle the dispute by both parties. The mediator who acts as the middleman of the disputed parties helps the parties to reflect on the benefit concerned by the parties to each other in a private and confidential manner. The whole process from the application of the mediation to the settlement usually will not take a very long time. Unlike mediation, litigation involves much cumbersome procedure. Besides the cumbersome procedure, litigation involves a lot of legal issues which take time for the court to resolve. Most of the time,a civil case in the ordinary court will take up to at least few years. So if the disputed parties were to seek for a quick resolution for their particular disputes, they should choose to utilize mediation.

Besides, mediation is also more cost saving than litigation. The charge for mediation services is lower as the time consumed for the settlement of disputes is shorter. The time-dragging trial in

an ordinary court consumes a lot of lawyer charge. Moreover, some of the mediation services provided in some countries are free of charge, particularly those provided by Malaysian Mediation Centre (MMC).

Mediation also gets the parties to reach a more mutually satisfied settlement. With facilitation of the mediator, both the parties in dispute will raise their concern about their benefit to the dispute to each other. As such, the resolution will be reached upon with compromise and the possibility not to conform to the agreement settled is lesser.

Mediation helps to mend broken relationship between disputed parties. Unlike in litigation, there is a win-win situation in mediation when there is an agreement reached. This is because the agreement is settled by compromise made by both the parties rather than the one-sided judgment made by judges in the ordinary court. In the case of a litigation involving closely related parties such as family members, relatives and employer-employee, the losing party tends to draw a clear line with the winning party. This in turn will not happen in mediation.

The disadvantage with mediation is that an agreement reached under mediation is not binding and final but merely a mutually agreed settlement made by both the parties under the facilitation of the mediator. Indeed the mediator does not provide any legal advice or any suggestion to the parties. The parties are not bound to comply with the agreement and the party who changed their mind not to accept the resolution reached may bring the dispute into litigation. This in turn defeats the purpose of mediation to help to clear out backlog of cases in the judiciary.

5.5 Conciliation

Conciliation is a form of alternative dispute resolution method in which a conciliator helps the parties to settle their dispute. The conciliator helps by identifying the objectives of the parties. It is different from arbitration in the sense there is no award at the end of proceedings.

It is different from court proceedings because the conciliator doesn‘t give judgment or a decision as is given by a court of law. It is different from mediation because in this process the conciliator actively participates in the proceeding. He conducts the proceedings himself by going to the parties and asking them to prioritize their objectives. He asks them to mention which is their firstobjective and then second and the list goes on. Similarly, he also asks the parties to let him knowthe points in which they will not be ready to shift and the points/issues in which they can be flexible. He then goes to the other party and tries to bring them on one of the objectives. He starts with minimum of concession then moves on to maximum.

So, it is different from mediation because a mediator encourages the parties to understand or take charge of their dispute instead of actively participating like this. There is similarity between mediation and conciliation in the sense that in both of the processes, there is one person who tries to settle the dispute. In both, the proceedings are confidential so a party cannot take those proceedings in any other forum. For instance as it was said earlier, the parties cannot rely on this to argue their case or substantiate their case before any other forum. It is because this is purely confidential and private. Another aspect of this is that the conciliation proceedings are not binding, which is the same as is mediation.

5.6 Expert Determination

Expert determination is also a form of alternative dispute resolution technique whereby parties submit their dispute to a person who is able to decide in accordance with his acumen. This concept is taken from olden times in which societies were classified into tribes and tribal chiefsor religious influential persons or other influential persons were taken as experts. The dispute was presented to an expert who was expected to give verdict on it

The verdict is not binding before a court of law but it holds moral authority that the parties will abide by it. In this way it is similar to the court proceedings in which both parties present their views and the matter is resolved by a decision of court which is binding. It is also similar to arbitration proceedings in a way that the decision is binding and the rules of proceedings are flexible unlike court proceedings.

The parties submit their dispute and receive verdict on their dispute. It is not as mediation proceedings in which there is no binding decision. Similarly, it is not similar to conciliation proceedings as it is binding on the parties. It is different from court proceedings because the verdict is not binding before a court of law. Similarly it is different from arbitration proceedings because its verdict is not binding before court of law as is the case for arbitration.

This process is still available in some societies of the world such as Afghanistan, tribal areas of Pakistan, India and in most of the societies it is available at family level. For instance, the decision of mum is sometimes binding for her sons/daughters though it doesn‘t have legal value in the eyes of court yet it has some force or sanction of enforcing it.

5.7 Early Neutral Evaluation

Early neutral evaluation is also a method of alternative dispute resolution in which a person acts as a neutral person and evaluates the merits and demerits of the dispute. This technique is also taken from olden times when people used to go before someone who was wise in the locality to know their position with regard to some claim or defense.

These days this is used alongside mediation proceedings so as to help the parties to evaluate the merits of their case. This is usually done by an experienced litigator who has vast experience of litigation. He gives opinion about the merits and demerits of the case. He is neutral in his opinion and this enables the parties to keep their trust in him. He doesn‘t know the parties or doesn‘t have interest in any one party at the cost of the other. He gets his fees from both parties no matter if they settle their dispute or not and this enables him to keep a neutral position and also to keep the trust of the parties.

Early neutral evaluation is different from mediation in the sense that it is direct communication of early neutral evaluator about the issues .In mediation, the parties try to sort out their dispute/issues themselves. A mediator doesn‘t comment upon the merits or demerits of a case. He is only a facilitator.

In early neutral evaluation, the evaluator deals with the merits and demerits of the case directly. It is different from court or arbitral proceedings because an evaluator only gives opinion about the merits of the case and he doesn‘t give verdict binding on the parties. Similarly, it is different from conciliation because an evaluator doesn‘t try to settle the dispute of the parties. All he does is to give an honest and neutral opinion with regard to the merits of the case of parties. In recent

times, early neutral evaluation is taken as part of the mediation proceedings. This means that it is a good technique for the resolution of disputes of commercial nature.

5.8 Mini Trial

Mini trial is also a form of alternative dispute resolution technique. This is widely used in these days in the commercial world. In this, the parties to a dispute select one representative from each party to sit on the panel. There is also one neutral person who is independent and who is appointed with mutual agreement. Then parties file their briefs. This is followed by recording of evidence and finally a verdict which is binding on the parties.

This is different from arbitration proceedings because this doesn‘t end in an award. There is a binding judgment which is the same like in court but with the consent of parties after settlement is reached. The value of that judgment is the same as the value of an award in the eyes of courts. It is different from mediation as this involves a process that goes for adjudication of dispute. In other words, the panel sits as adjudicator rather than as mediator. It is also different from conciliation on the same ground that the panel in mini trial sits as adjudicator and not as conciliator.

Moreover, the number of people on the panel is more than the number of people involved in the mediation or conciliation proceedings. Similarly, there is a difference in the way the proceedings are conducted in mini trial and mediation, conciliation or early neutral evaluation. Another important aspect is that in mini trial the evidence is heard by a panel which is followed by settlement proceedings. The parties try to convince each other regarding the merits of the case. Now, both parties know the strengths and weaknesses of their case. They are encouraged to settle the dispute by the neutral member of the panel. If an agreement is reached then that agreement is

binding and if not then he tries to settle by convincing the parties. If no agreement is reached at all then the proceedings automatically expire within thirty days. Like mediation and conciliation,the proceedings in mini trial are confidential. In other words, these proceedings cannot be used atany forum to substantiate any point.

