A CRITIQUE OF UGANDA'S INSTITUTIONAL FRAMEWORK IN THE ARBITRATION OF OIL AND GAS DISPUTES

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REG. No: S17M23/041

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

OCTOBER, 2020

DECLARATION

I, DAVID SSEMPALA**,** do hereby declare that this dissertation is my original work and it has not been submitted before to any other institution of higher learning for fulfillment of any academic award.

Signed………………………………………

Date………………………………………….

APPROVAL

This is to certify that, this dissertation entitled "A CRITIQUE OF UGANDA'S INSTITUTIONAL FRAMEWORK IN THE ARBITRATION OF OIL AND GAS DISPUTES" has been done under my supervision and now it is ready for submission.

Signature…………………………………………

Name: **DR. BRIAN KALENGE**
(Academic supervisor).

Date…………………………………………………

DEDICATION

I dedicate this work to the late Ben Mbogga Sserubidde (Rip) my uncle, who paid my tuition and other scholastic requirements from senior two till after my university and the late DMK Sengendo (Rip), my father who laid a foundation that the former built on; and it is therefore the effort of these two men that I was able to attain an education that has birthed this research.

I further dedicate this work to my mother Victoria Namata for her resilience, supporting hand and heart.

May the Almighty God bless you.

ACKNOWLEDGEMENTS

I thank the Almighty God for the gift of life, strength, wisdom, courage and, above all, the resources which have enabled me to accomplish this LL.M program.

Special thanks go to the management and staff of Messrs. KSMO Advocates for giving me a conducive environment that includes moral and financial support which have enabled me to accomplish this cause.

I would also like to express my sincere thanks and gratitude to my supervisor, **Dr. Brian Kalenge** for the professional guidance I received during the course of this study. It is your guidance that has greatly contributed to the outcome of this research, plus my academic and professional career.

In a special way, I wish to register my appreciation for the support from all the members of my family, relatives and friends during the course of this study.

Special thanks go to my wife Mrs. Flavia Kyomugisha Ssempala who tirelessly reminded me to read and kicked me out of bed on those days when the body was too weak to handle.

In a special way I thank my children; Daisy Lindsay Nakimuli, Denise Ashley Nabagala and Dylan Elijah Kigozi who continuously questioned my being a student at such an age, which challenge reminded me that l am supposed to pass exams and graduate before they do. This kept me on my tentacles.

Finally, I thank all those who participated in the study, especially my research assistants, for the work well done, my Respondents whom are grateful to and to the Energized Family for the support, collegiality and insisting that I have to graduate with. I wish all of you God's blessings. I hasten to add that the above people are only responsible for the merits and success of this work- the blame and failure being entirely mine.

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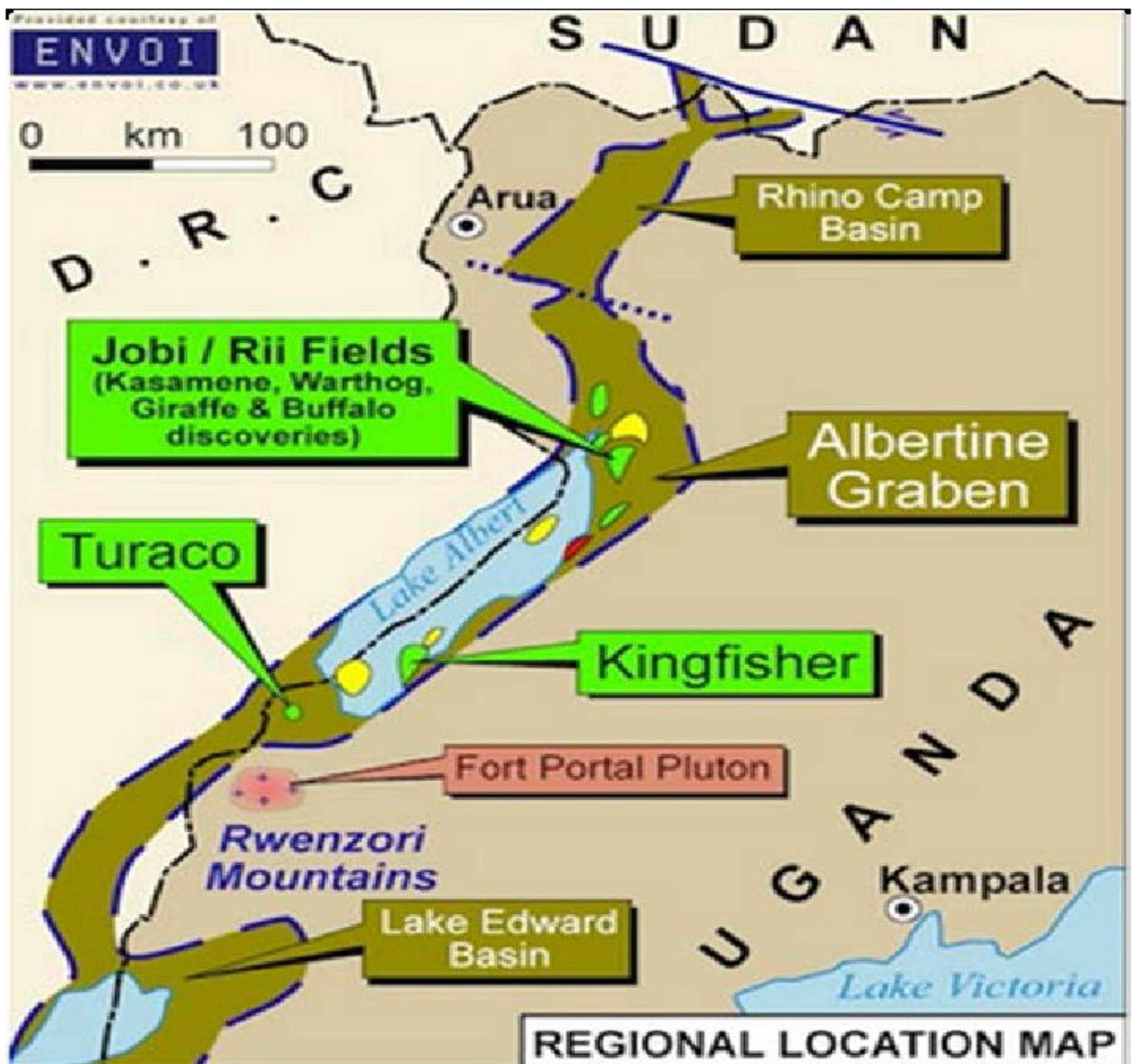

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ACRONYMS

ADR	Alternative Dispute Resolution
BCAM	Burundi Centre for Arbitration and Mediation
CADER	Centre for Arbitration and Dispute Resolution
CADR	Centre for Alternative Dispute Resolution
CIETAC	China International Economic Trade Arbitration Commission.
CNOOC	China National Offshore Oil Company
FDI	Final Decision to Invest
ICAMEK	International Centre for Arbitration and Mediation, Kampala
ICC	International Chamber of Commerce
ICSID	International Centre for Settling of Investment Disputes
ICA	International Court of Arbitration
IOCs	International Oil Companies
JCAA	Japanese Commercial Arbitration Association
JOA	Joint Operation Agreement
KIAC	Kigali International Arbitration Centre
LOGIC	Leading Oil and Gas Industry Competitiveness
NCIA	Nairobi Centre for International Arbitration
LCIA	London Court of International Arbitration
NOC	National Oil Company
TIA	Tanzania Institute of Arbitrators
UNCITRAL	United Nation Convention on International Trade Law
USAID	United States Aid for International Development

ABSTRACT

This research is premised on a conviction that the institutional arbitration framework of Uganda is not in tandem with the expectations of the stakeholders in the oil and gas industry although arbitration is globally accepted as the most preferred mode of dispute resolution in the oil and gas industry, in particular and in international commercial transactions, in general.

The research analyzes the characteristics and peculiarities of the oil and gas industry, which is not only one of the most vibrant and dynamic industries in the world, but also one of the most dispute-prone. It explains the reasons why this sector has more disputes than any other business sector and discusses how parties can effectively manage or at least mitigate that risk. The study reviews the arbitration institutional framework in Uganda by analyzing the laws, rules and practice that govern the processes of arbitration. While doing this, the research analyses the effectiveness of the law in achieving its goal. This is done by comparing its result with day-to-day case samples. Furthermore, the research critiques the regulatory and infrastructural framework for arbitration in the country.

Having analyzed the current arbitration institutional framework in Uganda, the study endeavors to compare the same with that of other countries in the region, (Eastern Africa) with case studies from the rest of Africa and other countries outside Africa. This is informed by the fact that since most developing countries like Uganda do not have the technological and financial capacity to harness the resource (oil and gas), other multi-nations, National and International oil companies are always invited to participate in the industry and yet they always bring with them their preferred mode of dispute resolution, which is arbitration.

The study concludes by highlighting the similarities and differences between Uganda's arbitration institutional framework and that of various countries in Africa and particularly those in East Africa. This is done on the different premises of the usage of arbitral processes, regulatory set up, the tribunals, the seats offered and the career development in the arbitration field. This comparative study, to a small extent, stretches to other jurisdictions within and without Africa which is informed by the fact that the oil and gas industry attracts players across the globe-making it instructive to consider the institutional and legal set up in other jurisdictions.

The paper ends by making recommendations vis-à-vis the findings arrived at, with the aim of improving on the legal and institutional arbitration framework in Uganda.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Definition of the phrase "Institutional Framework"

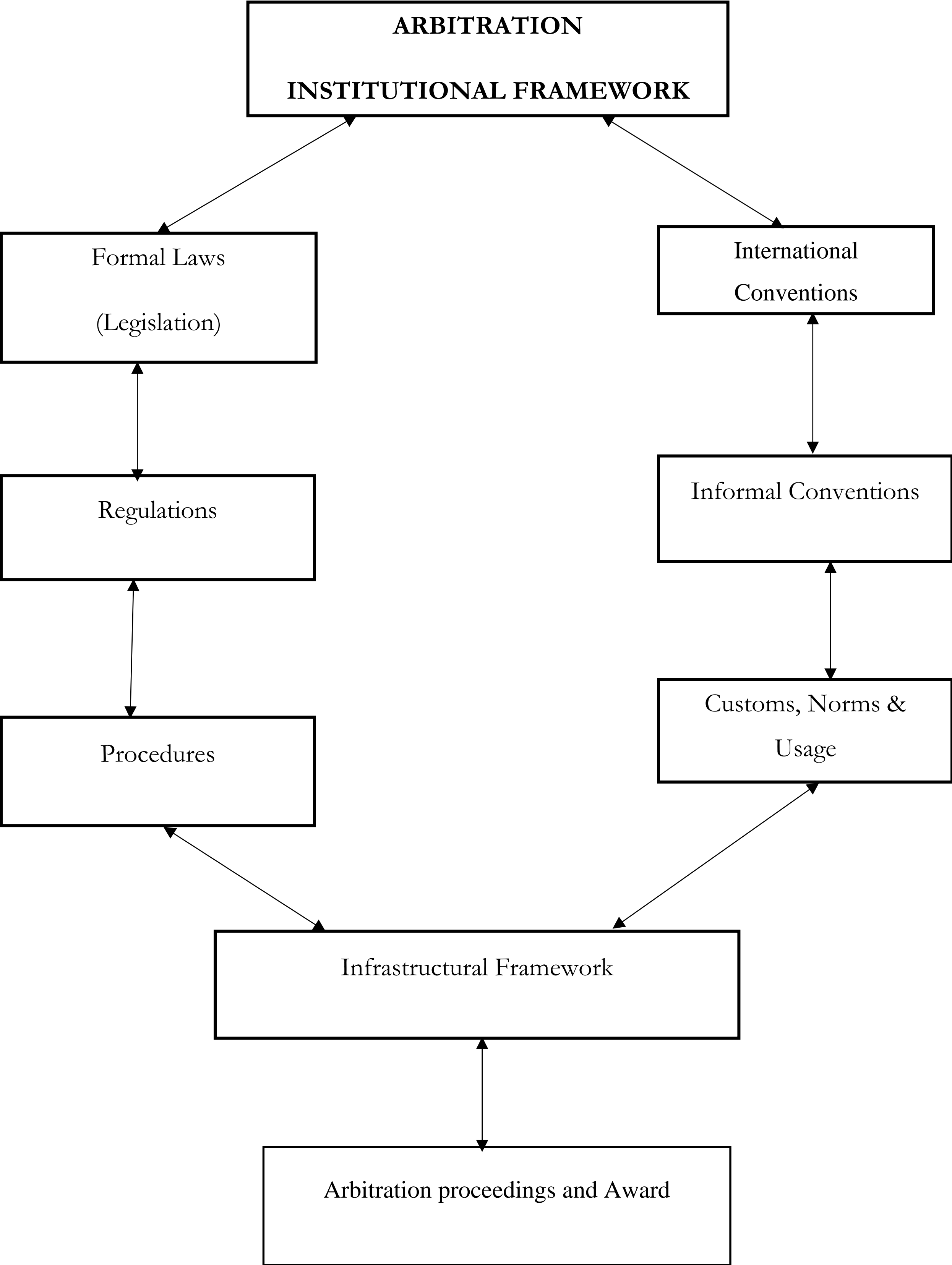
Institutional framework refers to the systems of formal laws, regulations, procedures, informal conventions, customs and norms that shape socioeconomic activity and behaviour[1].

In respect of this research, the phrase institutional framework shall include all the relevant legislation (Laws), regulations, policies, procedures, International and regional conventions, customs, usage and norms that govern the discipline of arbitration in Uganda. This shall to some extent stretch to the infrastructural arbitration framework.

Below is a graphic demonstration of the tenets of what constitutes arbitration institutional framework[2].

[1] http:www.answers.com/institutional %20 framework
[2] See chart on the next page.

A CHART SHOWING ARBITRATION INSTITUTIONAL FRAMEWORK



1.2 Introduction

Uganda's oil and gas industry is currently in its nascent stage as the discovery of commercially viable oil and gas deposits in Uganda was confirmed in 2006[3]. Oil production is expected to have commenced by 2023 as the construction of both the refinery and the pipeline is underway[4]. A good number of International Oil Companies (IOCs) and many other players have expressed interest and have indeed played a part in the ongoing process in one way or the other.

The complexity, novelty and capital intensive nature of the oil and gas industry usually attracts a big number of players, undertakings, contracts and commitments. This state of affairs is a recipe for disputes that may arise from negligence, breach of contract or any other cause. This in turn requires the country to put in place a robust arbitration institutional framework that is in tandem with the expectations of all the players in the industry if this risk of disputes is to be addressed, mitigated upon or curtailed.

For a company, individual or an entity to participate in the oil and gas industry, it must be possessed with a sufficient financial muscle and technical know-how. This is owing to the fact that the industry is not only capital intensive but it is highly technical in nature. Another feature is that the industry is highly volatile yet it attracts many players on one single platform or block with crisscrossing contracts, undertakings, insurance policies, back to back contracts, unique clauses and dealings between several International Oil Companies, National Oil Companies (NOCs), independent players, Oil Field Service Companies, among other players.

This industry being highly capital intensive, developing countries like Uganda have no financial capacity to single-handedly explore, process and have market for the resource. This usually leads to an influx of multi nationals, International Oil Companies and National Oil Companies to participate in the industry.

The above entities (being the market, capital and expertise leaders) usually insist on having agreements that meet their needs and nature of handling business. It follows therefore that the clauses that are contained in the resultant agreements, be they joint venture agreements or

[3]www.monitor.co.ug/Business/Prosper/Uganda slow-pace-towards-oil-production/688616-4594-748-742undz/index.html(last visited on 15th August, 2018)

[4]Although the Political Statements like the State of the Nation Address Speech June, 2018 put it at 2020 other stakeholders like the National Oil Company and other players indicate that this may take 36 months after the Final Decision to Invest (FDI) is made.

otherwise, bear the influence or are a reflection of the desires of the said International Oil Companies, National Oil Companies or multinationals.

When it comes to the dispute clause in the said agreements, memoranda of understanding, Joint venture agreements or otherwise, most of these entities prefer to include an arbitration clause in the said agreements. This leaves Uganda and other developing countries with no option than to accept to include in the agreements a clause that refers any dispute that may arise to arbitration.

The insistence on arbitration as a means of resolving disputes, however, is not a mere work of art or a baseless desire but this insistence is premised on a notion (which has become globally accepted) that arbitration is the most convenient, foolproof, cheap and timeous method of dispute resolution.

It is for this reason that Uganda's arbitration institutional framework ought to be at its best if the country is to fully benefit from the oil resource, which has ended up being an oil curse in other countries where no attention has been paid to detail.

Further, the oil and gas industry is prone to geological, political, market, technological, and economic risks. A combination of all the above features and factors in the industry expose the industry to a wide range of disputes.