5.9 Adjudication

Adjudication is a process in which parties take their dispute which involves question of law before some designated forum. It is also a technique of alternative dispute resolution. It isbecause the matter is not taken before a court. Adjudication also takes place before courts of law and it also takes place before an appointed forum. For instance, for the resolution of insurance dispute, some kind of adjudication forum is created to resolve the insurance disputes. Similarly, for disputes regarding construction contracts there is one forum that resolves those legal disputes.

In some countries, there is a forum called ombudsman which resolves such disputes. These disputes include disputes such as electricity bills etc. These are alternative dispute resolution because they are not adjudged by courts. The decisions are binding on litigants. It is different from mediation because the decisions are binding. The adjudicator doesn‘t facilitate dispute settlement but gives binding decisions. It is not judicial settlement because it is not strict process as is court.

5.10 Negotiations

Negotiations are the least formal of the proceedings. Negotiations take place regularly between two companies when conducting business. Negotiations could arise over shipping or billing terms, prices, terms of service, durations of a contract, or any other aspect of the business transaction. Negotiation takes place between the two parties in the absence of a third neutral

party. Without the need to pay a third party, the costs are only the time of the personnel devoted to the negotiations.

The two-party involvement limits outside influence and allows parties to focus on the problem solving at hand. Potential disadvantages to negotiation include lack of motivation by the parties involved to come to an agreement in a reasonable timeframe. If opposing-party viewpoints are highly varied from one another, reaching a conclusion without assistance becomes difficult or impossible. In complex disputes, such as collective bargaining agreements, the assistance of a third party can help to reach a solution to the problem. To establish and renew collective bargaining agreement, negotiations are a necessary factor.

An example includes the National Football League and the National Football League Players association meeting to establish a new collective bargaining agreement before it expires. The parties began with negotiations between representatives of each of the organizations. The agreement was complex and included how to divide the league‘s $9 billion dollars in revenue, whether or not to expand the number of games, and a new salary scale for rookies. The meetings progressed and no new settlements had been reached. As the deadline approached, the two organizations agreed to mediate to see if a third party could help them reach a decision. The NFLPA and the NFL owners agreed to mediate with the Federal Mediation and Conciliation Service, an independent U.S. government agency, for seven days. No decision was reached as a result of these meetings.

5.11 Hybrid Processes in ADR

A hybrid dispute resolution process combines elements of two or more traditionally separate processes into one. The most common hybrid process is mediation-arbitration, or "med-arb",

which uses the same individual or dispute resolution forum first as a mediator, and then if necessary, as an arbitrator. This is distinguished from the common circumstance where more than one type of dispute resolution procedure is provided for in sequence, such as a grievance procedure that provides first for negotiation, then mediation, and finally for arbitration where each of these processes is carried out by a different person.

Med-arb or other hybrid processes are generally used where parties believe a given dispute is likely to require elements of two or more processes, and/or where they believe that an individual or forum is available who has the skills necessary to enact more than one process with aconsequent saving of time and expense.

Med-arb was first used in US public-sector collective bargaining particularly for public safety groups (e.g. police and fire departments) where strikes are generally illegal. In many states, the state legislature has called for a hybrid system to resolve these disputes peacefully and efficiently.

Usually such systems call for mediation, after which either party can compel arbitration if the mediation effort fails to reach an agreement. The mediation in this type of case is often actually the second attempt at mediation following an earlier "pure mediation" effort by the labor-management mediation agency of that state.

Such "duplicate mediation" has two advantages: first, neutrals that practice as mediator- arbitrators are sometimes able to apply skills that agency neutrals may not possess to the same degree (though often, the agency neutrals are themselves highly skilled). Second, and more important is that a mediator-arbitrator's suggestions carry more weight than those of a "pure mediator," even when the suggestions are similar or identical. This is because the mediator-

arbitrator may have the final decision if the case is unresolved. This gives the "neutral" more perceived power even in the mediation and most certainly in the arbitration phase of the process.

Med-arb in these contexts has generally been considered effective as illegal strikes are very rare, and most parties believe the process works effectively and promptly.

However, parties sometimes object to the amount of power a mediator-arbitrator has. Typically, arbitrators never meet with the parties separately but only meet together where both sides can hear (and rebut) all the arguments the other side makes. In addition, arbitrators avoid reaching any conclusions or dropping hints as to the decision until the last argument has been fully expressed.

This mode of working is greatly different from the typical working methods of a mediator which usually include meeting privately with each party and at times, trying to persuade a party to make a particular concession or to try another approach to their negotiations. If the mediator is also an arbitrator, such pressure can take the form of an implied threat of an adverse decision if one party is seen as being "unreasonable."

In such cases, the losing party may believe (rightly or wrongly) that the decision was influenced by private conversations between the mediator and the opposing party. Concerns about such issues have led some jurisdictions to opt for mediation followed by separate arbitration instead ofmed-arb as the public service dispute resolution procedure of choice.

Other hybrid combinations of role also exist. The combination of the roles of facilitator and mediator is so common that many believe that the role of a mediator can hardly be fulfilled without taking on a facilitator's role as well — though the converse is not true. And it is quite common for a judge to take on the role of a mediator. While this inherently triggers the same

potential concerns as mediation-arbitration, it is indisputable that many cases have been resolved and often to the satisfaction of all parties, when a judge has engaged in adroit and sensitive intervention along these lines.

Parties who understand the risks inherent in mixing the roles of a neutral are in a much better position to make creative uses of available neutral talents, a hallmark of the flexibility that conflict resolution claims as one of its virtues as a field. There is probably no pair of neutral functions that has not been combined in one individual at some point, many times to the benefit of all parties. And there are subtleties in the distinctions between the common combinations. For example, many see a meaningful distinction between a mediator-arbitrator and an arbitrator- mediator. In this instance, the distinction in which role the neutral was primarily selected for. Thus describing a neutral as an "arbitrator-mediator" typically sets up an expectation that the case will probably be pursued to the point of a decision by an arbitrator but with the parties willing to mediate if the circumstances seem favorable. A mediator-arbitrator is hired by the parties with the expectation that the focus will be on mediation, with arbitration reserved as a lastresort.

Other forms of hybrid include the "Special Master‖ in such major issues as the September 11 Victims' Compensation Fund or the "Black Farmers' Case" (involving tens of thousands of farmers who sued the U.S. Department of Agriculture over decades of racial discrimination in its lending policies). Both of these are highly responsible functions that include elements of a mediator, an arbitrator, and a magistrate.

Meanwhile, fact-finding, summary jury trials, mini-trials, and private judging have also been described as hybrid processes although in these instances the term "hybrid" refers more to a

process that exists between two more classical neutral roles than to one in which the neutral is asked to "wear two hats."

Although the latter three processes are more commonly used in more limited or "tractable" conflicts than they are intractable conflicts. Fact-finding is used extensively in intractable conflicts (witness the 2002-2003 U.N. effort to confirm or deny Iraq's asserted stockpile of weapons of mass destruction) and there are occasions where other hybrid processes might be useful as well.