As explained above, most of the players in the oil and gas industry in Uganda (and industry world-wide) are International Oil Companies and in some cases National Oil Companies that have the capacity to negotiate their desired mode of dispute resolution. The most preferred mode of dispute resolution in the oil and gas industry is by way of alternative dispute resolution (ADR) the most preferred of which is arbitration[5].

Arbitration is also internationally accepted owing to its superadded advantage of being blind to geographical demarcations called states; it can be enforced anywhere in the world and sometimes against states themselves. It is also the best mode dispute resolution when it comes to inter-state disputes[6]. Other forms of dispute resolution have their own restrictions like when it comes to the enforceability of a judgement/award, conflict of laws, nature of a country's legal framework like common law as opposed to civil law, civil/common law as opposed to sharia law and the

[5] Greg Gordon, John Paterson and Emry Usenmez: Oil and Gas Law: Current Practice and Emerging Trends, 2nd Edition Dundee University Press, 2011. Page 604.
[6] Interstate disputes refer to a dispute between one state and another.

differences in trade customs and usage. The parties to an agreement with an arbitration clause have the liberty to clearly indicate which custom and usage that should employed during the arbitration process or in the entire transaction and this has to be complied with by the arbitrator.

By its nature, arbitration enables the parties to unilaterally engage the services of an arbitrator or an arbitral tribunal that is possessed with the requisite expertise and acumen to handle the dispute with utmost efficacy, the parties can decide on the scope of the matter in dispute, they are duty and contract bound not to appeal against the arbitral award (save in exceptional circumstances), the award can be enforced across the globe (with or without foreign judgement enforcement agreements) besides the award being easily enforceable against a state, the parties can chose the "seat" of the arbitral tribunal, amongst many other advantages that are peculiar to arbitration as opposed to litigation, conciliation and other modes of dispute resolution[7].

In Uganda the most used means of dispute resolution in the commercial world is litigation. Whereas it is true that the current legislation encourages alternative dispute resolution (ADR) that includes mediation, arbitration and conciliation, the practice, however, is that the country has not embraced ADR and because it is mandatory to try mediation as a condition precedent to litigation, parties have come up with an approach that takes it as a formality; they sometimes half-heartedly appear before a mediator, purport to resolve the dispute, fail to resolve it whereupon the mediator makes a report to the effect that the process was not successful then the matter is referred to a judicial officer for litigation to proceed[8].

Litigation has its own limitations, it takes a lot of time as the matter takes a minimum of 90 days from the time of filing the suit to the commencing of the trial. When the trial proceedings begin, more time is spent on scheduling, discoveries, miscellaneous applications (some of which are referred to appellate thus costing more time) and then the actual hearing proceeds which process takes at least two years as far as the practice in Uganda is concerned.

After that, the judicial officer takes time to deliberate and come up with a judgement. The judgement can be referred to appeal and each of the appellate courts take a minimum of two years to deliberate on the matter besides other remedies of review and revision which can also start from

[7] The seat of Arbitration connotes to the applicable laws the parties may have agreed to apply to the dispute, this does not necessarily mean the physical place where the dispute is resolved from.

[8] This is the general consensus from court going lawyers and some litigants that were interviewed during the course of this research.

the trial court up to the last appellate court. This takes a minimum of six years apart from a few cases where judgement can be entered on admission or in an *ex-parte* manner.

The process of executing the resultant judgement can also take the same period of time from the trial court to the last appellate court. Litigation thus becomes very costly in terms of time, money and other resources. This is a fetter to commerce because there is now consensus that delay defeats justice[9].

It is for the above reasons that players in international commercial transactions (where the oil and gas industry usually falls) came up with a consensus that arbitration is a more timeous, cheap and best suited mode of dispute resolution.

As indicated above, the doctrine of freedom of contract entitles parties to choose which mode of dispute resolution should be engaged, should disputes arise. The parties have a superadded advantage of choosing the scope, *modus-operandi* and other parameters for the said arbitration process as opposed to litigation where the judicial system and its intricate rules (that vary from jurisdiction to jurisdiction) apply.

The consideration parties base on to choose which country to arbitrate from, which rules, which customs and which usage to engage usually depends on the competitiveness of a given country's arbitration framework (in other words called "the arbitration institutional framework) which institutional framework includes the legislative set up (Laws), the infrastructural and institutional framework, the competence of the human resource (lawyers, witnesses, arbitrators) and the rate at which courts or the state interferes or is likely to interface with the arbitration process (from the inception through the proceedings to the execution of the award). This is what is called the choice of the *lex loci* and *locus domicilii* in the industry called international commercial arbitration or commercial arbitration[10].

This choice of the *lex loci* and *locus domicilii* (as explained above) is informed by many considerations that range from how competent the arbitration instititional framework of a given

[9] Has per the information obtained from court users in the arbitration cluster amongst practicing advocates in Uganda

[10] In Uganda for example, Courts have since ruled that parties can in their agreement oust the jurisdiction of Court. See Court of Appeal Civil Appeal No. 87 of 2015, Babcon Uganda Ltd V. Mbale Resort Hotel Ltd. *Locus Lexi* connotes to the set of laws that the parties opt to use whereas Lex domicili is the place the parties chose to conduct the arbitration of the dispute from.

country's arbitration framework is, the effectiveness of the country's arbitration system, the physical infrastructure to facilitate the arbitral process, the competence of the human resource (arbitrators, witnesses, support staff, prosecution and defence counsel), the geo-political set-up, the extent to which the Court's and laws of such a country respect or treat arbitral proceedings and awards, the language barriers, trade customs and usage, among others.

This phenomenon makes it pertinent to have a critical dissection of the institutional arbitration framework in the aspect of the process of the settling of oil and gas disputes in Uganda at this opportune time when the petroleum and gas industry is taking shape.

It is suggested that Uganda's institutional arbitration framework is robust and sound enough to handle oil and gas disputes with proficiency. However, the researcher's view is that the current arbitration instititional framework of Uganda's arbitration framework cannot proficiently handle the time-sensitive, dispute-averse, highly capital intensive, highly technical and complex oil and gas disputes. It is the researcher's opinion that unless Uganda carries out a reform of the relevant laws together with a re-alignment, improvement and overhaul of the arbitration institution, Uganda shall be less competitive as a seat for the arbitration of oil and gas disputes[11].

Since the discovery of economically viable deposits of oil and gas in Uganda, the country has been pushing for a drive to have a customized or Africanized approach to the harnessing of the resource. This has partly been a result of the effort of the protagonists of the local content argument. Arbitration being an internationally accepted means of dispute resolution with many international characteristics, a country like Uganda needs to "Africanise" the arbitration framework (with home-grown characteristics) but at the same time strive to maintain its foreign characteristics, if its appeal to foreign entities is to be maintained. Recent developments vindicate the notion that Uganda's arbitration framework does not appeal to the players in the oil and gas industry owing to some Lacunas in the legislation, want of competence and competitiveness.

Amongst the reasons for the wanting competence is having an arbitration institutional framework that is not as dynamic as the industry would require, having loopholes in the legislation and lack of up-to standard infrastructure. This research is an attempt to investigate this state of affairs, the likely or actual causes of the said phenomenon and the would be solution whilst juxtaposing it

[11] It is argued that one of the reasons why the arbitration dispute between Uganda and Tullow Oil, Uganda and Heritage oil was resolved in the London chamber of Arbitration was because Uganda has no acceptable arbitration institutional framework.

with other arbitration centres with a view of forging solutions/ recommendations on how best to improve on it.

The researcher is aware of the advent of the international centre for Arbitration, Kampala (ICAMEK) but is of the opinion had the arbitration institutional framework been up to standard, the centre would not have experienced the challenges it experienced at its inception. To this extent, this will act as a case study and a litmus test of the readiness of the arbitration institutional framework vis-à-vis, the resolution of oil and gas disputes.

The aim of this research, therefore, is to critically analyse the effectiveness of Uganda's arbitration institutional framework in the settling of oil and gas disputes and international commercial arbitration, in general. Central to this research is the need to consider the question, whether Uganda's arbitration institutional framework is adept enough to meet the expectations of the players in the oil and gas industry and the industry.

1.2 Background of the Study

In the early 1900s, geologists documented the occurrence of surface oil in the Albertine Graben[12]. However, the discovery of commercially viable hydrocarbons was confirmed in Uganda in the early 2006[13].This attracted the attention of International Oil Companies (IOCs) although the fact that Uganda had oil deposits predates Uganda's independence[14].

After the good news of the availability of commercially viable oil and gas deposits were released, several International Oil Companies (IOCs) like Total, Tullow Oil Company and Heritage Oil Company, National Oil Companies (NOCs) like China National Offshore Oil Company (CNOOC) and other international players jumped into the fray.

The discovery of commercially viable deposits of hydrocarbons and gas has thus led to the inflow of the said IOCs, multinationals, NOCs, other international entities, the only binding factor being the desire to participate in Uganda's oil and gas industry. The industry has its own unique form

[12] The World Bank Report N0. 97146- Ug (Uganda Country Economic Memorandum) a joint Report of the World Bank and the Government of Uganda – June 2015 page 27.
[13] Wayland Report, 2006.
[14] 9th October, 1962.

of agreements amongst which is the desire to resolve their disputes by way of recourse to arbitration as opposed to ordinary Courts (litigation) or any other mode of dispute resolution.

Time being of the essence, the disputants are very concerned with a timely resolution of any disputes that may rise in due course of their commercial transaction as any delay has serious ramifications to their business. Besides the delay, the matters in dispute are sometimes so technical that it requires an equally technical tribunal, staff, witnesses and counsel so as to have a timely and proficient resolution of the dispute. This also requires technical facilities at the venue where the dispute is supposed to be resolved from.

The above stringent requirements are further stretched to the characteristics of a given country's laws, Court decisions and culture vis-à-vis how they treat arbitral awards. The above concerns are also a challenge to a country with a developing oil and gas industry like Uganda and this becomes a wakeup call for such a country to strive to have in place a robust legal and institutional arbitration framework to cope with the unique requirements of the players in the oil and gas industry.

This research is a critical analysis of the arbitration institutional framework of Uganda's arbitration industry vis-à-vis the readiness to proficiently resolve disputes in the oil and gas industry. Central to this research is the need to answer the question whether Uganda's legal and institutional arbitration framework is in tandem with the expectations of players in the oil and gas industry.

1.3 Statement of the Problem

According to Uganda's *corpus Juris,* it can obliviously be argued that there is in place a sufficient legislation that would enable a successful and proficient arbitration of disputes in the oil and gas industry in Uganda, be it local or international commercial arbitration[15].

On the face of it, both the Civil Procedure Act and the Civil Procedure Rules appear to respect and provide for alternative dispute resolution (ADR) mechanisms amongst which, is arbitration[16]. The Evidence Act does not apply to arbitration proceedings[17]. It follows therefore that the Arbitration Act reigns uninterrupted in respect of arbitration proceedings and practice.[18] This position of the

[15] *Corpus juris* connotes to the entire body of laws: Black's Law Dictionary – Edition Sweet and Maxwell Page 10
[16] See Order 12 Rules 1 and 2 of the Civil Procedure Rules, S.I 71 – 1 and Section 1 of the Civil Procedure Act Cap. 71
[17] See Section 1 Evidence Act, Cap. 6
[18] Cap 4, Laws of Uganda.

law is expected to naturally enable the parties to agree and adopt any rules of procedure that may govern the arbitration proceedings. This would lead to a situation of having a good environment for parties to have their dispute resolved in a manner they may choose.

The geo-political environment is seemingly conducive for any arbitration proceedings to be conducted in any place or any corner of the country[19].

All that notwithstanding, the legal framework is not strong enough to attract parties to choose Uganda as a "seat" for arbitrating disputes in the oil and gas industry, be they local or international[20]. The law is silent in some material respects and this does not augur well with the expectations of the disputants in the oil and gas industry.

More of concern is the wanting physical facilities where the parties to a dispute can conveniently hold arbitration proceedings from, have teleconference facilities, auto-translating technology, handling of expert hearings and so forth. The legal set up coupled with the prevailing institutional framework is not in tandem with the expectations of the disputants in case of any international commercial arbitration.[21]

This research analyses the efficiency of both the arbitration institutional framework in handling the arbitration of oil and gas disputes. Central to this research is the question whether Uganda's arbitration institutional framework is in sync with the demands of the oil and gas industry when it comes to the aspect of arbitration of any disputes that may arise from time to time.

1.4 Objectives of the Study

1.4.1 General Objective

The general objective of the research is to critique and evaluate the efficiency of Uganda's legal and institutional arbitration framework in respect of its capacity to proficiently handle disputes that may crop up in the oil and gas industry.

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[19] Uganda has been experiencing peace and tranquility in the whole country since 1995.
[20] An arbitration is deemed to be international if one of the parties is a non-resident.
[21]Most Arbitration contracts have clauses that stop parties from making the disputes, the award and all details public, it's for this reason that the citation of the above cases are not easily available or accessible.

1.4.2 Specific Objectives

The specific objectives of research are:

i) To study Uganda's legal and institutional arbitration framework.

ii) To analyse the effectiveness of Uganda's arbitration arbitration institutional framework in the facilitation of the resolution of disputes in the oil and gas industry.

iii) To make a comparative analysis of other jurisdictions, identifying areas where Uganda can bench-mark and adopt good practices from.

iv) To suggest areas for law reform and institutional improvement.

1.5 Research Questions

i) What is the arbitration institutional framework for the arbitration of oil and gas disputes in Uganda?

ii) How effective is the legal and institutional arbitration framework in the resolution of oil and gas disputes in Uganda?

iii) How competitive is Uganda's legal and institutional arbitration framework in juxtaposition with other arbitrations frameworks, elsewhere?

iv) Is there any need for law reform and/or institutional re-alignment?

1.6 Scope of the Study

1.6.1 Temporal Scope

This research will cover the time from the year 2000 when the Arbitration and Conciliation Act was passed to date (2020).

1.6.2 Geographical Scope

The geographical scope will cover Uganda as a country with comparative studies of other countries like Kenya, Rwanda, United Kingdom, Saudi Arabia and Nigeria as a way of understanding how

their legal and institutional arbitration framework in the oil and gas industry is streamlined with a view of finding out whether there are any lessons that Uganda can learn from.

1.6.3 Subject Scope

This research shall be limited to the institutional and legal framework of arbitration as means of resolving legal disputes in the oil and gas industry in Uganda. This shall include both the law, the practice, the policy and the institutional framework. The research will basically review the existing laws, the policy as well as institutions that facilitate arbitration in Uganda.

1.7 Significance of the Study

The discovery of commercially viable hydrocarbons in Uganda has led to an influx of many players to partake of the opportunities that come with such a discovery. The participation of many players is likely to lead to many disputes. Even before any oil was produced in Uganda, disputes arose between Heritage Oil and Tullow Oil, the Government of Uganda and other parties. The said disputes were finally handled under the auspices of the London Chamber of Arbitration. It is axiomatic that amongst the reasons why the parties had not chosen Uganda as a physical place for the arbitration of any dispute was owing to the wanting arbitration institutional framework of the arbitration in Uganda. This development is a wake-up call as well as challenge to Uganda's legal and institutional arbitration framework.

Uganda's arbitration institutional framework seems not to be well streamlined to handle international commercial arbitrations yet most of the disputes in the oil and gas industry are engineered to be resolved by way of arbitration as opposed to other modes of dispute resolution. In Uganda both the Civil Procedure Rules (made pursuant to the Civil Procedure Act) and the Arbitration and Conciliation Act provide for arbitration as one of the alternatives in dispute resolution.[22] The good news is that according to Uganda's case law; a clause in an agreement that provides to the effect that in case of any dispute, the same shall be resolved by way of arbitration has been held to have ousted the jurisdiction of Court and has to be respected by Court.[23]

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[22] The Arbitration and Conciliation Act, Cap 4, Laws of Uganda.

[23] Babcon Uganda Ltd V. Mbale Resort Hotel C.A.C.A NO. 87 OF 2015 which was confirmed by the Supreme Court in S.C.C.A No. 06 of 2016 Mbale Resort Hotel Ltd V. Babcon Uganda Ltd.

The purpose of this study is to critique Uganda's legal framework and institutional framework vis-à-vis the capacity to facilitate a conducive, effective and proper handling of oil and gas disputes.

1.8 Justification of the Study

As a Ugandan, a professional advocate, a nationalist and a development oriented individual, the researcher is desirous of having in place an arbitration framework that is well positioned to proficiently handle oil and gas disputes be they local or international, this, needless to mention, requires an evaluation of the effectiveness of the current legal and infrastructural framework in the arbitration of oil and gas disputes, thus this research.