5.12 Conclusion

It can be concluded from the above analysis that Alternative Dispute Resolution provides numerous fora to be undertaken to resolve a dispute. Parties to a dispute will be free to utilize any procedure that they find convenient for them and their settlement.

CHAPTER SIX

6.0 Dispute Resolution in the Oil and Gas Sector of Other Countries

6.1 Introduction

This discussion analyzes the mode Nigeria has used to tackle disputes. It compares how these different mechanisms have yielded a great understanding between the parties or shattered the same.

6.2 Nigeria

The Niger Delta region of Nigeria, located in the south-south zone of the country is the region that produces oil – the lifeline of the Nigerian economy. Since 1956 when oil was discovered in commercial quantity in Oloibiri in present day Bayesa state, Hydrocarbon resources have been the engines for Nigeria‘s economy as oil provides 95% of Nigeria‘s foreign exchange earnings and 80% of the government‘s budgetary revenues. [75] According to the Nigerian National Petroleum Company, Nigeria‘s oil production accounts for 8% of the Organization of Petroleum Exporting Corporation‘s (OPEC) total daily production and 3% of the world‘s volume.

However, the discovery of oil which was expected to improve the lot of the communities where it is sourced has become a curse rather than a blessing because of oil exploration activities and its attendant hazards such as air and water pollution. This has led to the indigenous people demanding compensation as well as control of the oil wealth. This demand has led to a confrontation between activists and Multinational Oil Companies operating in the region as well

[75]Davis, James 2010. Getting it right: Searching for the elusive solution in the Niger Delta. Cornell International Affairs Review, 4 (1)

as the Federal Government. The struggle which started as a peaceful protest metamorphosed into armed conflict after the killing of a renowned activist and playwright in the region, Ken Sara-Wiwa and eight other Ogoni men. The new wave of protests after this has included the abduction of foreign oil workers, bombing of oil installments and destruction of lives and property.

In 2019, the Federal Government interceded with an amnesty programme under former President Musa Yar'adua and his deputy, Goodluck Jonathan. The amnesty which was proposed to last for five years required that repentant militants surrendered their arms in return for unconditional national pardon.

This exercise witnessed a total of 26,808 militants surrendering their arms and ammunition and being granted amnesty which involved co-opting or integrating them into the society as well as training them. [76] While amnesty lasted, there was some reprieve as militants sheathed their swords. However, there has been recourse to arms in the region in recent times as new militant groups emerged in 2016 with various demands.

While the new names that emerged this time differ from the past ones, there is no doubt that this was old wine in new bottles. The new militants are still insisting on resource control andbombing of oil installments which are re-immersing the country in conflict once again. The Federal Government in its bid to check this has been returning fire for fire by constituting a military operation code-named operation _Crocodile Smiles' which the militants and many analysts feel is not the answer to the problem of conflict in the region.

Conflicts and insecurity are prevalent in the Niger Delta region of Nigeria comprised in the nine states Abia, Akwa-Ibom, Bayelsa, Cross River, Delta, Edomo, Ondo and Rivers. About 31

[76]Ajodo-Adebanjoko, Angela 2016. Assessing amnesty programme in the Niger Delta in the face of renewed militancy in the region.Nasarawa Journal of Political Science, 4 (1), pp. 150–168.

million people live in the region which is renowned as one of the World‘s ten most important wetland and coastal marine ecosystems.

The Niger Delta is rich with a diverse mosaic of ecological zones, five of which are theMangrove Forest and Coastal Vegetation Zone, the Fresh Water Swamp Forest Zone, the Lowland Rain Forest Zone, the Derived Savannah Zone and the Montane Zone. The Niger Delta is also the location of massive oil deposits which have been extracted for decades by the government of Nigeria and by Multinational Oil Companies (MNIOCs).[77]

Since 1970, the country has earned at least $300 billion from energy development and in 2005 it made $450 billion. With about 40 million barrels of proven oil reserves, it currently produces 2.4 million barrels of oil per day, which constitutes about 90% of the government‘s revenue and 95% of the country‘s foreign exchange earnings.[78]

Nigeria is West Africa‘s biggest producer of petroleum and the sixth largest supplier of oil in the world, thanks to oil from the Niger Delta. Oil wealth has been instrumental to Nigeria‘s emergence as a leading player in world and regional politics. Specifically, Nigeria has been playing a leading and dynamic role in African politics as a member of several regional organizations, such as the Africa Union (AU) and the Economic Community of West African States (ECOWAS) and an active role in global politics under the United Nations. With the oil boom in the early 1970s, Nigeria began to assert her influence around the globe and to date whatever influence Nigeria has, it‘s credited to the discovery and exploration of oil.

[77] Ajodo-Adebanjoko, Angela and TakimOjua 2013.An assessment of Niger-Delta crisis on Nigeria‘s external relations - From 1992–2008. nternational Journal of Humanities and Social Science, 3 (8), pp. 179–192.
[78]Ajodo, Angela 2012. Niger Delta crisis and Nigeria‘s external relations from 1992–1998: An assessment. Ph.D. thesis, University of Abuja.

However, the region which bears this economically important oil has been enmeshed in conflicts for more than four decades – owing to the negative impact of oil exploration. The region is a tale of poverty, squalor and gross underdevelopment in the midst of plenty due to environmental degradation which has affected the people's agricultural means of livelihood.

The effect of oil spills and gas flares has been death to aquatic lives and waste to farm lands. It is on record that more gas is flared in Nigeria than anywhere else in the World.[79] It is also on record that the oil industry in the Niger Delta is one of the worst cases in the world of gas flaring.Nigeria is the second largest offending country, after Russia, in terms of the total volume of gas flared and the resulting emission of about 70 million tons of Carbon dioxide a year, higher than the emission in Norway.[80]

In the case of oil spills, Nigeria has the highest number of oil spills in the world. Between 9 million and 13 million barrels of oil have been spilled in the Niger Delta although the Department of Petroleum Resources (DPR) puts the amount of petroleum spilled in the area between 1976 and 1996 at 1.8 million out of a total of 2.4 million.[81] A UNDP report states that more than 6,800 spills were recorded in the area between 1976 and 2001 while the Nigeria National Petroleum Company (NNPC) places the quantity of petroleum spilled into the environment yearly at 2,300 cubic meters, with an average 300 industrial spills annually. The World Bank however believes that the amount of oil spills could be ten times higher than the officially released figures. Erosion, canalization intra- and inter-communal conflicts between

[79]Nore, P.C. and T. Turner 1980.Oil and class struggle - London, Zed Books.
[80]Worgu, S. Owabukeruyele 2000. Hydrocarbon exploitation, environmental degradation. Dissertation presented January 2000 at Lund University, Sweden.
[81] Supra note 25

host communities are also some effects of oil explorations in the region. This has led to protests by the indigenous people, leading in turn to full blown conflicts.

Conflicts in the Niger Delta have been occurring as far back as the pre-colonial period and the early 1960s when there were protests against the marginalization of the region. In the early 1990s, there were also non-violent protests in Ogoni land to protest against the degradation of the environment by Oil companies. After these series of uprisings, a new wave of protests characterized by militancy began in 2003. Violence during this period grew out of the political campaigns in 2003.

As they competed for office, politicians in Rivers State manipulated the Niger Delta Vigilantes (NDV) led by Ateke Tom, and the Niger Delta People's Volunteer Force (NDPVF) led by Alhaji Asari Dokubo and used these groups to advance their aspirations often rewarding gang members for acts of political violence and intimidation against their opponents. [82] This eventually witnessed the emergence of other militant groups such as the Movement for the Emancipation of the Niger Delta (MEND) and the Niger Delta Liberation Front (NDLF) which unleashed mayhem on the region. This introduced militancy into the region which was characterized by armed attacks, bombing of oil installments and hostage taking particularly of foreign oil workers thereby ushering in a Hobbesian Niger Delta.[83] For several years, the region was characterized by insecurity and at the height of the crisis, the situation was dreaded by Nigerian citizens and foreigners alike. As a result, many people fled their communities and many foreign businesses were relocated to their home countries.

[82]Bekoe, Dorina 2005.Strategies for peace in the Niger Delta.Peace Brief, United States Institute of Peace.
[83]Ibeanu, Okechukwu 2006. Civil society and conflict management in the Niger Delta: Scoping gaps for policy and advocacy. CLEEN Foundation Monograph Series No.2. Lagos, CLEEN Foundation.

Amnesty represented an opportunity to stabilize the region for constructive conflict resolution negotiations. It was not the first time that an amnesty imitative had been put forward to resolve the violence in the region, but this time it was an offer backed with solid proposals for the necessary disarmament, demobilization and reintegration of the region's militants (Davis 2010). Despite this, however, the program was not able to address regional violence, largely due to the lack of attention to the peculiar type of conflict in the Delta and the issues that gave rise to it. Thus, in order to fully appreciate the task of conflict resolution there, it is important to look at past attempts at conflict resolution in order to consider ideas for the future.[84]

Scholars are unanimous in their views that the end of the Cold War and economic globalization in the 1990s have had a significant impact on warfare globally and that the search for appropriate theories to explain this has contributed to the growing debate on the importance of natural resources as drivers of violent conflicts[85]

6.3 Theoretical Concept of the Conflict

Empirical studies have also shown that natural resources underlie territorial struggles which have been the most prevalent form of conflict all through history.[86] Extant literature on conflicts, particularly in Africa suggests that an overwhelming percentage of these conflicts are resource-based.[87]

[84] Supra note 22

[85]Kaldor, Mary 1999. New and old wars: Organized violence in a global era. Cambridge, Polity Press; Duffield, M. 2001. Global governance and the new wars: The merging of development and security. London, Zed Books; seealso; De Soysa, ndra 2002. Paradise is a bazaar? Greed, creed, and governance in civil war, 1989–99. Journal of Peace Research, 39 (4), pp. 395–416.

[86] Alao, Abiodun 2007. Natural resources and conflict in Africa: The tragedy of endowment. Rochester, NY,University of Rochester Press

[87] Blench, Roger 2004. National resources conflict in North-Central Nigeria: A handbook and case studies. Cambridge, MallamDendo Ltd; see also, De Soysa, supra note 31

According to a recent United Nations report in Sylvester (2012), in the last sixty years at least 40% of civil wars on the African continent have been connected with natural resources. Even in the natural sciences, there is a consensus that competition over scarce natural resources is one of the key drivers of violent conflict within and across species.[88]

Similarly, studies by the World Bank (2003) and others have shown that countries whose wealth is largely dependent on the exportation of primary commodities (Nigeria, Sudan, Chechnya, Liberia, Indonesia and Angola for instance) are highly prone to civil violence, and that those with oil and natural gas are the most conflict prone.[89]

Nigeria is the 12th largest producer of petroleum and it's the 8th largest exporter worldwide. Resource-related conflict in Nigeria revolves around oil with about 95% of violent conflict in Nigeria since 1997 being resource-related.[90] Studies also found that the fight for resource control strengthens the segmentation around already existing ethnic or linguistic cleavages thereby escalating conflict.[91] Against this background, this work adopts a combination of eco-violence and psychological primordial theories.

Eco-violence, also known as environmental conflict, theory was developed by Homer-Dixon (1999:30) in his attempt to explain the causal relationship between natural resource endowment and the outbreak of violent conflict. According to him, decrease in the quality and quantity of renewable resources act singly or in various combinations to increase the scarcity, for certain population groups, of vegetation, farmland, water, forests etc. This scarcity of ecological

[88]Bhattacharyya, Sambit 2015. Natural resources and conflict in Africa: isolating facts from fiction.
[89]Bannon, an and Paul Collier 2003.Natural resources and violent conflict options and actions.Washington, D.C., World Bank.
[90]Kishi, Roudabeh 2014. Resource-related conflict n Africa.
[91]Gleditsch, Nils P. and HenrikUrdal 2002.Ecoviolence?Links between population growth, environmental scarcity and violent conflict. Journal of international Affairs, 56 (1), pp. 283–302, see also; Gurr, Ted R. and Barbara Harff 1994. Ethnic conflict and world politics. Boulder, CO, Westview.

resources can reduce economic productivity, both for the local groups experiencing the scarcity and for the larger regional and national economies. Consequently, the affected people may migrate or be expelled to new lands … while decrease in wealth can cause deprivation conflicts.[92]

The central argument of the theory is that declining availability of renewable natural resources, which results in competition over scarce resources engender violent conflict.[93] This view was expressed by Kofi Annan[94] when he stated that ‗environmental degradation in forms such as desertification, resource depletion and demographic pressure exacerbates tensions and instability.

Michael[95] also noted that competition over the control of valuable oil supplies and pipeline routes has emerged as a particularly acute source of conflict in the 21st century. With the demand for oil growing and many older sources of supply (such as those in the United States, Mexico, and China) in decline, the pressure on remaining supplies, notably those in the Persian Gulf area, the Caspian Sea basin, South America, and Africa is growing ever more intense

This is seen from competition in Africa over the revenue generated from scarce natural resources which has led to violent conflict in Angola, the Democratic Republic of the Congo, Rwanda, Sudan and Nigeria.[96] The foregoing aptly describes the situation in the Niger Delta where oil exploration activities leading to environmental degradation such as shortage of farmlands, death of aquatic life, air and water pollution, oil poisoning causing respiratory ailments and destruction

[92]Homer-Dixon, Thomas F. 1999. Environment, scarcity, and violence. Princeton, Princeton University Press.
[93] Ajaero, C.K., A.T. Mozie, .C. Okeke, J.P. Okpanachi and C. Onyishi 2015. The drought-migration nexus implications for socio-ecological conflicts in Nigeria. Mediterranean Journal of Social Sciences, 6 (2), S1, pp. 470–478.
[94]Annan, Kofi 2006.Progress report of the secretary general on the prevention of armed conflict. Agenda item 12, 16th Session of the General Assembly, A/60/891
[95]Klare, Michael T. 2001. Resource wars: The new landscape of global conflict. New York, Henry Holt and Company.
[96] Supra note 34

of mangrove forests, often without adequate compensation, have resulted in conflict. This was why the late environmentalist, Ken Saro-Wiwa, lamented that the people of the region faced extinction in what he described as an ecological war.[97]

Psychological/primordial theorists, on the other hand, are of the view that humans have a deep-rooted psychological need to dichotomize and to establish enemies and allies, which leads to the formation of ethnic and national group identifies and behaviors. How a group perceives itself and its relationship with those outside the group determines whether their relationship will be based on cooperation, competition or conflict.[98]

Usually those within the group are regarded as better than those outside, and this leads to _me-you‘, _we-they‘ _insiders-outsiders‘ and _minority-majority‘ sentiments. In the Niger Delta, conflicts are generated by grievances about natural resources (which border on demands for ownership of the resource concerned), the distribution of resource revenues and about environmental and social damage caused by extracting the resource.[99]

In Nigeria, the Federal Government is the one responsible for resource allocation and control but conflict has arisen over the most appropriate revenue sharing formula with the Niger Delta people who demand that a special proportion be given to them due to their oil richness – just as it was done for the north when agricultural produce was the mainstay of the economy.[100] This demand has however been refused by Nigerians in the rest of the country and by some of the leaders.