Secondly, as a legal practitioner in Uganda, the researcher is desirous of participating in the arbitration of oil and gas disputes and Commercial Arbitration in general as Counsel, an umpire or an arbitrator, Counsel or expert Witness. The researcher has however found both the arbitration institutional framework wanting. To this end, the researcher is convinced that this research will go a long way in identifying some of the weaknesses, loopholes and short-comings in the prevailing legal and institutional arbitration framework and recommend on how best have the same purged.

Failure to adjust Uganda's arbitration institutional framework to the peculiar expectations of the oil and gas industry will isolate Uganda as a choice to act as the seat (*locus domicilii* and *lex loci*) for resolving oil and gas disputes. This will, needless to mention, eliminate Ugandan practitioners who want to participate in the arbitration of oil and gas disputes. The disputants can choose the London Court of International Arbitration (LCIA), the International Court of Arbitration (ICA), the International Center for Settling of Investment Disputes (ICSID), the International Chamber of Commerce (ICC) and many other fora. It is thus pertinent that Uganda follows the Leading Oil and Gas Competitiveness (LOGIC) principles, amongst which is to have in place a sound legal and institutional arbitration framework. This vindicates this undertaking as research can be used as a tool of self-reflection and improvement at the end of the day.

1.9 Synopsis of Chapters

Chapter One: *Introduction*

The first chapter delves on Introduction and it brings out the importance and background of the study, and states the objectives and the respective research questions.

Chapter Two: *Literature Review*

This chapter contains a review of the relevant literature and history of the Problems. A Quick look on some theories is also carried out in this chapter.

Chapter Three: *Methodology*

This chapter describes the methodology followed during the study. It elaborates on the research design, target population, sample size, procedure, ethical consideration and the limitations.

Chapter Four: *Institutional Framework for Arbitration in Uganda*

This chapter showcases the findings of the researcher in regards to the research question on the current position of the arbitration institutional framework for arbitration in Uganda.

This chapter further showcases the findings of the researcher in regards to the research question on the effectiveness of the Legal Arbitration Framework in Uganda.

Chapter Five: *Comparative Analysis of Uganda and Other Jurisdictions in Regards to the Institutional Framework for Arbitration*

This chapter showcases the findings of the researcher in regards to the research question on the Comparative Analysis of Uganda and Other Jurisdictions in Regards to the Institutional Framework for Arbitration.

Chapter Six: *Summary of Findings, Conclusion and Recommendations.*

This chapter presents the derivative summary and conclusions to the research that was carried out and makes recommendations accordingly.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

In this Chapter the researcher has considered and analysed all literature that he could lay hands on that is related to arbitration or international commercial arbitration in general and in particular the arbitration of oil and gas disputes in Uganda and elsewhere.

There is some commendable of literature on the topic of International Commercial Arbitration which is synonymous with the arbitration of oil and gas disputes as the players in this industry are always international participants. However, there is paucity of Ugandan literature on this subject. Since International Commercial Arbitration has an international dimension that subsumes internal commercial arbitration, the said literature is, needless to mention, very useful to this research.

2.2 Summary of the Literature

Many scholars are credited for their work in respect of the discipline of international commercial arbitration, which is the preferred mode of dispute resolution in the oil and gas industry.

2.3 Literature on the status quo of arbitration in Uganda

In this category, the researcher delves on the literature on the subject of arbitration in Uganda. It has transpired in the course of this research that there is scanty literature on the subject of arbitration in Uganda. The available literature, however, attempts to analyse the current state of affairs of the institutional framework of arbitration in Uganda. It is discussed hereunder;

2.3.1 Dr. Kakooza in his work entitled "***Arbitration*, *Conciliation, And Mediation in Uganda: A Focus on the Practical Aspects"*** went a long way to make an analysis of the practical aspects of the three systems of alternative dispute resolutions in Uganda[24]. Both challenges and limitations are considered and the same is a good reference point to both practitioners and reformists in equal measure. The paper does not analyse in detail the practical aspects that would enable Uganda to have a conducive arbitration institutional framework from its cause and neither does it provide

[24]Dr. Anthony Conrad K. Kakooza: Arbitration, Conciliation and Mediation in Uganda: A focus on the practical Aspects: Uganda Living Law Journal, Vol.7 No.2 December, 2009 pp.268-269.ISBN 1729-4672. Published by the Uganda Law Reform Commission.

practical solutions to the lacuna. Premised on that background, this paper has gone further to dig up to the root cause of the problems and it further provides workable solutions aimed at purging areas that need a reform and/or improvement.

Dr. Kakooza's paper does not give a complete analysis of the current arbitration framework in Uganda. It does not identify all the loopholes in the current arbitration legislation which forms the basis of the practical aspects that are discussed.

The paper is however very relevant as it gives a bird eye's view of the current pertinent practical aspects of arbitration in Uganda.

To build on the above effort, the researcher shall go further to analyse the areas of strength and at the same time loopholes in the current arbitration institutional framework so that the practical aspects of arbitration are among others driven by a sound arbitration institutional framework.

Dr. Kakooza's paper makes no effort to juxtapose Uganda's current arbitration institutional framework with other arbitration frameworks in the region (East Africa), the rest of Africa and in the world. This research paper, however, makes an attempt to analyse the similarities and differences with other arbitration centres (frameworks) in East Africa, the rest of Africa and in other continents.

2.3.2 In a paper entitled "***Alternative Dispute Resolution; Uganda Judicial Perspective***" **Justice Geoffrey W. M Kiryabwire** underscores the role arbitration can play in the resolution of disputes that would, in the end, decongest Courts[25].

Although the paper discusses other forms dispute resolution like conciliation, mediation and arbitration as opposed to litigation, effort is put on the advantages of arbitration in the resolution of disputes and how the same supplements the role of Court. The view of the learned author is limited to the role of arbitration and other alternative dispute mechanisms in decongesting Courts but it runs short of identifying the weaknesses in Uganda's arbitration institutional framework. This makes this research to be necessary in the circumstances.

[25] 2006 Justice Geoffrey W.M Kiryabwire: Alternative Dispute Resolution: Uganda's Judicial Perspective

This work is relevant in the analysis of the intermarriage between arbitration as one of the alternative dispute resolution methods and ligation. That being the case, to a great extent, the work helps in the analysis of the current legal and practical set up for arbitration in Uganda.

The paper runs short of making a critique on the competitiveness of the current arbitration institutional framework of arbitration in Uganda and it does not analyse the readiness of Uganda's arbitration framework in the resolution of oil and gas disputes. This research attempts to attend to that analysis and it provides workable solutions.

2.3.3 In his paper on ***The Role of Domestic Courts in International Commercial Arbitration,* 2007**, ***Angualia*** analyses the role of domestic Courts in International Commercial Arbitration in Uganda[26]. Angulia's paper demonstrates the role the courts can play in international commercial arbitration and this helps to understand the permitted legislative intervention in so far as International commercial arbitration is concerned.

This role is both negative and positive in that whereas courts can help in pre-trial remedies like preservation of the subject matter, discoveries, etc. Courts are also of great use when it comes to the execution of the award.

The negative role is, *inter alia*, the attendant delays and makes public of matters which ought to be confidential.

This paper runs short of addressing the fear that if Courts over poke their noses in matters to do with arbitration, the whole purpose of choosing arbitration as an alternative to litigation is defeated.

This research paper has emphasized the need to improve on both the structural and institutional framework in the arbitration of oil and gas disputes where the role of domestic Courts will not only be taken advantage of but also address their negative effect in the whole sphere of arbitrating oil and gas disputes.

Whereas this work is relevant to this research especially on the current legal or practical interplay between domestic courts and international commercial arbitration, it makes no attempt to analyse the competitiveness of Uganda's arbitration institutional framework and International commercial arbitrations in general.

[26] Mr. Daniel Angualia, Advocate and Arbitration Practitioner in Uganda

This research paper is intended at giving a holistic approach while analysing the entire arbitration framework in Uganda (be it local or international) vis-à-vis its competitiveness in the arbitration of oil and gas disputes.

2.4 Literature on competitive and current trends in International Commercial Arbitration

2.4.1 In their book entitled; ***International Commercial Arbitration*** Redfern and Hunter analyse the topic of international commercial arbitration using an international perspective[27]. The authors consider the discipline of international arbitration from the explanation of the parties in international commercial arbitration that, needless to mention, include the oil and gas industry. The book throws more light on the discipline of international commercial arbitration in respect of its parameters, limitations and how it can conductively be carried out.

Whereas this work is of great importance to this research (as it helps to understand the discipline of international commercial arbitration, the tenets of a sound arbitration framework by giving a great insight into the expectations of the players in international commercial arbitration where the oil and gas industry usually falls) it does not in any way analyse the competitiveness of Uganda's oil and gas industry.

As indicated, this literature is important owing to the fact that it is pertinent when it comes to the aspect of analysing the competitiveness Uganda's arbitration institutional framework in juxtaposition with other jurisdictions.

It is however necessary to have a home-grown analysis of Uganda's readiness for international commercial arbitration with a bias on the oil and gas industry. The book runs short of giving the parameters of a conclusive arbitration institutional framework for arbitration proceedings and the outcome. The work is also limited in scope in so far as Uganda is concerned.

This research paper borrows a great deal of information on how to have a sound arbitration institutional framework from the above literature and it uses it in chapters that deal with a comparative analysis of the arbitration institutional framework of other jurisdictions that Uganda needs to bench mark from.

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[27] Redfern and Hunter; International Commercial Arbitration, 5th Edition- please cite properly using the correct referencing technique. (I will email you a guide)

Since the said literature does not focus on Uganda, this research paper comes in to throw more focus on Uganda with an aim of using the above work as a yardstick to analyse the competitiveness of Uganda's arbitration institutional framework.

2.4.2 Simon Greenberg, Christopher Kee and J. Ramesh Weerantry in their book ***International Commercial Arbitration***, made a tremendous effort to discuss in greater detail the principles and doctrines of international commercial arbitration from an Asian – Pacific perspective while referring to other renown arbitration centres[28]. This work is silent on Uganda's arbitration law and practice as the scholars' work was premised on a case study of the Asian-Pacific perspective where Uganda does not fall.

The authors endeavour to analyse the developments in international commercial arbitration and demonstrate how different arbitration centres are dynamic in respect of the developments in the discipline of arbitration as they come. Little or no attention is made to Uganda and this makes the undertaking in this research very necessary.

This work is important in the juxtaposition of Uganda's arbitration institutional framework with that of the international community vis-à-vis the best practices in international commercial arbitration where the oil and gas industry falls. It is however necessary to pay particular attention to Uganda's framework- thus the relevance of this research paper.

2.4.3 In their book, ***Oil and Gas Law; Current Practice and Emerging Trends*** the authors write about the practice and emerging trends in the United Kingdom Continental Shelf (UKCS) oil and gas law[29]. In this work, all forms of dispute resolution in the oil and gas industry that include; unilateral action, collaboration and negotiation, assisted collaborative non-binding process, expert determination, arbitration and litigation are considered[30].

This work is relevant for this research especially in respect of chapters 4, 5 and 6 below. This work is also of great help in respect of analysing the various methods of ADR with a bias on arbitration. Like Redfern and Hunter as well as Christopher Kee's texts, the work is relevant in understanding

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[28]An Asian Pacific Perspective Cambridge University Press 2011

[29] Greg Gordon, John Paterson and Emre Usenmez; Oil and Gas Law; Current Practice and Emerging Trends. 2nd Edition Dundee University Press, 2011

[30] Ibid Page 575.

and analysing the current practice and emerging trends in the oil and gas industry from an International arena but with a bias on the United Kingdom Continental shelf.

The book however, runs short of emphasizing that arbitration is the most preferred form of dispute resolution in the oil and gas industry in the United Kingdom Continental Shelf (UKCS). It also concentrates on the law and practice in the United Kingdom Continental Shelf as opposed to Uganda. Since Uganda's oil and gas industry is just taking shape, it is pertinent that we have in place a "home grown" arbitration framework that is not only relevant but even attractive to both the local and international stakeholders. This makes the literature of International scholars to be very relevant.

Whereas the textbook concentrates on the law and practice of arbitration in the United Kingdom continental shelf, it runs short of giving an analysis of what a competitive arbitration institutional framework should or ought to be.

This research is intended to consider or have a bias on Uganda's arbitration institutional framework while borrowing a leaf or two from other jurisdictions.

2. 5 Conclusion

From an international perspective, there is some literature on the discipline of International Commercial Arbitration which usually includes the oil and gas industry. In Uganda, however, there is limited literature on the topic of International Commercial Arbitration, in general, and arbitration of oil and gas disputes in particular. The Researcher intends to analyse the literature that is both local and international as the principles of arbitration are the same from a global point of view.

The Researcher will identify the missing link in the said literature and will endeavour to join hands with the mentioned authors and scholars in contributing to the literature in respect of arbitration in the oil and gas industry while making a case for reform and institutional re-alignment.

At the end of this research, a contribution to the wanting Ugandan literature on the topic of arbitrating oil and gas disputes is intended to be achieved.

CHAPTER THREE

METHODOLOGY

3.1 Introduction

In this chapter the researcher concentrates on the research methodology. Research Methodology entails the processes by which information was to be obtained, analysed and applied. Research methodology usually takes three (3) forms; the qualitative, quantitative and mixed research methods.

Under the qualitative method, three procedures of data collection may be engaged, they are: open ended interview, direct observation and written documents[31]. Qualitative on the other hand involves objective measurements of statistical, mathematical or numerical analysis of the data collected through questionnaires, interviews, surveys and polls.

3.2 Research Design

The researcher utilised qualitative methods of research wherein primary and secondary materials were relied upon during the data analysis. This was engaged while using structured interviews in form of questionnaires. The researcher had structured interviews and guided discourse with the stakeholders that include; Uganda Chamber of Petroleum and Mines, the Uganda National Oil company staff, professional bodies like Uganda Law Society, Departments like the Attorney General's chambers, staff at Centre for Arbitration and Dispute Resolution (CADER) and practicing Advocates in Uganda that are in the arbitration cluster.

It is settled that research methodology is categorized into three aspects; quantitative method, qualitative method and mixed research method. In the quantitative category, the data is collected through the use of questionnaires and analysed using graphs, pie charts and statistics that form the quantitative methods that are used to generate or use numerical data[32].

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[31] Michael Quinn Patson, Qualitative Evaluation and Research Methods, University of Southern California, Research Guides, Page 10.
[32] Nsubuga T., Katamba P., Basic Research; Simplified for University Students 1st Edition, Newgo Publishing Company.

Qualitative methods, on the other hand, involve data collected through interviews which is analysed, categorized and generated as none numerical data[33]. It follows therefore that whereas quantitative methods engage the exploitation of pre-classified data that are determined to lead to a pre-determined conclusion which can be done by way closed ended or restricted – answer interviews, qualitative is otherwise.

According to Dr. Nsubuga and Dr. Katamba, each method has its own advantages and disadvantages. The researcher has been guided by the above merits and demerits while making a choice on which methods to use.

In the view of the above authors, qualitative methods are more suitable for topics that need to be deeply explored, those that require a detailed view of the topic, where there is need to study individuals and their natural setting looking at the "how" and "what". This makes the research inquiry to remain open as the phenomenon is susceptible to change.

Since the quantitative research method compromises detail owing to the fact that free data that is collected must be turned in such a way that it fits into the pre-determined categories, assumptions or conclusions the researcher has found it pertinent to engage it. The quantitative research method has enabled the researcher to state the research problems in succinct and well set terms specifying the independent as the dependent variables that are under investigation. This in the end has limited the subjectivity of judgement or conclusion[34]. However, according to Tashakkori, qualitative and quantitative methods are alternative but not mutually exclusive[35].

It is thus very possible to combine both methods in order to obtain and capture the strength of both methods and at the same time limit the weakness of both in the same study. A combination of this results in mixed methodology[36]. The use of mixed methodology enables the Researcher to use the differences in the two methods to enhance the credibility of his or her research.

The Researcher shall thus adopt both the qualitative and quantitative methods (mixed methodology) with a view of ensuring the credibility of the research and to also cater for situations

[33] Ibid 39
[34] Ibid 37
[35]Tashakkori and Another, Mixed Methodology, Reichardt and Rakis Publications, 1994, 5
[36] Ibid 46

where it will not be possible to use only one method. A good example would be on-line interviews in some of the Arbitration Centres spread across the globe.

3.3 Sampling Method and Procedure

While going on with the interviews, the researcher engaged the following sample selection techniques;

The Respondents were selected using an analysis of a cross section of the intended population sample. Owing to their importance to this exercise, the researcher came up with clusters of a given interest group, presented general questions in a workshop like manner and it is from such a group that the Researcher obtained the representative sample by way of recommendation from the group, by taking advantage of those expressing of interest in the research topic or determining the sample of the population basing on the willingness of some members of the cluster to be of help. This is the snowball method of sampling.

Effort was taken to ensure that information is obtained from all categories of people from a given department by paying attention to the categorization of the Respondents vis-à-vis their positions using the factor of professional seniority of an individual or the seniority in hierarchy of the office that individual occupies. This was aimed at getting information for all ranks of people in a given department were obtained.

The researcher interfaced with 25 Respondents the selection of whom was guided by the Krejcie and Morgan sampling guidelines using non-probability methods of purposive sampling criteria[37]. These are listed in the table below (Next Page).

As it is difficult to reach out all the stakeholders in all the clusters of the population, the researcher adopted the purposive method of sampling. A purposive sampling approach entails deliberately using a selected sample in respect of a specific group with a specific purpose in mind[38].

[37]Krejcie, Robert v. and Daryle W. Morgan; Determining sample size for research activities. Educ psycho Meas (1970)

[38] Robert B. Burns and Richard A. Burns; Business Research Methods and Statistics using SPSS. Sage Publications Inc. India, 2008

SUMMARY OF THE SAMPLING APPROACH[39]

NO	CATEGORY	POPULATION	SAMPLE SIZE	TECHNIQUE
1.	The Judiciary	370	1	Purposive
2.	Attorney General's Chambers	203	1	Purposive
3.	Ministry of Justice and Constitutional Affairs	115	1	Purposive
4.	Uganda Law Society Offices	35	1	Purposive
5.	Practicing Advocates with a bias in arbitration (Arbitration Cluster)	105	5	Purposive
6.	National chamber of Mines & Petroleum	83	2	Purposive
7.	NOC Officers	43	2	Purposive
8.	CADER Officers	8		Purposive
9	ICAMEK	13	1	Purposive
10.	Tullow Oil Uganda	25	1	Purposive
11	CNOOC	35	2	Purposive
12	Oil & Gas Service Providers	1005	5	Purposive
13.	Academia	100	2	Purposive
	TOTAL	2842	25	

[39] The various figures were obtained from the respective departments or offices referred to therein. Judiciary, from the Office of the Spokesperson, Attorney General's Chambers from the Human Resource Offices at the Attorney General's Chambers, Ministry of Justice, from the Ministry of Justice and Constitutional Affairs, Uganda Law Society; from the CEO, Uganda Law Society Ms. Joyce Nalunga Birimumaaso, Practicing Advocates with a bias on Arbitration; from Uganda Law Society, arbitration cluster, National Chamber of Mines and Petroleum, from the Office of the National Chamber of Mines and Petroleum; National Oil Company Office from the National Oil Company Offices, CADER Offices from the Center for Arbitration and Dispute Resolution Offices, Commercial Court Building, Tullow Oil from the Tallow Oil Offices, CNOOC from the CNOOC Website, Oil and Gas Service providers; from the National Chamber of Mines and Petroleum Offices, Academia from the Sound Institutional Offices and Websites and the Registrar, ICAMEK.

3.4 Data Collecting Instruments

The researcher employed both the quantitative and the qualitative data techniques (mixed methodology) in the process of collecting data premised on the school of thought that finds the method to be a very proficient method vis-à-vis the nature of the topic at hand. This qualitative data was gathered using a structured interview guide with the Respondents in the sampled population explained above.

In this regard the researcher studied text books, Acts of Parliament and other subsidiary legislation, law journals, policy documents, decided cases and/or arbitration awards that are related to the topic of study and critically analysed them vis-à-vis the empirical studies. This study further reviewed information and data (documents, records and statistics) concerning other arbitration centres like the London Court of Arbitration and others.

3.4.1 Interviews

The researcher formulated and followed an interview guide which is a set of questions to be asked or where answers should be solicited from the Respondents in the course of the interview. This is owing to the fact that structured interviews demonstrate authentic analytical research and an opportunity to the interviewer to obtain useful and authentic information in respect of the structure and managerial issues in a succinct manner.

In this interview method, the researcher was in position to have control over the soliciting and construction of the data which flexibility will allow new developments and ideas that keep on cropping up during the dialogue and the entire process. This gave the interviewer an opportunity to follow up answers that are useful, qualified or appeared to be very closely related to the topic.

3.4.2 Document Analysis

The researcher considered analysed and juxtaposed secondary data from materials such as publications and reports (both published within and without Uganda) that have a direct connection to the instant topic and the same has been used to buttress primary information which has been analysed with the outcome of the study. To this end, the researcher obtained views from Scholars, Arbitration Practitioners, Opinion Leaders and other writers and relate them to the topic at hand.

3.5 Data Analysis

The Researcher engaged a qualitative data analysis approach. This included brief descriptions, explanations and instructions that can be prescribed in tabular form. The Researcher presented the descriptive information in essay form.

Data analysis is the process of bringing order, structure and meaning to the whole of the collected data. It is aimed at obtaining usable and useful information. The analysis is a description and summation of the data so collected. The researcher intends to employ the data analysis method in the course of this research.

In this respect, the researcher provided procedures and a process which is a slight departure from the data that has been translated into some form of explanation, understanding or interpretation of the events, people and situations that were investigated. Qualitative data analysis is based on an interpretative philosophy. The cardinal intent intended to examine the meaningful and symbolic content of qualitative data. This approach achieved the intended results.

In analysing the interview data, the researcher made an attempt to identify and scrutinize another person's interpretation of the events, understand why they have such a point of view, how they came to that position and what their pre-occupation is. Thus qualitative data analysis is usually by-factored, in that there is writing on one hand and identifying the themes, on the other.

3.6 Validity and Reliability

3.6.1 Data Validity

Validity is the extent to which a measuring instrument on application performs the function for which it is designed.[40] To ascertain the validity of the instrument, content validity was adopted. The instrument is validated by the researcher's supervisors at the University. They ensured that the instrument represented the entire range of possible items to be tested in the study.

Furthermore, the research that was carried out, the researcher used the "face validity" technique.[41] Here the researcher used easily understandable questions in the interview guide that can easily be

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[40]Easter by-Smith, M., Thorpe, R., & Lowe, A. (2002). Management research methods. *London: Sage Publications Examinership-Friel Stafford, Available from www. liquidation. ie*.

[41]Alkhatib, E., Collis, J., & Ojala, H. (2017). Digital Reporting by Small Private Companies: Evidence from the UK.

comprehended by the Respondents. Such questions enable the researcher to receive straight forward answers; hence the responses represented exactly what was "on ground".

3.6.2 Data Reliability

To ensure the reliability of the responses to the questions, the "Test re-test method" as described by Roger Hussey was used.[42] The Respondents were asked the same questions on two separate occasions under different situations, to avoid having the Respondents feeling like they are answering the same questions for a second time. Reliability is the tendency toward consistency found in repeated measurements[43]. The reliability of the instrument was ascertained using the internal consistency method.

3.7 Ethical Consideration

The researcher was alive to the ethical requirements of writing a research paper, collecting data, analysing the data and dealing with human beings. With that at the back of the Researcher's mind, the Researcher invoked the best practices of obtaining the information lawfully, keeping confidential, the identities of the Respondents who prefer to remain anonymous and analysing the legal provisions as they are - not as they ought to be.

To alley any fears and suspicion from the Respondents, the researcher obtained a letter of introduction from the Institute of Petroleum Studies under the auspices of Uganda Christian University that was submitted to all the offices and departments that the researcher was seeking information from.

3.8 Limitations of the Study

Delays in data collection: Since most Respondents were not concerned with the timely delivery of the information (the data, the answers to the questionnaire), the fixing of timely appointments, this caused a setback on the time factor.

As a mitigating factor, the researcher used a strategy of passing on the request for an interview and the questionnaire on time. Effort was made towards trying to fit within the Respondents' program

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[42]Collis, J., & Hussey, R. (2003). Business research: A practical guide for postgraduate and undergraduate students. *Ruona, WE (2005). Analyzing qualitative data. Research in organizations: Foundations and methods of inquiry*, *223*, 263.
[43]Sekaran, U. (2003). Research methods for business. Hoboken.

by seeking for alternative appointments at the discretion, pleasure and convenience of the Respondents.

Failure to have a guided one-on-one interview with staff and administrators of other benchmarked arbitration centres owing to the unavailability of funds and time.

Withholding information: Owing to the nature of information asymmetry that is a characteristic of the oil and gas industry, some officers withheld useful information in the process of responding to interview questions or passing on records. This was mitigated by cross-checking the information from other independent sources, where practicable.

CHAPTER FOUR

UGANDA'S ARBITRATION LEGAL FRAMEWORK

4.1 Introduction

Considering the need to enhance commercial activities in Uganda and the indisputable right of parties (be they local or international) to resolve disputes through arbitration, the need for Uganda to sign and ratify the New York Convention cannot be over emphasized. Due to disparities between the systems of thinking, multiple cultures, national ideologies and methods of conducting business in the various regions of the world, a national of a particular jurisdiction will be more likely to present a more convincing case by the standards of the Court of her jurisdiction than will, a foreigner. The negative perception of a judge's national predisposition may prevent parties with different national or cultural backgrounds from agreeing on a suitable Court to hear their disputes.

This is also vindicated by the legal maxim that Justice should not only be done but should also be seen to be done. This maxim concentrates more on the impression or feeling of the party whose interest is achieving justice as opposed to the real authenticity of the outcome.

Another interesting legal maxim is that justice delayed is justice defeated. Arbitration as a means of dispute resolution comes in handy to conform to the above time tested legal maxims.

The necessary implication of the foregoing is that once a Court pronounces itself on a matter, it can only have a binding effect or force within that judicial territory (jurisdiction) and not beyond, save for situations where other jurisdictions have agreed to allow such judgments' enforceability within their own territories. Two schools of thought have emerged from the foregoing.

Firstly, by analogy, the theory of reciprocity implies that Ugandan Courts should recognize and enforce the judgments of say, Kenyan Courts if, and only if, Kenya is prepared to offer similar recognition and enforcement to Ugandan judgments. This theory is necessary when one thinks of the fact that policies can eventually be altered by states varying their patterns of behaviour and causing one custom to supplant another. Secondly, the theory of obligation implies that the judgement of a Court of competent jurisdiction imposes a duty or obligation on a Defendant (foreign party) to comply with the terms of a given judgment, which the Courts in the foreign party's country are bound to enforce. Where there is anything, which negatives that duty, a defence to an action could arise.

For competitiveness' sake, it is thus desirable that a country's arbitration institutional framework for the arbitration framework is alive to the international or regional trends in the arbitration of disputes in general and the arbitration of oil and gas disputes in particular.

This Chapter therefore attempts to critically analyse the national legal framework of commercial arbitration in Uganda. It draws a semblance from the consciousness that has been implanted into Ugandan legal jurisprudence through compulsory recourse to those mechanisms that will bring speedy resolution of disputes. There is no doubt that Uganda appears to have sufficient laws that would help the oil and gas industry to cope with the resolution of disputes through arbitration but it's axiomatic that it attracts and serves better and greater interests if the said laws are improved upon, made more proficient and designed in such a way that makes them acceptable on an international plane.

4.2 Discussion

4.2.1 Legal Framework for Arbitration in Uganda

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 more efficient and accessible; faster and cheaper as opposed to litigation. This is where Alternative Dispute Resolution (commonly referred to as ADR) comes in.

Alternative Dispute Resolution (ADR) takes the forms of Arbitration, Conciliation and Mediation. The next paragraphs shall briefly distinguish the latter two from Arbitration.

Conciliation

According to Black's law Dictionary, Conciliation is defined as a process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved; especially a relatively unstructured method of dispute resolution in which a third party facilitates communication between parties in an attempt to help them settle their differences[44].

[44] Black's Law Dictionary, Eight Edition, 2004 Bryan A. Garner P. 307

As opposed to Arbitration, the intention of the parties in this type of arrangement is to reconcile their differences. In this regard, the Conciliator just provides a platform where the parties meet to resolve their disputes, although he/she may offer his/her expertise, opinion or a solution which the parties have the discretion to accept or not.

One of the benefits of conciliation is that, it comes in handy as a preventive method of resolving disputes. Whereas a mediator or an arbitrator is in most cases engaged after the arising of a dispute or when the dispute is ongoing, a conciliator is always sought as soon as it becomes apparent that a dispute is about to occur. Conciliation is thus an effective pre-emptive measure of avoiding disputes. It is more effective if both parties agree to avoid further disagreements or accept and own up their breaches and reach an understanding on how to atone for any of the breaches in the manner the parties may deem fit.

Conciliation can equally be useful as a dispute resolution mechanism even when a dispute has already happened and the parties may as well agree on how to make good the ensuing loss, how to avoid a further dispute or even agree on how to leave with it.

The Conciliator plays the role of an umpire but his opinion, though persuasive, is not binding on the parties. The system works so well where the parties work in utmost good faith, where they are willing to take or lose something, if not all. The confidence the parties may have in the Conciliator plays a big role.

Conciliation as a dispute resolution mechanism is advantageous in that it allows the parties to have control over the process and outcome of their dispute, the outcome arrived at is always satisfactory to the parties, the parties freely and candidly discuss the dispute and it is cheap as compared to other dispute resolution mechanisms.

According to African anthropology, conciliation is inbuilt in African traditional dispute resolution mechanisms. Its disadvantages are that it is not binding upon the parties and may thus not be enforced like an award or a judgement; it is ineffective as far as a final resolution of disputes is concerned and an aggrieved party has no right of appeal.

As distinguished from Arbitration, Conciliation is not cognisant of the binding effect of the umpire’s award which is a cornerstone of arbitration.

Mediation

Mediation is a dynamic, structured, interactive process where an impartial third party assists disputing parties in resolving conflict through the use of specialised communication and negotiation techniques[45].

Mediation is in all respects similar to Conciliation and it has been adopted by Courts in Uganda making it to be part and parcel of the judicial system.[46] According to the Judicature (Mediation Rules) all matters have to first go through the mediation process before they are referred back to Court for adjudication[47].

As opposed to arbitration, the opinion of a Mediator is only persuasive and is not binding on the parties. Like Conciliation, the success of Mediation is premised on the principle of utmost good faith, the good will of the Mediator and all the stakeholders like the parties and counsel involved.

The development of ADR in Uganda has a rather, an interesting history. Although America takes centre stage especially with the assistance of Washington D.C Judiciary, the idea came from Canada in 1990, when Ambassador Tomusange, then Uganda's High Commissioner to Canada, met informally, with Justice Ntabgoba, now retired Principal Judge. After the meeting, Ambassador Tomusange interacted with Canadian government officials and it so happened that the government of Canada was willing to extend aid to Uganda.

The Judiciary was proposed as one department that can be one of the major conducts of this desired aid. Subsequently, a Canadian delegation met judges and it was clear that lawyers were presumed to be so exposed that it was rarely necessary to access new information.

This state of affairs had led both the bar and the bench to lag behind in view of the dynamic and changing trends of resolving commercial disputes that have always been local and sometimes international. Eventually the idea that judges, private legal practitioners and academicians should interact and learn together became acceptable. It is upon this background that ideas were

[45] S.I 10 of 2013

[46] https://en.m.wikipedia.org (last visited on 7th March, 2020).

[47] It is now a mandatory requirement that a matter has to undergo mediation before it is entertained by a Judicial Officer in trial Court.

exchanged, training above, a lot of benchmarking; leading to the enactment of the Arbitration and Reconciliation Act.[48]

The most relevant law on arbitration in Uganda is the Arbitration and Conciliation Act[49] The aim of the Act as discerned from its long title is to provide a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation; and to make applicable the Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention) to any award made in Uganda or in any contracting State arising out of international commercial arbitration. Part III of the Act relates to the International Commercial Arbitration. Section 34 sets the grounds under which an arbitral award may be set aside. According to my juxtaposition of the two statutes, there is no striking difference from the provisions of Article V of the New York Convention and the provisions of Uganda's Arbitration Act.

The Arbitration and Conciliation Act[50]

The Arbitration and Conciliation Act provides for domestic arbitration, International Commercial Arbitration and enforcement of foreign arbitral awards, among others. Where parties have agreed to submit to arbitration of all or certain disputes, which have arisen between them and have obtained an award as a result; or it is a foreign arbitral award, such an award is enforceable in Uganda. On the national plane, the Act is only binding where parties have a commercial contract that makes provision for the submission of disputes for arbitration. In a bid to promote a more responsive and quick dispute settlement mechanism, the Commercial Division of the High Court of Uganda piloted a project of Court-assisted mediation to facilitate the process of dispute resolution.

The Arbitration and Conciliation Act is thus the prevailing law in this respect. This pilot project resulted into a mandatory Court-assisted mediation of all disputes before any matter is set for adjudication[51].

[48] 2000, Cap 4 Laws of Uganda.
[49] Supra
[50] 1bid
[51] The Judicature (Mediation) Rules S.I No. 10 of 2013.