[97]Na‘Allah, N. 1998.Ogoni‘s agonies: Ken SaroWiwa and the crisis in Nigeria. Trenton, NJ, African World Press.
[98]https://reliefweb.int/report/nigeria/towards-ending-conflict-and-insecurity-niger-delta-region
[99]bid
[100]heriff, Ghali Ibrahim, Sadeeque Abba and FarouqBibi 2014. Resource based conflicts and political instability in Africa: Major trends, challenges and prospects. International Journal of Humanities, Social Sciences and Education, 1 (9), pp. 71–78.

The result was the above-mentioned primordial sentiments of group versus group which led tothe creation of ethno-nationalism-identities.[101] We see this in the confrontation between foreign oil companies and local communities in the Niger Delta and between the Niger Delta people whoview themselves as minorities being marginalized and oppressed and the _majorities in the other parts of the country that do not produce oil but reap the benefits of revenue allocation. Consequently, there have been violent agitations in the form of militancy and a call for secession by the Niger Delta buttressing the argument of Bannon and Collier[102] that violent secessionist movements are statistically much more likely if a country has valuable natural resources, especially oil.

Efforts by the Nigerian government to address conflicts in the Niger Delta:

Various efforts, beginning even before independence, have been made by the Federal Government to end the conflicts in the region. In 1957, the government established the Willink Commission to look into the problems of the minorities and this Commission acknowledged the utter neglect of the region and among other proposals recommended the creation of the Niger Delta Development Board (NDDB). This Board could not achieve its aims for many reasons, oneof which was the fact that it headquarters were located in Lagos, far from the problem area. Withthe creation of twelve states in 1967 and the establishment of the Niger Delta River Basin Authority (NDRBA), the NNDB became obsolete. In the second republic, a 1.5% Federation Account for the development of the Niger Delta region was set up for the oil producing areas, but

[101]Kasomo, D. 2012. An assessment of ethnic conflict and its challenges today. African Journal of Political Science and international Relations, 6 (1), pp. 1–7.
[102]Bannon, and Paul Collier 2003.Natural resources and violent conflict options and actions. Washington, D.C., World Bank.

because of the constraint of operating from its secretariat in Lagos, it was not able to achieve its purpose.[103]

In spite of recurrent failures, and in order to show its commitment to ending the crisis and ensuring the development of the area, the Federal Government established some other Commissions such as the Oil Mineral Producing Areas Development Commission (OMPADEC) which was in operation from 1992 to 1999. OMPADEC was set up by the Ibrahim Babangida Administration under the chairmanship of Chief Albert Horsefall.

Like its predecessors, it failed to achieve its mandate owing to official profligacy, corruption, excessive political interference and lack of transparency. After this, the Niger DeltaEnvironmental Survey was set up in 1995, followed by the Niger Delta Development Commission, established in 2000 by President Olusegun Obasanjo with a vision _to offer a lasting solution to socio-economic difficulties of the Niger Delta Region' and a mission _to facilitate the rapid, even and sustainable development of the Niger Delta into a region that is economically prosperous, socially stable, ecologically regenerative and politically peaceful'.[104]

The government also put in place other mechanisms such as the Task Force on Pipeline Vandalism in April 2000 operated by the Nigeria Police Force in collaboration with the NNPC (Niger Delta Development Commission 2001). Similar task forces were also set up by the navy, army and State Security Service (SSS) in various states of the Niger Delta.

In Delta state, the government passed a law in August 2001 banning militant groups blamed for the disruption of oil activities in the state. The Special Security Committee on Oil Producing

[103] Supra note 44
[104]Niger Delta Development Commission (NDDC) 2000. Niger Delta Regional Development Master plan. Port Harcourt, NDDC.

Areas was also set up by the Federal Government in November 2001 to address the prevailing situation in the oil producing areas. Other efforts include the convening of the first Niger Delta peace conference in Abuja in 2007, a Joint Task Force (JTF) in 2008, and a Technical Committee made up of stakeholders and the Niger Delta ministry in 2008.

Amnesty and post-amnesty era: Following criticisms of the military option, especially when it became obvious that the use of force by the JTF was aggravating rather than resolving the conflict, an amnesty program was set up by the Federal Government on 25th May 2009 under the leadership of former president, Umar Musa Yar'Adua. Amnesty was the Federal Government's effort towards bringing enduring peace, security, stability and development to the region.

6.4 Conclusion

Nigeria was one of the earliest countries in Africa to discover the resource of Oil. Since this discovery, Nigeria has struggled with conflict and this has been majorly between the IOCs or the State with the Communities where the resource was discovered. Failure to resolve the disparities led the disputes to escalate into armed conflicts and the effects exist to date.

Therefore, Alternative Dispute Resolution provides an opportunity to nip these disputes in their buds. The failure to effectively curb them has proven catastrophic for Nigeria, and the same could befall Uganda if no lessons are picked.

CHAPTER SEVEN

7.0 Summary of Findings, Conclusion and Recommendations of the Study

7.1 Introduction

This chapter concludes the study. It covers the summary of the findings, conclusion and the recommendations made following those discoveries.

7.2 Summary of the Findings

This research found out that the nature of oil and gas is one that is wide. As an industry it covers very many areas of the economy and the social structure. It is concerned with the community; the people who are affected by the work it does. This is because the industry must acquire land or work side by side with the communities in order to extract oil. In this process, the industry must be careful to establish a working relationship between themselves and the communities concerned.

The oil and gas industry also concerns the environment and its sustainability. This research found that the work carried out by the oil and gas sector has a direct impact on the well-being of the environment. Poor working mechanisms could potentially harm the environment. The industry can pollute air, land and water bodies thereby choking the surrounding environments of their existence and well-being.

The industry is also concerned with the welfare of its own workers. It must be able to respect and uphold their health and safety while at work or risk facing court cases that will usually require compensation.

This research has also found that the Oil and Gas sector is comprised of numerous contracts that must exist to set the project into action. These contracts are principally between the IOC and the state that owns the resource. They can also be contracts between the IOCs and different subsidiary companies whose role is to carry out certain activities that the IOC could not carry outon its own.

This research also found out that oil and gas mining is a venture that takes up a long amount of time. The bringing of oil to fruition can take years of hard work and as such, there is a lot of upfront investment that must be made at early stages. This investment can only be regained at theend of the exhaustion of the project. This is why the sector is very sensitive to changes in laws and taxation regimes as we know them. if these changes occur to the sector without rightful insurance, it becomes difficult to see the possibility of reaping from the sector.