This project has been a success so much so that it is now mandatory that all matters are first referred to a mandatory mediation before recourse to litigation and this only becomes necessary when the parties fail to reach a settlement.[52]

The Arbitration and Conciliation Act regulates the operation of arbitration and conciliation procedures, as well as the behaviour of the arbitrator or conciliator in the conduct of such procedure. This Act is of great significance owing to the fact that it incorporates the provisions in the 1985 United Nations Commission on International Trade (UNCITRAL) Model Law on International Commercial Arbitration as well as the UNICITRAL Arbitration Rules 1976 and the UNCITRAL Conciliation Rules 1976. However, it should be noted that the Act does not provide for the immunity of an arbitrator which is covered under the UNCITRAL Model law.

This lapse (whether intended or otherwise) makes the office of the arbitrator less attractive or risk prone. This lack of legal protection (immunity) to the office of the arbitrator is a major lacuna in the law which should be purged.

In the course of this research, it transpired from the Respondents (who were in unison) that this lack of immunity of the Arbitrator puts some competent people on their tenterhooks and some off the list of arbitrators. This is one of the legislative steps that the researcher shall propose to address if the arbitration process and industry has to go to another level.

The stated purpose of the Act is to empower the parties and to increase their autonomy. It has always been the case that if an arbitration agreement existed, the Courts would not hear the case until the arbitration procedure has taken place. Disputing parties are thus obliged to submit to the provisions under the Act on the basis of an existence of an agreement to arbitrate in the event that a dispute arises. Section 2(1) provides for the meaning of "Arbitration Agreement". It states – "an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not"

The Act recognizes and gives effect to New York Convention Awards[53]. Under section 39, arbitral awards made in pursuance of an arbitration agreement in the territory of a state which is party to

[52] No statistical data is available, but according to most Respondents, this mandatory mediation has resolved some of the disputes or at least narrowed down some of the issues, and thus has been recognized as a time saving approach.

[53] 39, Arbitration and Conciliation Act, Cap 4

the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) adopted by the United Nations Conference on International Commercial Arbitration on 10th June 1958 is enforceable in Uganda. A New York Convention Award shall be binding for all purposes on the persons as between whom it was made[54]. It shall be recognized and deemed binding and enforced upon application in writing to the Court where it is sought to be enforced[55].

Further, the Act also gives effect to the enforcement of ICSID awards. The ICSID Convention award means an arbitral award rendered pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other states. It includes any decision interpreting, revising or annulling an award, being a decision pursuant to the ICSID Convention, any decision as to costs, which the Convention is to form part of the award[56]. A person seeking enforcement of an ICSID Convention Award shall be entitled to have the award registered in the Court subject to proof of the prescribed requirements and the other provisions of the law[57].

Given the wider membership and application of these international conventions (New York Convention with (149) states (see list of members) and ICSID Convention with (159) states (see list of members), the Arbitration and Conciliation Act broadens the scope and openness of Uganda in recognizing and enforcing foreign judgements[58]. It should however be noted that the openness is specifically in relation to arbitration awards and not Court decisions *per se*. A party who is dealing with another where these conventions are applied enjoys the liberty to enforce the awards in Uganda. For Court decisions; they can only be enforced in accordance with the procedures set out by law.

There are however other legislations that, needless to mention, are of relevance to this subject which pre-date the Arbitration and Conciliation Act. The Researcher is convinced that a discussion on such statutes will demonstrate the desire for a well-founded law, practice and modus operandi and on arbitration in general, and international commercial arbitration, in particular. Some of the said laws are discussed below.

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[54] S. 41, ibid

[55] Ss. 35, 42 and 43, ibid

[56] S. 45, Supra note 3

[57] http://www.newyorkconvention.org/new-york-convention-countries visited October 21, 2018

[58] https://icsid.worldbank.org/apps/ICSIDWEB/icsiddocs/Documents/List%20of%20Contracting%20States%20and%20Other%20Signatories%20of%20the%20Convention%20-%20Apr%202014.pdf visited October 21, 2018

The Foreign Judgments (Reciprocal Enforcement) Act.[59]

This is an Act that makes provision for the enforcement in Uganda of judgments given in foreign countries which accord reciprocal treatment to judgements given in Uganda, for facilitating the enforcement in foreign countries of judgments given in Uganda, and for other purposes in connection with the matters aforesaid[60]. The Act applies to an 'action in personnum' which shall not be deemed to include any matrimonial cause or any proceedings in connection with matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding-up of companies, guardianship of infants or the care of, or the administration of the estates of, persons of unsound mind[61]. In effect, this Act is applicable to judgments obtained in commercial and contractual or other tortuous or civil claims by or against a person.

Section 2 of the Foreign Judgments (Reciprocal Enforcement) Act gives powers to the Minister, if satisfied that in the event of the benefits conferred by this Part of the Act being extended to judgments given in superior Courts of any foreign country, substantial reciprocity of treatment will be assured in respect of the enforcement in that foreign country of judgments given in the superior Courts in Uganda may by statutory order direct that this part of the Act extends to that foreign country and that such Courts of that foreign country as are specified in the order shall be deemed superior Courts of the that country for the purposes of that part of the Act.

For a judgment from a foreign Court to be admitted, it must: be final and conclusive as[62] between[63]the parties to the judgment; and there is payable under the judgment a sum of money, not being a sum payable in respect to taxes or other charges of a like nature or in respect of a fine or other penalty; and it is given after the coming into operation of the order directing that this part of this Act shall extend to that foreign county[64].

Under this Act and many other similar statutes (Acts) except for the Arbitration and Conciliation Act, the principle of reciprocity is a mandatory and it is at the centre of the Act. Black's law Dictionary defines the word '*reciprocal*' to mean '*directed by each toward the other or others'*[65]. The theories adopted to enforce foreign judgments are ably discussed in the case

[59] - 1961.
[60] See long title to the Act.
[61] Section 1(2) Foreign Judgments (Reciprocal Enforcement) Act Cap 9
[62] Section 2(2) ibid
[63] Section 1(2) Foreign Judgments (Reciprocal Enforcement) Act Cap 9.
[64] Section 2(2), ibid
[65] Black's Law Dictionary, 8th Edition, 2004, pg.1297

of *Christopher Sales & Carol Sales v. Attorney General*.[66] There are two theories vis-a`-vis the theory of obligation and reciprocity which are combined and the theory of comity. The theory of obligation considers that foreign judgment creates a debt and liability to pay. Meanwhile, the theory of reciprocity enjoins the Court of one country to recognize and enforce judgments of another country behaviour. The principle of comity is premised on courtesy and considerate behaviour towards another. The theories of obligation, reciprocity and comity are thus used in tandem, in isolation or any two by court to enforce foreign judgements. I must hasten to add that this is doable because of the mutual benefit that accrues from the reciprocal arrangement which is made at a political level and enforced through statutory instruments. This was the observation of Court in the case of *Emmanuel & Others v Symon* while referring to Courts in the United Kingdom[67].

Accordingly, the Court in Uganda was faced with a grand challenge to resolve the issue of a judgment creditor seeking to enforce a foreign judgment against a debtor in a country where there is apparently no reciprocal arrangement. The Learned Trial Judge departing from a more rigid and non-progressive pursuit of the doctrine of reciprocity espoused by our laws, went out of the rigid dictates of the law and purposively applied the doctrine of comity and allowed the registration and enforcement of a judgment obtained from the United States of America (USA). In his observation, Justice Mwangutsya (as he then was) considered the fact that the creditor could not just be left 'stranded' without a remedy having obtained a judgment from a country with a well-established legal systems and Courts that are credible.[68]

Under this Act, a foreign judgment can only be enforced where there is a reciprocal arrangement and it must be registered[69]. In the case of *Christopher Sales and Carol Sales v. Attorney General*[70], the Applicants obtained a judgment against the Respondent from USA and could not enforce the same against the Respondent (Uganda) and thus applied to have it recognized and enforced under the Ugandan legal framework. There being no reciprocal arrangement between USA and Uganda, Justice Mwangutsya (as he then was) departed from the cardinal principles

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[66]Civil Suit No.91 of 2011 (unreported); http://www.ulii.org/ug/judgment/high-Court/2013/15-2 visited October 21, 2018
[67] (1908) 1KB 302
[68] Justice Eldon Mwangutsya was then a High Court Judge, he is now a Justice of the Supreme Court.
[69]Section 7, US Court of Appeals 2nd Circuit in 2004
[70]Civil Suit No.91 of 2011 (unreported); http://www.ulii.org/ug/judgment/high-Court/2013/15-2 visited 18th March 2015

espoused in the Act and other decided cases while premising himself on the principles of reciprocity and comity went ahead to grant the *recognition and enforcement* of the USA judgment despite the lack of reciprocal arrangement between Uganda and USA.

This judgment opens up Uganda as a jurisdiction that recognizes, as credible, certain judicial systems and in that respect, sets aside or compliments the responsibility of the Minister to issue statutory orders, thereby creating an exception vis-a`-vis the principle of reciprocity by bringing in an application of the principal of necessity. Whether or not this is judicial activism without restraints is yet to be investigated; the benefit on the other hand is to make it easy for various nations with credible judicial systems to automatically register their judgments and enforce them in Uganda. The danger that might emerge is where the judgment to be enforced in Uganda is against public policy in Uganda and yet lawful in the country of origin. The question thus, is whether public policy and the political relations should govern this or rather, judicial activism should prevail[71].

It is however possible to have judicial activism and the public policy of Uganda to be intermarried so that in case of any conflict between the two, public policy prevails.

This Judgement is celebrated for giving efficacy to international trade which is always blind to such rigid requirements as the need for reciprocity between the different states of the parties and which is, needless to say, not always in contemplation of the parties to the transaction at the time of entering the contract, yet the role of Court is always as much as possible, to enforce the intention of the parties to a contract.

Section 8(1) provides that the Minister may, by statutory order by way of a general application order or otherwise, direct that this Part of the Act shall apply to the territories of the Commonwealth and to judgments obtained in the Courts of those territories as it applies to foreign countries[72]. There is a wealth of benefits in having reciprocal arrangements that benefit the country in terms of trade. There is no statutory order giving effect to this Act in terms setting out the countries with which Uganda has reciprocal arrangements. All applications for extension of this Act as it stands now require parties making specific applications to the Minister seeking such extension of reciprocity and thus making it costly in terms of time and money. With the implication

[71] CRB 540 of 2018. This is another interesting area of study which goes outside the purview of this research.
[72] The Foreign Judgments (Reciprocal Enforcement) Act, Cap 9.

of the *Christopher Sales case,* what Uganda would require for recognition and enforcement of a foreign judgment is credible judicial systems of the country where the judgement sought to be enforced originates from[73].

This Judicial activism is thus commended as it improves on Uganda's competitiveness when it comes to international trade and commerce, where oil and gas industry falls.

The Judgment Extension Act[74]

This Act provides for the execution by the Courts of Uganda of decrees and warrants in Court in respect of cases made and granted by the Courts of Kenya, Malawi and Tanzania. Under section 1 of the Act where a decree is obtained or entered in the Supreme Court of Kenya or in the High Court of Malawi or of Tanzania or in any Court subordinate to any of those Courts, for any debt, damages or costs, the same may be transferred to the High Court of Uganda or other Courts subordinate thereto for purposes of execution of the same. Such decrees are deemed to be original decrees of the respective Ugandan Court where they are sought to be enforced.

A judge or Magistrate in a Ugandan Court has powers to endorse and execute such decrees. A minister may by statutory order extend the provisions of this Act to other common wealth countries[75]. This law somehow seems applicable at a regional level, especially the former East African Community members like Kenya and Tanzania, which in effect made it easy to enforce judgments across the borders of each country in the list. But with the enlargement and growth the East African Community, Partner members like Rwanda and Burundi and many other countries (like South Sudan) that are seeking membership, it is now very pertinent for the East African Community to pass a protocol for the enforcement of foreign judgments within the member states and in relation to other regional economic blocs.

Conclusion:

The *corpus juris* of Uganda is not silent on the enforcement of foreign judgements. This approach shares some advantages with arbitration as a mode of dispute resolution for the reason that awards of any arbitral tribunal are easily enforceable across any boarders.

[73] Ibid
[74] Cap 10 Laws of Uganda.
[75] Section 5, Supra

However, since the laws on enforcing foreign judgements are restricted to some jurisdictions and to some extent give the minister power to extend the application of the Acts to some other states, the rigid principles of reciprocity, comity and to only judgements in persona creates a big shadow of doubt that makes the application of the Acts illusory in some respects.

For commerce to flourish across national boundaries, the law should be as accessible as the business opportunities on an international plane. It is self-defeating to allow commerce to prevail across boarders without having in place, a legal framework that can address disputes to the satisfaction of all parties.

International commercial arbitration is one such a remedy when it comes to the resolution of international trade business disputes.

Further, the Judgement Extension Act only applies to a few countries within the region yet the oil and gas industry involves many players from other continents than Africa and this does not cure the mischief the Act may have been enacted to redress.

The advantages of arbitration as a means of resolving disputes and commercial disputes in particular, thus remain very relevant and come in handy to provide a redress to this lacuna in our law.

Since the oil and gas industry has a multitude of players who are always on an international plane, it is axiomatic that the current legislation on enforcing foreign Judgements is of little or no relevance to them as the scope of the said laws is limited to countries that Uganda has a reciprocal arrangement with, the juridical ingenuity of identifying countries with respectable judicial systems notwithstanding.

The Judgement extension Act, as mentioned above, is also restricted to a few countries in the region. The information obtained from the Petroleum Authority is that the majority of the participants in the oil and gas industry are from such countries as China, Italy, England, America, Denmark, Saudi Arabia and Nigeria, among others, and the statutes on foreign Judgements do not apply to most of the above states.

This is a fetter to commerce, which commerce is blind to geographical restrictions called states, regions or continents. It is for this reason, among others, that arbitration has become a favoured mode of dispute resolution in the commercial world, be it local or international.

4.2.3 Institutions that handle Arbitration in Uganda

4.2.3.1 Centre for Arbitration and Dispute Resolution (CADER)

The Arbitration and Conciliation Act provides for the Centre for Arbitration and Dispute Resolution (CADER) as a Statutory Institutional alternative dispute resolution provider. Until the coming into force of the Arbitration and Conciliation Act, the use of arbitration, which has been in place since the 1930s, was rather limited with an absence of an appropriate control system as well as a general oversight over arbitrators especially with respect to the fees charged[76].

Prior to the coming into force of the Act the Courts were handling arbitration proceedings from a common law approach whilst being guided by the doctrines of equity and freedom to contract. Since Uganda's law is cognisant of the parties' right and freedom to agree on any lawful thing in their contract, the parties were at liberty to include an arbitration clause in their contract. This clause had to be respected.

With time, the legislature came up with an independent law to handle arbitration and conciliation termed as the Arbitration and Conciliation Act in the year, 2000[77].

The Arbitration and Conciliation Act is thus instrumental in the advancement of equality and fairness in the whole arbitration process. It is on these three core objectives that CADER was established[78]. CADER has made significant contributions to the development of the arbitration mechanism in alternative dispute resolution (ADR)[79]. The institution makes available to individuals and their legal counsel, at no charge, pre-drafted model arbitration and mediation clauses for inclusion in their contracts. It also has a detailed fee structure that can be relied upon when charging for various services including fees that are charged by the individual CADER registered mediators or arbitrators. These registered members are also required to subscribe to CADER's Code of Conduct and are subject in their conduct of arbitration and mediation proceedings to the Ethics Committee established within CADER's governing body referred to as "The Governing Council".

[76] S. Sempasa: Centre for Arbitration and Dispute Resolution & the new legislative formulation on A.D.R; Uganda Living Law Journal, Vol. 1, No. 1, June 2003 p. 81 at p. 86

[77] See History leading to the enactment of the Arbitration and Conciliation Act, in this chapter for above.

[78] See Part VI of the Act

[79] Ibid

Unfortunately, in the past, CADER was not able to effectively perform its services due to inadequate funding. From the time of inception, CADER was funded by USAID (United States Aid for International Development) which funding was terminated in 2003 on the understanding that government would take over. In June of 2008, the Arbitration and Conciliation (Amendment) Act[80], was enacted with the purpose of providing for funding of the Centre for Arbitration and Dispute Resolution by government. Refocusing the sourcing of funds for the Centre has enabled the revival of its operations in the settlement of disputes in Uganda.

Since the revival of the operations of CADER, between August 2008 and November 2009, the majority of cases that have been handled have been addressing applications for the compulsory appointment of a single arbitrator. The basis of such applications before CADER is the existence of an arbitration clause in a contractual agreement binding the parties, the request to submit any dispute to arbitration and the Respondent's refusal to cooperate in the appointment of an arbitrator. What is most prevalent in such matters is that the arbitrator is always advised or reminded to sign the Declaration of Impartiality, Party Undertaking Agreement and file the same with CADER upon assuming jurisdiction over the matter in dispute as well as returning the file to CADER for archiving purposes upon completion of the case[81].

The above interventions of creating an organised, competitive, efficient and result-oriented arbitration framework are a welcome move not only to the jurisprudence of Uganda but also to the business world.

In the recent past, CADER has been given yet another blow by the High Court in H.C.M.C No. 133 of 2018 when the High Court ruled that the constitution of the leadership at CADER is not in conformity with the law[82]. However, this matter is on appeal and it is too early to speculate.

It is worth noting that in Uganda there is no independent physical infrastructure where arbitration proceedings take place.

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[80] Act No. 3 of 2008

[81] Dr. Anthony Conrad K. Kakooza: Arbitration, Conciliation and Mediation in Uganda: A focus on the Practical Aspects: Uganda Living Law Journal, Vol. 7 No. 2 December, 2009 pp. 268 -269. ISBN 1729-4672. Published by the Uganda Law Reform Commission

[82] International Development Consultants V. Jimmy Muyanja and 2 Others.

The Researcher found out that arbitration proceedings are handled at the auspices of the Commercial Court of Uganda, in the arbitrators' chambers/offices, in hotel meeting rooms or any place the parties may find convenient.

This, as shall be discussed latter, has far reaching implications as it is a norm that there should be no room that provides any opportunity to Courts or any other party to interfere with arbitration proceedings.

Owing to the short-comings in CADER, other players that include; the Association of Bankers; Uganda Law Society and Uganda Chamber of Commerce have joined hands to come up with an independent arbitration centre named International Centre for Arbitration and Mediation, Kampala (**ICAMEK**).

4.2.3.2 International Centre for Arbitration and Mediation, Kampala (ICAMEK)

The Centre has specialised staff and independent facilities that can effectively handle arbitration proceedings. It has a registry, arbitration rooms and other infrastructure necessary for carrying out arbitration.

ICAMEK has a fully-fledged Registry a list of a credited arbitrators, a policy on training and dissemination of information besides well-structured physical facilities where arbitration may take place.

According to Ms. Kaggwa, the Registrar at ICAMEK (as at the time of the interview, November, 2019) ICAMEK has a panel trained arbitrators from whom an arbitrator, a panel of arbitrators or an umpire can be chosen depending on the nature of the dispute. The Centre has several clusters of professions or areas of speciality to choose from and this is guided by the nature of the subject matter in dispute.[83]

ICAMEK has further facilities that include over three rooms where arbitration can be conducted from teleconference facilities and a fully-fledged secretariat designed with a sole aim of facilitating the arbitration process.

[8383] By 5th March, 2020 ICAMEK's Panel of Arbitrators had grown to 19 Members as per the information derived from Ms. Norah Kaggwa.

Further ICAMEK has its own arbitration Rules that are available at its website. The said rules bind all the parties to the dispute, the arbitrator and counsel at either side of the divide should parties choose to be bound by the said rules while having a matter under arbitration. The Centre has a code to be complied with by people acting as arbitrators, umpires and members of any arbitral tribunal.

ICAMEK is however at its level of inception, it's too early to speculate but, on the face it, it seems to have been incubated to outlive and purge the weaknesses of **CADER**.

ICAMEK is accredited for its ingenuity in coming up with all the above approaches that are aimed at having an effective arbitral institution. However, it is clear that all the above loopholes are more in the legal framework as opposed to structural framework. The Arbitration and Conciliation Act, should thus be supported by wide and all inclusive regulations (rules) that cater for all the innovations brought up ICAMEK and many others that should be aimed at having an effective arbitration legal and structural framework.

ICAMEK has however faced some challenges as the Arbitration and Conciliation Act seems to be silent on other arbitration centres than **CADER**.

The call for legal reform and institution re-alignment is thus still necessary.

4.10 Conclusion.

The arbitration institutional framework for arbitration in Uganda requires streamlining and updating if Uganda is to realise a robust and competitive arbitration framework. This should start with a well-informed, founded and workable policy on arbitration that should precede the amendment of all arbitration related legislation.

4.3 AN ANALYSIS OF THE ARBITRATION LEGAL FRAMEWORK IN UGANDA

4.3.1 Introduction

This chapter examines the efficiency of the legal framework for arbitration in Uganda. Areas of vulnerability in the legal framework are identified and possible proposals are spelt out to redress some of these shortcomings later. The paper also spells out some of the advantages of using arbitration over traditional Court processes (litigation) especially in oil and gas related disputes. Pertinent international law issues applicable to arbitration in Uganda are examined as well. And,

purposely, no attempt is made to delve into the intricacies of literature review of other scholastic work on arbitration law in their countries of origin or interest.

4.4 Discussion

4.4.1 Office of the Arbitrator

Under the Arbitration and Conciliation Act, parties to a dispute may agree that in case a dispute arose out of the underlying contract such a dispute shall be referred to an arbitrator or arbitrators for settlement. Furthermore, and in accordance with the intentions of the parties, an arbitrator or arbitrators may be appointed by a person designated by the disputing parties. Here, the designation must be contained in a document known as a submission. This document is a written agreement to submit present or future differences (or disputes in a contract) to arbitration, whether an arbitrator is named in it or not. A submission can, therefore, not be made orally.

In Uganda, the Contracts Act[84] envisages a situation where the parties can enter into an oral contract or a contract inferred from the conduct of the parties.[85]

Whereas a submission for arbitration can also be inferred from correspondences or mails amongst the parties, for giving efficacy to business, there would be no fetter to commerce if evidence is led that leads to a conclusion that the parties orally agreed to refer their dispute to arbitration.

This will even be practicable as the Arbitration Act provides for guidelines (solutions) in case parties have not agreed to such other ideas as the seat of arbitration, the law applicable, the number of arbitrations, the usage and custom to be applied and so forth.[86]

When we delve into other areas of concerning the appointment of arbitrator, there are other areas of concern that require a discourse.

Can disputing parties designate and give powers to appoint an arbitrator to a body corporate or an individual? The Arbitration and Conciliation Act is silent on this. Another begging question that comes to the fore is that, can anybody corporate or individual be granted powers to appoint an

[84] Act Number 7 of 2010, Laws of Uganda.
[85] Section 10 (2) the Contracts Act, No. 7 of 2010.
[86] Sections 2(2), 2(3) of the Arbitration and Conciliation Act, Cap 4, Laws of Uganda.

arbitrator? Again, the Arbitration and Conciliation Act is silent. The Act does not even spell out the qualifications of persons eligible to appoint an arbitrator.

Can parties choose an organisation, society president (like the Uganda Law Society, The Architects' Council, the Surveyors Association Committee) to designate or appoint an individual or panel of arbitrators?

Section 2(2) seems to suggest that the parties may be at liberty to authorise an institution to determine an issue, this leaves an ambiguity and does not answer the question whether an institution can be designated as an arbitrator or not.

Further, can an undischarged bankrupt appoint an arbitrator? Or, can a mentally unsound person appoint an arbitrator? The Arbitration and Conciliation Act is silent on such matters. Even section 37 of the Arbitration and Conciliation Act, which elaborates a bit further that 'such a person may be designated either by name or as the holder for the time being of any office or appointment' is not helpful. The qualifications of the party appointing an arbitrator are still not clear.

This ambiguity is always a recipe for uncalled for disputes that the law ought to forestall by providing for would be solutions that pre-empt such hurdles before they come up.

Another major lacuna in the Arbitration and Conciliation Act is that the statute does not spell out qualifications of a person who is eligible to hold office of an arbitrator. Can a body corporate be appointed as an arbitrator? If so, which officer(s) of the body corporate would represent this corporation as arbitrator? Although sub-section 2 of section 11 to the Arbitration and Conciliation Act provides that the arbitral procedure, including the constitution of the arbitral tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

This Section seems to contradict the doctrine of ***Lexus Loci*** and ***Lexus Arbitri***. Under the former principle the disputants may choose Uganda as the physical place of seating to hear the dispute (arbitration proceedings) but they may also choose that the tribunal employs the laws of South Sudan, for example.

So the provision of Section 11 of the Arbitration Act which is not qualified with such words as "subject to the agreement of the Parties" seems to defeat a cardinal principle or tenement of

arbitration which is to the effect that the parties have right to choose the arbitral tribunal, the law to be applied, among others.

Such provisions that make compulsory, matters which ought to be optional, usually end up restricting the parties in the exercise of their rights. It would also mean that if two foreign companies chose Uganda as the physical place where the dispute should be resolved, then the laws of Uganda would automatically apply. This is a turn off to parties who may desire to choose Uganda as a place for the determination of their dispute but nevertheless chose to use the UNCITRAL or any other set of arbitration rules to be used to sail through the arbitration process.

The said Section, (section 2) does not resolve such a conundrum. If the legal philosophy underpinning the above statutory provision is centred on the doctrines of freedom of contract and sanctity of contract, to what extent, then, can these doctrines be upheld where parties to a dispute agree to appoint an arbitrator who is an infant or a mentally sick person? We are drawn into polemics precipitated mainly by less thoughtful consideration, on the part of the draftsman or even the legislature in the enactment or in the preparation of the Arbitration and Conciliation Act.

The fact that some contracts or pieces of foreign legislation provide that the disputing parties themselves should spell out the procedure for arbitration is no excuse for the draftsman not to have taken pro-active measures to spell out more clearly some of the fundamental guidelines of any arbitration procedure. Indeed, when adopting foreign laws, it is helpful to remember that not all wisdom from a foreign vineyard makes good local wine. The draftsman should have endeavoured courageously to brew his own wine, with some adaptations, of course, from other jurisdictions. To that end since the position is that Courts should not interfere with arbitration proceedings, effort ought to have been made to leave no room for doubt, no escape route and to leave no stone unturned when it comes to the initial stages of the arbitration proceedings.

The partnership Act for example has many provisions that use such qualified language as "subject to an agreement between the parties or unless agreed otherwise..."[87] This presupposes that the legislature is ready to accept and respect the agreed terms as supreme but in case the agreement is silent on certain issues, the law comes in to provide a solution. By so doing, circumstances that would lead to further disputes or putting the entire process to a standstill as avoided.

[87] Cap 4, Laws of Uganda

The law ought to define and set up clear cut category of people who qualify to be appointed as arbitrators which all parties with capacity to contract shall have capacity to choose from or a default clause on the procedure of choosing one, should the agreement be silent on this aspect. In the same vein the law should provide for as many safeguards as possible in case the submission is silent on a given aspect.

Since arbitration awards are not a subject of appeal (save for a few exceptions) the law should spell out the people or offices that qualify to be appointed as arbitrators and this should be clear on which officers of a body corporate, association or organisation that qualify to act as arbitrators or who shall have the mandate to appoint an arbitrator, as the case may be, as agreed to by the parties to a contract. This should include a default clause should the parties omit, ignore or forget to provide for parameters of appointing an arbitrator or arbitrators.

4.4.2 Appointment of Arbitrators

This area has long been a point of contention in Uganda's laws. In case a submission provides that the dispute will be settled by two arbitrators, one appointed by each disputing party, then, unless a different intention is expressed in that submission, (a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, or is removed, the party who appointed him may appoint a new arbitrator in his place; or (b) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with a written notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent[88].

A default provision for the centre to appoint an arbitration in case one of the parties fails, ignores or refuses to exercise its right to appoint an arbitration would seem to comply more with the intention of the parties at the time of contracting.

Although the Arbitration and Conciliation Act provides that the appointing authority (which in Uganda's case is CADER) shall have the mandate to appoint an arbitrator, Court may set aside any appointment made in pursuance of Section 11 (4) of the above statutory provision. The statute

[88] See S. 11 of the Arbitration and Conciliation Act Cap 4 Laws of Uganda.

does not spell out: (a) the grounds upon which the High Court can intervene; and (b) the party or parties that can petition the High Court to intervene.

The implication of the above legislation is that someone is left to wonder if the High Court is seized with powers to intervene, on its own, in proceedings of private parties or that Court can be moved to by one of the parties. Such form of judicial activism has never been known to exist in Uganda.

Two, some few fearless and commercial oriented Judges may be willing to intervene but such interference is equally not desirable in the arbitration industry, be it local or international.

What is clear, however, is that where any party to a submission made under Section 5 (2) of the Arbitration and Conciliation Act, or where any person claiming under that party, commences legal proceedings against any other party to the submission or any person claiming under that party, in respect of any matter agreed to be referred, any party to such legal proceedings can, at any time after appearance, and before filing a written statement, or taking any other steps in the proceedings apply to the High Court to stay the proceedings."[89]

The High Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the Applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, can make an order staying the proceedings. It is Important, here, to stress that before an order to stay proceedings is made the Court must satisfy itself that the aforesaid conditions are met.

The Court's intervention here is a double edged sword. On a positive front, the orders issued can preserve the dispute property from being put to waste, damage, alienation or any other disposal. If this intervention is ignored, then this will make whatever orders the arbitrator may come up with not to be in vain or nugatory.

On a negative note, the moment the matter is referred to Court, the Rules of Court apply. The first impact which is always undesirable for the arbitrating parties in that the dispute runs the risk of

[89] Section s (2) of the Arbitration and Conciliation Act, Act 4 of 2000.

being made public and thus may defeat the parties intention of keeping confidential the affairs of the contracting parties.

The legislature should maintain the privacy of the arbitration proceedings just like in some family matters where such privacy may be recognised by for example conducting hearings in camera or by using pseudo names like "***in Re Akasombo Dam Arbitration***"[90]. This approach can respect the privacy of the disputing parties.

Another ramification is that the aggrieved party always has a right to appeal against the order of Court. This may have the effect of delaying the arbitration proceedings – defeating the very reason why parties may have adopted arbitration as a dispute resolution mechanism in the agreement, which is, among others, saving time in the course of the resolution of the dispute.

It would have been instructive for the legislature to provide that whatever interim measure the Court gives is not appealable and further that Court should as much as possible keep the matter confidential. This would not be a new practice as it is applied in Court related matters where children are involved, sexual offences (involving children) and so on where the trials are sometimes allowed to proceed in camera.

4.4.3 Multi-party Arbitrations

The provisions of Section 11 of the Arbitration and Conciliation Act do not pay due attention to multi-party arbitration proceedings vis-à-vis the right of each of the parties to appoint an arbitrator.

According to Christopher Kee, when the ICC changed its rules to incorporate rule 10, it triggered many amendments to institutional arbitration rules throughout the world[91]. In their work, the authors analysed the impact of a French decision in the case of *Siemens AG and BKMI Industrienlagen GmbH v. Dutco Consortium Construction Co, French Cour de Cassation* where two Respondents who had been directed to have one joint arbitrator contended that since they had different interests each party ought to have been allowed to appoint an arbitrator[92]. The ICC arbitration agreement in that case provided for two-party nominated arbitrators whereby each party

[90] This is but an example of how the details of the parties can be hidden to protect their privacy.
[91]Supra F.N.21.
[92] First Civil Chamber, 7 January, 1992.

had to nominate one arbitrator and the third, and presiding arbitrator, was to be selected by the two co-arbitrators so nominated[93].

The many Respondents agreed under protest to jointly appoint one co-arbitrator but later challenged the award of such a constituted arbitral tribunal arguing that the arbitral tribunal had not been properly constituted. According to the above authors,

"The main concern of the Dutco Principle is to ensure equality in multi-party arbitrations. Two aspects of equality must be respected. The first is that all parties to the arbitration agreement must agree to and be aware of the appointment process. This may seem a somewhat trite observation. However, this was missing among the Dutco participants… Secondly, all parties should be treated equally meaning that, in certain circumstances, if one party loses the right to nominate an arbitrator so should all"[94].

As noted earlier, the Arbitration and Conciliation Act of Uganda is silent on the issue of multiple parties to an arbitration agreement. We have established that several arbitral institutions and states have since changed their respective rules to cater for *Dutco* predicament.[95]

In Uganda, the Arbitration and Conciliation Act was enacted in the year 2000, yet the Dutco case had been decided eight (8) years before but, for one reason or the other, this escaped the eyes of the legislature, the parliamentary Counsel or the Draftsman. This is however the advantage of the judiciary in that it has a duty to breathe life into the law. The law should have the acumen to forestall a mischief or an absurdity before it occurs and by so doing, Uganda's competitiveness as a seat for arbitrating oil and gas disputes will not be put under scrutiny owing to either Judicial or legislative dynamism.

The JCAA Rules as at 2011 did not have a specific rule that provided for cases of multi-party arbitrations but it expressly provided in Rule 10 (2) that "multiple claimants or Respondents shall be deemed to be one party for purposes of appointment of arbitrators"[96].