The exploitation of Oil and Gas has extensive bearings upon the Communities where the oil is situated. The settlers in the Albertine region have so far been affected by the exploration stages of production. Some have been asked to relocate, with or without compensation. Some have been resettled to other parts in the country for purposes of exploration. This is because of the effects the processes of the mining could potentially have on their health and the environment at large.

The environment and climate are usually not spared in this too and as such, many measures must be put in place to preserve the environment as much as is possible during these processes of exploitation of the resource. These measures include the passing or updating of laws concerned with environmental management, and ratifying of international instruments that protect the same.

Also, the production of Oil undergoes different stages of production. The Upstream which entails the exploration and drilling of the oil; midstream which is concerned with transportation of this

oil to refineries for purifying; and then downstream which is concerned with the marketing and sale of the product. All these processes will in essence require a lot of contracts with many different organizations and many subcontracts as well. Some are straight up necessary; others arerequired by the law.

All these factors; numerous contracts, upfront investment, long life span, sensitivity to change in laws and tax regimes, climate and community impact and different stages of production; increase the chances of disputes arising indeed, any of the mentioned factors has led to disputes that have required settlement.

7.3 Conclusion

Uganda is gradually moving away from the traditional definition of litigation being more successful than ADR, but more needs to be done. ADR can also be cost-effective as well as financially and mentally satisfying, just as the lawyer's stock in trade is his time for which he lavishes in his bills following court proceedings. More and more business concerns are opting for ADR, particularly arbitration and mediation, to settle their disputes as opposed to traditional litigation in the Court.

This is essentially because they would rather protect their business contacts, reputations and interests rather than severe them through exploring lengthy and embarrassing litigation. However, in the same vein, warring parties that are advised to opt for ADR should not be led to believe that this option is out of compulsion by Court or any quasi-judicial structure, but should freely appreciate the benefits that come with it.

Because of its benefits over litigation, arbitration has gained popularity over time among the business community. One of the most excellent advantages of arbitration over litigation is its

transnational applicability to global disputes with limited or no intervention from national courts, thus improving the confidence of the parties in seeking justice in the best possible way.

Furthermore, it was observed that its intent and the relative ease of compliance of arbitral awards worldwide are among the primary advantages of international arbitration. Countries and various regions around the world have therefore begun to advocate international arbitration as the best approach to dispute settlement in international disputes. The creation of arbitration structures /nstitutions across the continent is part of this acceptance of international arbitration as one of the most effective solutions to international conflict resolution.

Nevertheless, it was found that in some parts of Uganda there were insufficient legal systems and facilities to coordinate and administer international commercial arbitration efficiently and effectively. It denied the avenues for local international arbitrators to show their skills and expertise in international commercial arbitration as disputants for foreign organizations shun the local arbitral institutions if any. African countries need to update and harmonize their arbitration laws in order to ensure that, even as African arbitration institutions develop, they can find suitable conditions for implementing international awards required. One way of achieving this is adoption of UNCITRAL Model law provisions for those countries that are yet to streamline their domestic arbitration laws in line with the Model law.

It is however important to note that whereas Alternative Dispute Resolution is the preferred mode of resolution of disputes in the oil and gas sector, the neutral players involved may actuallybe bribed to make decisions that favor the side that gives the neutral player money. This may even be worsened by the fact that in the oil and gas industry, there are usually multinational players that have a lot of money and who for the sake of not allowing their projects to stall, may

be willing to do anything to ensure that a dispute that arises is settlement as soon as possible. This may include influencing the chosen ADR process in their favor.

Lastly, the capacity of existing institutions to meet demands for international commercial arbitration issues was also described as an obstacle. Much more needs to be done to improve their ability in terms of the number and performance of arbitrators, sufficient personnel and financial resources to ensure they are up to the task of promoting international arbitration.

7.4 Suggestions for Further Study

Further investigation of how users of arbitration consider arbitration as referred to in this study, but with a larger sample, should be carried out. In addition, a study as to the degree of knowledge users have regarding the arbitral process and their obligations towards the process should be carried out.

7.5 Recommendations

This research makes three measures for a recommendation;

- Agreement-focused facilitation and mediation;

- Arbitration and conciliation; and

- Joint fact finding and/ or neutral fact finding.

Resource-related disputes are good candidates for one or combination of alternative dispute resolution (ADR) strategies. Facilitated dialogue, for example, is an effective supplement to traditional administrative, legislative and judicial procedures that often limit cooperation between competing groups, undercut creativity and sometimes lead to politically unstable

outcomes. Agreement-focused facilitation and mediation in relation to the subject of discussion therefore involves resorting to skilled facilitation and mediation services to help disputing parties resolve contentious energy resource and environmental disputes, and produce lasting agreement with minimal impact on cordial relationships between the parties. Whereas litigation may destroy long-term relationships, facilitation and mediation can build a basis for collaboration.

Facilitation is a group process that is goal-oriented. The facilitator directs traffic, elicits views, clarifies and records significant data but is usually not involved in substantive issues. Thefacilitator is frequently seen as a 'shadow leader'. His task is to stay in the background with little direct involvement in activities, but to see that the right things happen. The facilitator's task isnot to try to keep mistakes from being made, but to help the team avoid outright disaster where possible. in fact, the most important task for the facilitator is to facilitate communication in a manner that helps the teams grow and mature to the point where they are largely self-facilitating and need to call for assistance only in emergency situations. The ability of the teams to function effectively, while remaining as independent as possible from the facilitator's direct involvement determines the degree of success of the entire process.

Mediation, on the other hand, provides an opportunity to resolve disputes with an impartial mediator who helps identify and communicate the interests of the parties, identify mutual interests and manage expectations. This process is particularly useful when communication has broken down or emotions are intense. The mediation process is also confidential and relevant statutes usually protect confidentiality of the information is exchanged. The mediator does not impose a decision for the parties, but assists the parties in reaching their own negotiated and mutually acceptable resolutions, which the mediator reduces into writing for the parties to execute as a binding agreement.

Flowing from the above, employing the facilitation and mediation procedure in resolving the Niger Delta problem would involve stakeholder analysis to understand the complex interests and positions of the principal actors, as well as provide assistance to negotiating parties in the preparation of written agreements and the implementation of negotiated settlements. This procedure would be most useful in resolving disputes arising from compensation claims for land expropriation and for oil spills - two of the sorest points in the crises.

The combination of arbitration and conciliation is a well-established tradition in some parts of the world such as Germany, Switzerland, China and the United States. Linking the two techniques together creates an ADR mechanism that makes the whole a more effective force thanthe sum of the two components used individually. In combining arbitration and conciliation in the same proceedings, the concerned parties' agreement/consent seems to be the common requirement in some institutional rules. For example, the arbitration laws of Hong Kong, Singapore, India and Nigeria allow arbitral tribunals to render the settlement reached through conciliation in the course of arbitral proceedings as an arbitral award.

Joint fact-finding is a strategy for resolving factual disputes. Employing joint fact-finding means addressing a factual dispute by forming a single fact-finding team comprising experts anddecision-makers representing both sides of a conflict. The team works together in an effort to come to agreement regarding relevant facts, often in the form of scientific, technical or historical claims. In this respect, joint fact-finding is really mediation within mediation- an attempt to resolve a sub-conflict over facts as part of an effort to deal with the overall conflict. While joint fact-finding is not always a viable or appropriate option, a strong case can be made for it being the preferred method for settling a factual dispute. This is obvious from how joint fact finding

works and what can be expected of a successful joint fact-finding venture. Often, n carrying out a joint fact-finding endeavor, the benefits go beyond reaching a consensus on the facts.

Basically, members from each of the disputing parties or their representatives constitute a fact-finding committee. They are given the task of working together to discuss, debate and research the facts. This kind of forum would result in a level of interaction that is not likely to occur underother circumstances. A stage is set for open communication, which can go a long way in resolving a factual dispute, as factual disputes -like many disputes- may be the result of faulty communication. In addition to providing an opportunity for greatly improved communication, the act of agreeing to joint fact-finding ventures is a general shift away from self-serving fact- finding strategies such as 'adversary science' Joint fact-finding, therefore, addresses the problem of contradictory experts by getting the experts together as a team to respond directly to research, discuss where evidence is soft or misinterpreted, and propose new directions. For example, environmental groups sometimes employ leading scientists and academics, yet academic departments face fairly serious budget constraints, as do many environmental organizations. On the other hand, large industrial companies usually have much larger budgets, allowing them to acquire the latest scientific equipment and experts of their own. If such groups choose to work together on a specific factual inquiry, they gain access to previously unavailable expertise and equipment. In this respect, the whole may turn out to be greater than the sum of the parts or,more specifically, such a sharing of resources holds possibilities beyond reaching agreement on key conflict facts. When diverse knowledge and resources are put together in a 'think tank' environment such as joint fact-finding, there is a possibility of achieving a greater understanding of underlying scientific/technical knowledge as a whole. The prospect of actually furthering the relevant fields by sharing resources can provide additional motivation for experts under such

conditions to set aside adversarial techniques and work together. This is in addition to the potential benefit of discovering unrecognized opportunities for balancing competing interests.

Like joint fact-finding, neutral fact-finding serves as one possible way to resolve a factual dispute. Loosely defined, it is a fact-finding endeavor in which those conducting the investigation are neutral with respect to the conflict at hand. Neutral fact-finding can be employed at many levels, from small (but heated) environmental or community conflicts to large-scale political or international conflicts.

The obvious advantage of employing neutral parties in an attempt to settle a factual dispute is that neutrals are much more likely to be objective, and in being objective they are more likely to discover the real facts. Stakeholders suffer from a conflict of interests, which is the desire to gain profit for themselves conflicting with a duty to discover or embrace the genuine facts. It is difficult for any people who stand to lose or gain from conflict‘s outcome to resist employing strategic methods in information gathering and factual analyzes, and slanting information to suit their own ends. The neutral person by definition does not stand to lose or gain anything as aresult of taking one side or the other. Neutrals have no reason to initially favor one set of claims over another. Such a position allows the deciding factors to be what they should be - namely, the strength of the evidence, how well it supports certain conclusions, which facts can be agreed on and which facts are justifiably in dispute due to uncertainty or lingering unknowns.

Joint fact-finding is probably the best fact-finding method to use as a means of improving relations between conflict parties. Yet joint fact-finding is not always possible. Some conflicts become too heated, or involve a long history of violence; or the parties in the conflict may be tooscared to cooperate. Others involve drastic power differentials, such that one group cannot match

the resources or expertise of the other. This situation results in one side having a greater say in the kinds of facts that are collected, thereby skewing the results of the mission in itsfavor. Still other kinds of conflicts simply do not allow the two sides to come together, such as in the case ofan internal conflict between members or groups of the same organization in which cases it may be necessary to enroll the aid of a neutral party.

The Niger Delta crises are multi-faceted and complex. Therefore, the reactive measures discussed above are proposed to address the many faces of the disputes depending on the scale, nature of and players in the dispute. We indicated in the introductory part of this article that thereare inter community disputes besides the conflicts between the OPCs and the MIOCs/Federal Government of Nigeria. These inter-community conflicts more often than not are caused by claims over boundaries or land where petroleum is found or sites of pollution or pipelines and other oil and gas-related installments because of the opportunities for compensation payments and potential contracts. We believe that one or a combination of the dispute resolution models of neutral/joint fact-finding, conciliation, facilitation and mediation or litigation (as a last resort) could resolve inter-community conflicts rather than violence.

For the larger crisis involving the OPCs, MIOCs and the government, we advocate the reactive measures discussed above and propose the creation of a specialized institution for ADR that would handle oil and gas-related disputes arising in the Niger Delta as between communities or between the OPCs and MIOCs. We envisage here that such an institution must be completely independent, neutral and capable of funding itself. This specialized institution should be conferred with the authority to:

- maintain lists of qualified mediators, conciliators, arbitrators and oil and gas experts;

- receive requests for ADR processes in resolving disputes;

- assist disputing parties to appoint neutrals and maintain a code of ethics for them;

- set the necessary rules under which any of the chosen ADR processes would operate and fix a reasonable time limit within which to resolve the issues at stake;

- notify the public, where necessary, of complaints and the proceedings of the panels of conciliators, arbitrators or fact-finders, etc;

- render all other services necessary for the peaceful resolution of disputes.

I am mindful of the fact that a specialized institution may not be able to resolve all kinds of conflicts emanating from the energy sector. Therefore propose that whenever the reactive measures recommended above fail or where disputing parties have no inclination to use them, recourse may be had to standard litigation, but with the recommendation that such disputes be given accelerated hearings to determine the rights and liabilities of the parties before disputes degenerate into violence.

Further recommendations

There is a need to implement the mechanisms to help authoritarian institutions in Uganda to grow and show that the country has enough knowledge and expertise to arbitrate international affairs outside of the world.

While the author has noted elsewhere that government intervention can raise concerns of discrimination and undue influence .it is important to point out that government support can be received from arbitral institutions while preserving their autonomy. The government can expand

goodwill by helping institutions get on their feet through financial support and marketing, while ensuring that it does not interfere with the institutions‘ internal affairs and overall governance.

State institutions like courts can also play a critical role in helping arbitral centers resolve international institutions in the region. The assistance may be in the form of endorsing or encouraging the implementation of international and domestic arbitral awards and ensuring minimal interferences the process to gain the confidence of potential users within and outside the region. Parliament and the courts should also work together to facilitate changes of the law to reflect current developments in the world's arbitration procedure.

There is also need for putting up the relevant infrastructure which includes ICT and other physical structures. This should be coupled with enhanced training for purposes of capacity building. Training should start at school level as opposed to institutional professional courses as is the case with most countries. A good example is the CADRE institute which currently offers international commercial arbitration as a course in its Masters of Law Programme. The students who take this course can apply directly to become members of Uganda Law Society at Associate level. This not only boosts the number of persons eligible to pursue arbitration at a higher level but also helps in creating awareness in the country and the region, a powerful tool for awakening arbitral institutions and boosting the development and practice of arbitration.