This approach has its own disadvantages, in that, it does not cure the mischief in the *Dutco* case, it instead compounds it as it, in effect, forces the joint claimants or Respondents to agree on a joint

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[93] This is actually the position in Section 11 (2) (a) of the Arbitration and Conciliation Act, Cap 4 Laws of Uganda.
[94] Supra F.N. 2 Page 255 para 6.33
[95] ACICA Rules Article 11; CIETA Rule 24; HKIAC Rules Article 82; KCAB International rule 4; 2010 SIAC Rules Rule 9; ICC Rules Article 10; and 2010 UNCITRAL Arbitration Rules Article 10.
[96] JCAA is Japanese Commercial Arbitration Association.

co-arbitrator. If co-claimants / co-Respondents are treated as one party for purposes of choosing an arbitrator, its implication is that the autonomy of a party to freely choose an arbitrator is compromised, another negative implication is that the co-claimant or co-Respondent would have lost that benefit of choosing an arbitrator and to that extent, they will be disadvantaged as opposed to the single party that has a lee way to choose its arbitrator.

The relevancy of this approach can be vindicated by the fact that it is a common occurrence in the oil and gas industry in Uganda, as elsewhere, to have multiple or joint parties to syndicate or synergize in a given undertaking. This state of affairs requires the law not to be blind to the fact that each party ought to retain the right to enforce its interests and goals albeit syndicating with another.

By comparison, the CIETAC Rules do not follow the approach that is adopted in the ICC Rules vis-à-vis the right of parties in a multiparty arbitration[97]. The CIETAC Rules provide that where multiple claimants or multiple Respondents cannot agree on an arbitrator, CIETAC will appoint only the arbitrator for the side that has failed to agree on a common arbitrator, it does not appoint the three, as opposed to the ICC or the ACICA Rules[98].

This makes the position in China not different from the position in Japan as at that time which is, by default and in view of the lacuna, the position in Uganda. As explained earlier on, this approach gives an unfair advantage to the single party who may have nominated an arbitrator of its choice. This is also a recipe or ground for the affected party to apply to set aside the arbitration award as was the case in the Dutco case. For the above reasons, the researcher opines that the Arbitration Act should be revised to cater for this development, which will come in handy in the oil and gas industry where synergizing or having many parties is more of a rule than an exception.

In International Commercial Arbitration, the parties have the liberty to choose the seat of arbitration and by necessary implication, the *lex arbitri.*[99]This makes countries with well founded,

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[97] CIETAC Rules mean China International Economic and Trade Arbitration Commission Arbitration Rules (N.B. We refer to the Rules that were in Force as at 1st May, 2005)

[98] Article 24. Article 10 (1) & (2) of the ICC Rules. The applicable laws or rules that govern the arbitration proceedings.

[99] The applicable laws or rules that govern the arbitration proceedings.

reasonable and just rules (and laws) to have a more comparative advantage and thus a more probable choice and so is the vice versa.

In the *Dutco* case the Court observed that in multi-party arbitrations two principles have to be considered; the first is that all the parties to an arbitration agreement must agree and be aware of the appointment process, secondly in the appointment process all parties ought to be treated equally, in that, if one party loses the right to appoint an arbitrator, so should the others[100].

To this end the Arbitration Act of Uganda is silent on the procedure of how multiple parties appoint an arbitrator or an arbitral tribunal and the parameters under which they may fairly and justly lose an opportunity to appoint an arbitrator or arbitral tribunal.

The Act concentrates on matters where there are many arbitrators and is silent on multiple parties to an arbitration agreement and proceedings. This is not in consonance with the nature of the oil and gas industry that is characterised by a multitude of players in a single undertaking.

In case of default, should the appointing authority appoint an arbitrator for each party? If one of the parties lost the right to appoint an arbitrator, should the authority appoint one, alongside the others appointed by the cooperating parties?[101]

4.4.4 Specialized Competence of Arbitrators

Judicial systems do not allow the parties to a dispute to choose their own judges. In contrast, arbitration offers the parties the unique opportunity to designate persons of their choice as arbitrators, provided they are independent. This enables the parties to have their disputes resolved by people who have specialized competence in the relevant field.

With the sophistication in the oil and gas industry, this is a welcome move which, at the end, gives efficacy to business.

[100] Siemens AG and BKMI IndustrienlagenGmBH V. Dutco Consortium Construction Co, French Cour de Cassation, First Civil Chambers, 7th January 1992

[101] *Some of the answers to the above issues of concern or proposals are contained in the last chapter that deals with recommendations*.

As opposed to Courts; where the parties do not decide who the adjudicator should be, where the parties do not have the opportunity to at least decide the qualifications and experience of the adjudicator, where the parties cannot decide on the parameters of the dispute, the laws and rules to be applied, arbitration enables the parties to decide on who the adjudicator (arbiter) should be, the scope, the law to be applied including trade customs and usage. This makes the rights of the parties and their interests to be identical at all levels, to be respected and held as sacrosanct.

As explained earlier on, the oil and gas industry is so complex that in all fairness, for expediency and to give efficacy to business, it is axiomatic that a person possessed with the requisite skills, experience and business acumen is best placed to act as an arbiter or umpire should a dispute arise.

According to Ugandan law, once appointed the arbitration has the discretion to determine his capacity or competence to hear the matter. This is what is termed as the competence-competence rule. This rule is so fundamental in arbitration matters in that avoids delays, unfounded allegations and what has been seen as a change of mind by the parties with a view of either frustrating or delaying the proceedings.[102]

For the rule to be more positively used from abused (negative) it is axiomatic that in the first place, the law should spell out the minimum qualifications of people who are to act as arbitrators, the rules should be strict that there is no room to allow misuse of this doctrine.

The Researcher shall dwell more on this in the recommendations chapter.

It therefore goes without saying that both the legal framework and institutional framework of arbitration in Uganda should be in tandem with the desire for speed and autonomy of the arbitration process.

To this end, the legislation should eliminate or restrict situations where court ought to intervene in arbitration proceedings.

Another legal step that can be taken to provide for time lines within which appeals and applications to court should be filed and disposed of.

Presently the law is silent on the rights of parties and the limitations of the right of appeal, so much that an aggrieved party may appeal to the High Court against the arbitration award (of course with

[102]See Section 16 of the Arbitration and conciliation Act, Cap 4, 2000.

the limited scope of the grounds under which a party can appeal) but after that if the matters may be referred to the Court of Appeal and Supreme Court as if it is any other ordinary litigation matter.

By so doing, this whittles down the advantages of arbitration as opposed to litigation as the appellant process ends up filling arbitration with litigation.

The competence doctrine is now a foundational principal of the modern law of arbitration. Under this principle, an arbitration tribunal has the competence to decide its own competence. In other words, the tribunal has the Jurisdiction to independently decide whether it has the Jurisdiction to try a matter or not.

Under this principle, it's the tribunal and not the court that should in the first place decide the tribunal's competence.

This is a very big strike in limiting the involvement of court. According to most Respondents interviewed, the more independent an arbitrator or tribunal is the more it performs better.

Put in another way, parties appear before a given arbitrator or arbitral tribunal for one reason or the others, one of the parties feels comfortable to appear before such an arbitrator, such a party files an application in court so that court pronounces itself on the neutrality or competence of the arbitrator (of course with the attendant right of appeal, from the matters goes back for arbitration, this will cost the innocent party clearly in terms of time and money and the same will not give efficacy to business.

The competence-competence rule has been adopted in most arbitration statutes including that of Uganda.

One of the hinds to the competence-competence rule has been pointed out but the Court of Appeal in the state of Ontario in the case of Shaw Satellite G.P V. Pieckenhagen when court held that in the very least, the party seeking to apply the competence-competence principle must admit that it is a party to the arbitration agreement[103].

[103] Show Satellite G.P V Pieckenhagen, 2020 ONCA 192, June 3, 2012

In short a none-party to an arbitration agreement cannot be bound by the competence-competence principles and may thus apply to court to avoid being inconvenienced by an arbitration process he/she did not subscribe to in the first place.

4.4.5 Speed and economy

The current legal framework for arbitration makes it faster and less expensive than litigation in the Courts. Although a complex international dispute may sometimes take a great deal of time and money to resolve, even by arbitration, the limited scope for challenge against arbitral awards, as compared to Court judgements, offers a clear advantage. Above all, it helps to ensure that the parties will not subsequently be entangled in a prolonged and costly series of appeals. Furthermore, arbitration offers the parties the flexibility to set up proceedings that can be conducted as quickly and economically as the circumstances allow. In this way, multimillion dollar ICC arbitration was once completed in just over two months. The limited scope for challenging the award, the ease with which an award can be enforced across national borders and the ease with which an award can be enforced against a state qua state or state and an individual makes arbitration more desirable in international commercial disputes where most disputes in the oil and gas industry fall.

CHAPTER FIVE

COMPARATIVE ANALYSIS OF UGANDA AND OTHER JURISDICTIONS IN RESPECT TO THE ARBITRATION INSTITITIONAL FRAMEWORKS.

5.1 Introduction

The benefits of diversity (defined broadly as variety or variation) are widely recognized[104]. Diversity of team members is associated with increased creativity (albeit also with increased conflict).[105] As stated by Katherine W. Phillips of the Columbia Business School: "Diversity encourages the search for novel information and perspectives, leading to better decision making and problem solving."[106] But when it comes to legal rules, diversity is not so highly valued. Instead, uniformity is the favoured goal.[107] American lawyers study the Uniform Commercial Code and numerous other uniform statutes promulgated by the Uniform Law Commissioners (with occasional help from the American Law Institute). Internationally, the United Nations Commission on International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law (UNIDROIT) likewise support the uniformity of legal rules[108]. The leading instruments of international arbitration law—the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the UNCITRAL Model Law on International Commercial Arbitration—are both widely touted for the uniformity they have brought to arbitration law[109]. And, as the researcher will discuss later, commentators continue to

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[104] John M. Rounds Professor of Law, University of Kansas School of Law; Board of Directors, Arbitrator Intelligence, Inc. This Essay is based on my inaugural Glenn P. Hendrix lecture, sponsored by the Atlanta International Arbitration Society and given at Emory Law School on March 24, 2016.

[105] Diversity, MERRIAM-WEBSTER (11th ed. 2012) ("the condition of having or being composed of different elements: variety")

[106] Elizabeth Mannix& Margaret A. Neale, What Difference Makes a Difference? The Promise and Reality of Diverse Teams in Organizations, 6 PSYCHOL. SCI. PUB. INT. 31, 32 (2005)

[107] See generally Acts, UNIF. LAW COMM'N, http://uniformlaws.org/Acts.aspx (last visited Jan. 22, 2017) [hereinafter Acts, UNIF. LAW COMM'N]; UCC Final Act Information, UNIF. LAW COMM'N, http://www.uniformlaws.org/Narrative.aspx?title=UCC%20Final%20Act%20Information (last visited Jan. 22, 2017).

[108] UNCITRAL, https://www.uncitral.org/ (last visited Jan. 30, 2017); History and Overview, UNIDROIT, http://www.unidroit.org/about-unidroit/overview (last visited Jan. 30, 2017)

[109] Louise Barrington &Rashda Rana SC, Dealing with Diversity in International Arbitration, 4 TRANSNAT'L DISP. MGMT. (2015).

urge more uniformity rather than less when proposing reforms to the law on international arbitration law[110].

Uniformity of legal rules clearly has benefits, and widespread adherence to the New York Convention and adoption of the UNCITRAL Model Law and this has been beneficial to individual States and the international community as a whole. But in this study the research shows the differences between Uganda's arbitration institutional framework and other nations.

5.2 Discussion

Arbitration, while in a development phase, is growing rapidly across sub-Saharan Africa, which might be broadly spilt into three groups: East Africa, West and Central Africa, and Southern Africa. (North Africa is considered in the report on MENA). This research found that while arbitration is well established in some parts of West and Central and Southern Africa such as Ghana, Nigeria and South Africa, various other countries in the continent have only recently been seen to support and embrace arbitration. In East Africa, arbitration is reported to be increasing in the jurisdictions of Uganda, Kenya, Tanzania and Rwanda in particular. Users from these particular jurisdictions foresee a significant upturn in arbitration in the next five years.

Having examined the various arbitration laws and institutions that operate in East African countries, this section examines some of the similarities and differences by focusing on the challenges confronting these laws and arbitration centres and suggests how the centres can grow their workload, make their services better known and strategically share their regional space. These are presented in different categories of usage, seats on the tribunal the regulatory institutions and career development in the field as supported by different countries.

5.2.1 Use of Arbitration for Dispute Settlement

The research noted that there is an increase in the use of arbitration in Africa and East Africa, in particular. The reason for the increased use of arbitration across the continent as a whole lies not only with the parties' control over the process but also primarily with their control on the pace of the proceedings and the confidentiality afforded by arbitration. In a continent where the perception of lack of commercial sensitivity by the Courts is an issue, considerations such as costs, neutrality,

[110] Susan D. Franck et al., The Diversity Challenge: Exploring the 'Invisible College' of International Arbitration, 53 COLUM. J. TRANSNAT'L L. 429, 431, 468 (2015). Efforts are underway to enhance that diversity.

expertise of arbitrators and finality have been pointed out as additional advantages. Consequently, participants also indicated that international arbitration affords a dispute resolution mechanism independent of the political and bureaucratic issues. It was noted that, while much of the demand for international arbitration is driven by international companies investing in Africa, local entrepreneurs are beginning to embrace international arbitration or arbitration in general.

There are also some country-specific reasons for the growth of arbitration. For example, it was discovered that in Nigeria, the absence of a discovery process as one of the advantages of arbitration over litigation and could lead to an increased use of arbitration. However, despite the increased use of arbitration, practitioners and users of arbitration commonly point to costs as a significant disadvantage, with some remarking on the discouraging effect this has on the settlement of lower-value disputes through arbitration. Perhaps in response to this, there appears to be a drive by many African states to appear arbitration-friendly, with Courts taking arbitration-friendly positions and governments updating old arbitration legislation to comply with modern norms. Uganda is not an exception in this regard.

Arbitration is now regarded as the preferred mechanism for settling international disputes[111]. It is now argued that international arbitration should grow in tandem with the globalization of trade[112]. Arbitration has thus gained popularity over time amongst members of the business community due to its advantages over litigation. One of the most outstanding benefits of arbitration over litigation is its transnational applicability in international disputes with minimal or no interference by national Courts and the strong, but usually invisible, hand of the state.

This lack of interference by domestic Courts boosts the confidence of parties in their pursuit for justice in a forum of their choice. This is more applauded because in some respects the states are some of the disputing parties; making the vehicle of arbitration more palatable as it's more immune to state interference than Courts. However, it is arguable if this advantage of arbitration can be seen in some East African countries.[113] The researcher has discovered that even elsewhere, when an African state has become a party to the relevant treaties, there might still be the perception that

[111] Susan D. Franck, The Role of International Arbitrators, 1 and available at: https://internationalarbitration-attorney.com/wp-content/uploads/Microsoft-Word-ILW-ILSA-Article.docsfranck2. pdf [accessed on 7 Apr. 2016]
[112] Peter Cresswell, International Arbitration: Enhancing Standards 10, 10-13 (The Resolver, Chartered Institute of Arbitrators, 2014).
[113] Such as the New York Convention 1958 and the ICSID Convention 1965.

its Courts cannot be relied upon to apply their texts correctly or in good faith[114]. As it relates to Kenya, it was also noted that parties to arbitration agreements have used Court intervention to delay and frustrate arbitral proceedings[115].

Uganda is not in a better stead when it comes to this rather disappointing conduct. This requires having in place a legal framework that is fool-proof in as far as Court's and the State's interference is concerned.

5.2.2 Regulatory Institutions

Unlike some countries in East Africa, there has been only one major arbitration institution in Uganda, the Centre for Arbitration and Dispute Resolution[116]. Uganda's Arbitration and Conciliation Act establishes the Centre for Arbitration and Dispute Resolution (CADER)[117]. The Act empowers CADER to make appropriate rules, administrative procedure and forms for effective performance of arbitration, conciliation or ADR processes; to establish and enforce a code of ethics for arbitrators, conciliators, neutrals and experts; to qualify and accredit arbitrators, conciliators and experts; to provide administrative services and other technical services in aid of arbitration, conciliation and ADR; to facilitate certification, registration and authentication of arbitration awards and conciliation settlements; to provide skills training and promote the use of ADR methods for stakeholders[118].