BIBLIOGRAPHY

STATUTES

- The Constitution of the Republic of Uganda, 1995, as amended.
- The Judicature Act Cap 13, Laws of Uganda
- The Civil Procedure Rules SI 71-1 (as amended)
- The Arbitration and Conciliation Act, Cap 4, Laws of Uganda.
- The Judicature (Mediation) Rules SI No. 10 of 2013
- Uganda Model Production Sharing Agreement 2018

BOOKS AND JOURNAL ARTICLES

- Cristal Advocates, February 2019. Dispute Resolution in the Oil and Gas industry: The Case of Uganda, Cristal Energy Series.
- ACODE, 2011. Understanding The Tax Dispute: Heritage, Tullow, And The Government of Uganda, Infosheet No. 16, 2011 [online] available at; http://www.acode-u.org/uploadedFiles/infosheet16.pdf (accessed on 2nd July, 2021)
- https://www.tullowoil.com/media/press-releases/tullow-settles-capital-gains-tax-dispute-uganda/
- Anthony Connerty, 2002. Dispute Resolution in the Oil and Gas industries, Journal of Energy & Natural Resources Law, 20:2, 144-171, DOI:10.1080/02646811.2002.11433292 [online] available at; http://dx.doi.org/10.1080/02646811.2002.11433292 (accessed on 4th July, 2021)
- Dennison & Tibihikira, Legal Ethics and professionalism: A handbook for Uganda, Globethics.net African Law 2, pg.220

- Efraim Chalamish, 2013. Energy Disputes in Africa: An Economic and Political Context, Cambridge University Press, Proceedings of the Annual Meeting (American Society of international Law), Vol. 107interational Law is a Multipolar World (2013), pp. 123-125
- Okpan, Samuel O. and Njoku Precious C., July 2019. Evaluation Of Corruption And Conflict in Nigerian Oil industry; imperative For Sustainable Development, international Journal of Sociology and Anthropology Research, Vol.5, No.4 pp.14-26, European Centre for Research Training and Development UK
- Sola Fajana, 2005. ndustrial Relations in the Oil industry in Nigeria, international Labour Office, Geneva, Switzerland
- Anthony Conrad K. Kakooza Arbitration, Conciliation and Mediation in Uganda: A focus on the practical aspects.
- International Alert, Understanding conflict. Building peace
- Kaggwa David, Arbitration and the Courts
- Tweedale A, and Tweedale K, 2007, Arbitration and Commercial Disputes, Oxford
- Davis, James 2010. Getting it right: Searching for the elusive solution in the Niger Delta. Cornell international Affairs Review, 4 (1)
- Ajodo-Adebanjoko, Angela 2016. Assessing amnesty programme in the Niger Delta in the face of renewed militancy in the region. Nasarawa Journal of Political Science, 4 (1), pp. 150–168.
- Ajodo-Adebanjoko, Angela and TakimOjua 2013. An assessment of Niger-Delta crisis on Nigeria‘s external relations - From 1992–2008. nternational Journal of Humanities and Social Science, 3 (8), pp. 179–192.

- Ajodo, Angela 2012. Niger Delta crisis and Nigeria‘s external relations from 1992–1998: An assessment. Ph.D. thesis, University of Abuja.
- Nore, P.C. and T. Turner 1980. Oil and class struggle. London, Zed Books.
- Worgu, S. Owabukeruyele 2000. Hydrocarbon exploitation, environmental degradation. research presented January 2000 at Lund University, Sweden.
- Bekoe, Dorina 2005. Strategies for peace in the Niger Delta. Peace Brief, United States Institute of Peace.
- Ibeanu, Okechukwu 2006. Civil society and conflict management in the Niger Delta: Scoping gaps for policy and advocacy. CLEEN Foundation Monograph Series No.2. Lagos, CLEEN Foundation.
- Kaldor, Mary 1999. New and old wars: Organized violence in a global era. Cambridge, Polity Press; Duffield, M. 2001. Global governance and the new wars: The merging of development and security. London, Zed Books
- De Soysa, ndra 2002. Paradise is a bazaar? Greed, creed, and governance in civil war, 1989–99. Journal of Peace Research, 39 (4), pp. 395–416.
- Alao, Abiodun 2007. Natural resources and conflict in Africa: The tragedy of endowment. Rochester, NY, University of Rochester Press
- Blench, Roger 2004. National resources conflict in North-Central Nigeria: A handbook and case studies. Cambridge, Mallam Dendo Ltd
- Bhattacharyya, Sambit 2015. Natural resources and conflict in Africa isolating facts from fiction.
- Bannon, an and Paul Collier 2003. Natural resources and violent conflict options and actions. Washington, D.C., World Bank.

- Kishi, Roudabeh 2014. Resource-related conflict in Africa.
- Gleditsch, Nils P. and Henrik Urdal 2002. Eco violence? Links between population growth, environmental scarcity and violent conflict. Journal of international Affairs, 56 (1), pp. 283–302
- Gurr, Ted R. and Barbara Harff 1994. Ethnic conflict in world politics. Boulder, CO, Westview.
- Homer-Dixon, Thomas F. 1999. Environment, scarcity, and violence. Princeton, Princeton University Press.
- Ajaero, C.K., A.T. Mozie, .C. Okeke, J.P. Okpanachi and C. Onyishi 2015. The drought-migration nexus; implications for socio-ecological conflicts in Nigeria. Mediterranean Journal of Social Sciences, 6 (2), S1, pp. 470–478.
- Annan, Kofi 2006. Progress report of the secretary general on the prevention of armed conflict. Agenda item 12, 16th Session of the General Assembly, A/60/891
- Klare, Michael T. 2001. Resource wars: The new landscape of global conflict. New York, Henry Holt and Company.
- Na'Allah, N. 1998. Ogoni's agonies: Ken SaroWiwa and the crisis in Nigeria. Trenton, NJ, African World Press.
- Heriff, Ghali brahim, Sadeeque Abba and FarouqBibi 2014. Resource based conflicts and political instability in Africa: Major trends, challenges and prospects. International Journal of Humanities, Social Sciences and Education, 1 (9), pp. 71–78.
- Kasomo, D. 2012. An assessment of ethnic conflict and its challenges today. African Journal of Political Science and International Relations, 6 (1), pp. 1–7.

- Bannon and Paul Collier 2003. Natural resources and violent conflict options and actions. Washington, D.C., World Bank.
- Niger Delta Development Commission (NDDC) 2000. Niger Delta Regional Development Master plan. Port Harcourt, NDDC.

CASE LAW

- Adamson vs. Queensland Law Society Inc[1990]1 QdR 498
- BP Exploration Company (Libya) Limited Vs. Government of the Libyan Arab Republic 7 Sw.U.L.Rev. 68 (1975)
- LIAMCO Vs. The Government of the Libyan Arab Republic, YCA 1981
- Texaco Overseas Petroleum Company Vs. The Government of the Libyan Arab Republic 53.L.R 389, 491-92 (1977)

WEB LINKS

- What is Alternative Dispute Resolution, www.Findlaw.com 8th October, 2020, https://www.findlaw.com/hirealawyer/choosing-the-right-lawyer/alternative-dispute-resolution.html 23rd November 2020.
- Alternative Dispute Resolution, www.Rocketlawyer.comhttps://www.rocketlawyer.com/gb/en/quick-guides/alternative-dispute-resolution 23rd November, 2020
- What is ADR? www.arbresolutions.com, 21st August,2020 https://www.arbresolutions.com/what-is-adr/ 23rd November,2020
- https://reliefweb.int/report/nigeria/towards-ending-conflict-and-insecurity-niger-delta-region