As indicated earlier on, another arbitration centre, International Centre for Arbitration and mediation Kampala (ICAMEK) has been established in Uganda more as a centre to fill up the gap left by CADER but also as a panacea for CADER's short-comings.[119]

The situation in Uganda before the advent of ICAMEK is similar to what is happening both in Burundi and Rwanda. In Burundi, the researcher found that the Burundian Government created the Burundi Centre for Arbitration and Mediation (BCAM) to deal with commercial and

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[114] K. Muigua Role of the Court under Arbitration Act 1995: Court Intervention Before, Pending and After Arbitration in Kenya, Kenya Law Review 2 (2008-2010).
[115] J.T. McLaughlin, Arbitration and Developing Countries, vol. 13, no. 2 The International Lawyer 211, 212 (1979).
[116] A.C.K Kakooza, Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects, (2009) vol. 7 no. 2 Uganda Living Law Journal 268, 272 (December 2009).
[117] Arbitration and Conciliation Act of Uganda, 2000, s. 67, Cap 4. The 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 foregoing.
[118] Section 68, Arbitration and Conciliation Act of Uganda
[119]See Section 16 of the Arbitration and conciliation Act, Cap 4, 2000.

investment disputes[120]. It is not very evident how busy the BCAM has been[121]. In a 2008 World Bank publication, it was noted that the BCAM, needs to project its profile to the international community[122]. To increase its visibility, the Centre may enter into strategic collaboration with the other centres within the region in the area of conferences and other activities of these institutions. BCAM can also organize international and regional conferences, in collaboration with the business community of Burundi to promote the use of arbitration to them. Such collaboration may also include the various government ministries that deal with the international business community in the areas of tourism, investments and trade.

On the other hand, in Rwanda, the Parliament enacted a law establishing the Kigali International Arbitration Centre (KIAC) as an independent body to administer mediation, adjudication and arbitration[123]. KIAC has a panel of domestic and international arbitrators publicly available on its website[124]. Parties to KIAC arbitration are free to nominate their arbitrators, in accordance with the KIAC Rules. However, when KIAC is called upon to appoint an arbitrator, it does so primarily from its panel of arbitrators. It is noteworthy that prior to the establishment of KIAC, there was no formal organization administering amicable dispute resolution processes in both domestic and international disputes[125].

In contrast to Rwanda and Burundi, however, Kenya and Tanzania were found to have more than one regulatory institution of arbitration. In Kenya for example, there are three major arbitration institutions: Chartered Institute of Arbitrators, Kenya Branch, Nairobi Centre for International Arbitration (NCIA), and the Centre for Alternative Dispute Resolution (CADR). This is contrary to the case in Tanzania. The Researcher discovered that in Tanzania, the Act does not make any provisions on institutional arbitration in Tanzania. It also does not endorse a sole arbitral institution in the country. It may, therefore, be implied that the provisions of the Tanzania Arbitration Act (TAA) apply to both institutional and ad hoc arbitrations where Tanzania is the seat of arbitration.

[120] Law No. 1/08 of 17 Mar. 2005, Code on the Organization and Competence of the Judiciary
[121] See USA International Business Publications, Burundi Mineral & Mining Sector Investment and Business Guide: World Strategic and Business Information Library 128 (Int'l Business Publications, 2013).
[122] I. Baghdadli et al. (eds), Breaking the Cycle: A Strategy for Conflict-sensitive Rural Growth in Burundi: Main Report (World Bank Publications, January 2008).
[123] Law Establishing the Kigali International Arbitration Centre, Law No. 51/2010 of 10 Jan. 2010, Laws of Rwanda.
[124] Panel of arbitrators is available on KIAC website at: http://kiac.org.rw/spip.php?rubrique25 [accessed 8 Apr. 2016].
[125] Kigali International Arbitration Centre Rules, 2012, Arts 12-15, published in the Official gazette No. 22 Bis of 28 May 2012, available at: http://www.kiac.org.rw/IMG/pdf/-3.pdf [accessed 5 Apr. 2016].

Therefore, there are two main arbitration institutions in Tanzania: The Tanzania Institute of Arbitrators (TIA) and the National Construction Council.

5.2.3 Career Development in the Arbitration Field

Overall, a need for greater specialization among arbitrators and the lack of experienced arbitrators were highlighted as necessary to promote arbitration in Africa. In West Africa, it was discovered that there are various factors which may affect the career prospects of arbitration practitioners. In Nigeria, for example, the proposed creation of the National Alternative Dispute Resolution Regulatory Commission to regulate the processes of accreditation, the institutions and individuals involved in alternative dispute resolution (ADR), was regarded as a key challenge because it gives rise to concerns that this will undermine parties' freedom to select legal counsel and arbitrators.

In Ghana there is a requirement that arbitrators must have ten years' experience and this is a challenge for younger arbitration practitioners[126]. In South African the research showed that until the current complicated and antiquated legal system for international arbitration is reformed in their jurisdiction, it will limit the ability of lawyers in the jurisdiction to develop specialist international arbitration practices. Lastly in Rwanda, practitioners are becoming specialized quickly as parties are reluctant to appoint practitioners without any proven accreditation or experience in arbitration.

All the above developments from the foregoing comparative analysis provide a wide platform for Uganda to pick a leaf from, as stated earlier, uniformity is the trend that all countries that aspire to have sound, attractive and fool proof arbitration centres should adopt, after all, there is no harm in domesticating best practices from elsewhere by legislation, practice, or otherwise.

5.2.4 Conclusion

As discussed above, different countries have different arbitration institutional framework (that is the laws, regulations, procedures, formal an informal conventions, custom and usage). Whereas other jurisdictions are dynamic in view of their continuous adjusting of the laws, which is at the

[126] It is also a requirement in Uganda that for one to qualify to be eligibly appointed as a Judge of the High Court, one must have practiced law for more than ten (10) years among other stringent qualifications.

same rate as the developments that keep on merging, Uganda's arbitration institutional framework is on the other hand static especially on the front of legislative dynamism.

5.2.5 Recommendation

As explained in detail in the next chapter, the researcher recommends a re-alignment of the arbitration institutional framework. This includes reforming the law to the emerging demands of international commercial arbitration. Infrastructural adjustment and putting in place rules on fees, independence of the arbitrator and so forth.

CHAPTER SIX

6.0 SUMMARY, CONCLUSION AND RECOMMENDATION

6.1 Introduction

In this chapter, the researcher summarizes the study, discusses, draws conclusions and makes out recommendations accordingly. The conclusions and recommendations are made from the findings that were analysed, interpreted and presented in the previous chapter. This study was aimed at critiquing and evaluating the efficiency of Uganda's legal and institutional arbitration framework in respect of its capacity to proficiently handle disputes in the oil and gas industry.

6.2 Summary of the Findings

Uganda's Arbitration and Conciliation Act was enacted to amend the law relating to domestic arbitration and international commercial arbitration, and provide for the enforcement of foreign arbitral awards. The Act also defines the law relating to conciliation of disputes. Under this Act, national Courts may assist parties involved in arbitration with taking evidence, issuing interim orders, setting aside arbitral awards and recognition and enforcement of the arbitral awards. This Act is modelled on the UNCITRAL Model Law. Until recently, there has been one major arbitration institution in Uganda, the Centre for Arbitration and Dispute Resolution.

Uganda's Arbitration and Conciliation Act establishes the Centre for Arbitration and Dispute Resolution (CADER). The Act empowers CADER to make appropriate rules, administrative procedure and forms for effective performance of arbitration, conciliation or ADR processes; to establish and enforce a code of ethics for arbitrators, conciliators, neutrals and experts; to qualify and accredit arbitrators, conciliators and experts; to provide administrative services and other technical services in aid of arbitration, conciliation and ADR; to facilitate certification, registration and authentication of arbitration awards and conciliation settlements; to provide skills training and promote the use of ADR methods for stakeholders. The Arbitration and Conciliation (Amendment) Act, 2008 provides for the funding of the CADER by the Ugandan government. While this may help the institution to run smoothly, caution should always be exercised to avoid creating the impression that as a result of the funding, the Centre's activities are not independent of government interference.

CADER has not carried out the statutory mandate of making appropriate rules, there is no clear cut procedure and forms for effective arbitration proceedings.

In the course of the research, the Researcher has found that CADER has no code of ethics for arbitrators and neutral experts. There is no clearly established guidelines for accrediting arbitrators apart from attending a few conferences which actually have no clear cut parameters and minimum standards.

Whereas the amendment to the Arbitration and Reconciliation Act, provides for Government funding of CADER, the same has not been streamlined and followed up to the later.

All of the above concerns have to be identified and redressed from the cause if Uganda is to have an effective arbitration industry.

As indicated earlier on, ICAMEK has made strides to address some of the above issues but the same is in the trial stage, is at the try and error approach and it is industry driven than policy driven.

Good enough in practice, Uganda has several government funded institutions that are statutory bound to be independent like Uganda Law Society under the Uganda Law Society Act[127], Courts of Judicature and Institution of the Inspector General of Government.

CADER is empowered under the Act to offer both ad hoc and institutional arbitration whether domestic or international. The Act refers to 'administered arbitration' in defining arbitration and allows parties to authorize such institution to take decisions the Act permits them to make. In Uganda, the parties are free to determine the number of arbitrators. However, if the parties fail to determine the number of arbitrators under subsection (1), there shall be one arbitrator.

As discussed earlier on, this approach is a recipe for parties to bring applications to court to set aside the award that may come out such an arrangement.

To this end, the Researcher recommends that this as part of the Act be amended to cater for multiparty arbitrations.

If one party loses the right to appoint an arbitrator, so should all. If the authority is to appoint an arbitrator where a party is unable to appoint one, this appointment should cut across the board.

[127] Cap 276, Laws of Uganda

On the case of effectiveness, as it relates to Uganda, the misgiving is that in some cases parties will litigate arbitration related disputes all the way to the Supreme Court especially in pursuing the setting aside of awards. This situation creates an impression that Courts are entertaining litigation at the expense of arbitration, thus, scaring away some potential users of arbitration as a mole of dispute resolution. The effect of this is that parties who are keen on having their disputes settled faster may avoid jurisdictions where they perceive that they may be dragged before Courts for longer than necessary. This has the effect of denying the local arbitration institutions the opportunity to administer such arbitration matters.

To this end the Act should provide for more stringent hurdles at all levels of the Appellate systems. For instance the appeal should be restricted up to the Court of Appeal as the last Appellate Court in respect of arbitration proceedings. Here we can have the case study of the case of Babcon case that went all the way to the Supreme Court[128].

The 9 years this dispute remained unresolved whittled down all the advantages of arbitration as the Court appellate procedure fused the matter with litigation.

There are various issues of concern to users of arbitration, some of which do not fall within the ambit of arbitration institutions while others do. Users need adequate Information Communication Technology (ICT) infrastructure and other relevant physical infrastructure for the conduct of modern arbitration. Some of these arbitration institutions like CADER in Uganda's case, lack such basic infrastructure. Also some of the centres lack institutional capacity which refers to both physical infrastructure and adequately trained staff to assist parties and arbitrators sitting under their rules.

Another issue of concern is the amorphous position of the fees to be charged in arbitration matters by Advocates. This has left the market scared in respect of the uncertainty of the fees of counsel, yet the public concern is that arbitration is expensive. To alley such fears, the law should come up with a friendly fees structure, this one only requires the amendment of the Advocates Remuneration and Taxation of costs rules since arbitration and litigation are not very different in respect of the effort needed, training and strain on Counsel's resources, the Researcher

[128]Mbale Resort Hotel Ltd V. Babcon Uganda Ltd S.C.C.A No. 06 of 2016.

recommends that it is only the Sixth sentence (that relates to Court matters) that should be amended to include instructions on arbitration matters.

It should be noted that the Advocates Remuneration and Taxation of Cost rules have just been amended.[129]

These costs pertain to the fees chargeable by an Advocate after the Advocate Act. To strike a balance with other matters when the arbitrator may not be an advocate, the Arbitration and Conciliation Act of the Rules should have a fees structure for other arbitrators who are not Advocates but with a proviso that referred Judges former Advocates or Jurists should be constructed at Advocates only for purposes of billing.

To this end, the Researcher recommends that the Advocates Remuneration and Taxation for costs Rules be amended to include a schedule for arbitration matters.

Such s schedule should be streamlined with the guidelines on charges that are to be streamlined under the proposed amendment to the Arbitration and conciliation Act/Rules.

The Arbitration and conciliation Act and Rules should provide for the scale of fees for the arbitration that should be in tandem with the nature of the matter in dispute which should include, the value of the subject matter, the intricacies involved and so forth. For uniformity, it is advised that these rules should be a reflect action of the fees chargeable by Advocates, retired Judges and Jurists as explained above.

Once the fees are made uniform, clear and similar to what is charged elsewhere, the argument that the arbitration is expensive will be whittled down.

This will have more advantages since the fees shall be made to apply even if the Advocate, Judge, Retired Judge, Jurist etc. is an arbitrator or umpire.

It is the practice that in most arbitration proceedings, each party meets time costs of its Counsel and the two jointly meet the costs of the arbitrator or arbitral tribunal.

[129] The most recent amendment being in 2018 vide S1 No.7of 2018, cited as The Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations, 2017

It is the Researcher's recommendation that either way, the fees structure should govern the fees payable in such a case, or in case it is found that one party is to pay all time costs incurred there should be a clear procedure of deforming such fees-the rules.

Arbitration institutions in Africa and particularly Uganda must meet these concerns of users and provide a professional environment for such users.

On the part of comparing the standards of arbitration in different countries, there have been various legal developments in the different regions which are, in turn, driving the implementation of legal frameworks in keeping with modern norms. For example, the establishment of the Organisation for Harmonisation of Business Law in Africa (OHADA) is martialling the French-speaking countries in West and Central Africa, and it is only a matter of time before this extends to the development of a more modern legal infrastructure for international arbitration in the region.

Some signs of this have already been seen in, for example, Rwanda or Mauritius where there has been a government support drive to provide an arbitration infrastructure through changes to arbitration legislation, the training of the judiciary and the establishment of an international arbitration centre. In the common law jurisdictions, which are essentially English-speaking countries, the development of arbitration has been boosted by changes to the legal framework in order to support arbitration. For example, Nigeria, Ghana and Rwanda have seen either new pro-arbitration legislation or judicial precedent. In Uganda the Supreme Court decision of Mbale Resort V. Babcon is a good example of a pro-arbitration judicially.

6.3 Conclusion

The availability of effective and reliable arbitration institutions or effective dispute resolution mechanism is an additional factor that encourages investors to enter and carry on business in any jurisdiction. This is because of the confidence in knowing that their disputes will be settled expeditiously and in a neutral forum. This will also enhance users' confidence in arbitral institutions in the African continent and directly impact positively on the transformation of arbitration practice in Africa.

There is still a lot of investment required in the physical and legal infrastructure in order to give parties sufficient confidence to agree to have their arbitrations seated in many African jurisdictions. South Africa is a case in point, as statute requires permission from the Minister of

Economic Affairs for the enforcement of broad categories of foreign arbitral awards. Concerns were expressed that in many jurisdictions the Courts are not as supportive of arbitration as they might be; for example, key principles of arbitration law which are reflected in the New York Convention still risk being interpreted in a way which is not in keeping with modern norms. Some participants hoped that pressure from large commercial corporations might propel the creation of a supranational arbitration centre.

Uganda, however, is gradually moving away from the traditional concept that litigation is more effective than arbitration 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, arbitration can also be cost effective as well as financially and intellectually rewarding. More and more business concerns are opting for arbitration 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 arbitration 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 noteworthy that legal training in Uganda is progressing away from the adversarial system to moderate training involving arbitration and ADR in general with an added exposure to arbitration and other ADR practical techniques. Law Students and advocates alike should be encouraged further in this awareness so as to appreciate arbitration more, rather than ridicule it and thus embrace it in the practice of pursuit of justice in Uganda.

The Respondents who were practicing Advocates with a stint at the Law Development Centre and Uganda Law Society acknowledged how arbitration and ADR in general is becoming an integral part of legal practice in the recent past and underscored the super added obligation of including it in the academic program for students and continuing legal training for practicing advocates.

The technocrats at Uganda Law Society confirmed that arbitration and other ADR related seminars constitute 40% of their programs with a promise to lay more emphasis on the same with the advent of oil and gas disputes and international commercial transactions in general.

6.4 Recommendations

Based on the observation that the arbitration institutions are still under funded by governments for fear of their intervention being construed as bias and undue influence, the Researcher recommends that the government of Uganda should consider providing seed funding to help the institutions commence their activities. It is important to note that it is possible for arbitration institutions to receive support from the government while retaining their independence. The government can also (and even more importantly) nominate these institutions in their arbitration agreements. State institutions, such as Courts can also play a critical role in supporting the arbitral centres by facilitating the enforcement of international and domestic arbitral awards as well as ensuring that there is minimal Court interference in the arbitral process. This will win the confidence of potential arbitration users within and outside the region. Parliament and Courts need to also work in tandem in promoting law reform to ensure that the state arbitration related laws reflect modern trends in arbitration practice.

Arbitration institutions can also support the training of arbitration practitioners and the teaching of arbitration in Law Schools. A good example is the Uganda Christian University, which currently offers international commercial arbitration as a course on its Masters of Law in Oil and Gas Programme. This not only boosts the number of persons eligible to pursue a career in arbitration but also helps in creating awareness in the country and the region. It is also a powerful tool for improving the legal capacity and personnel of arbitral institutions, and boosting the development and practice of arbitration generally. It is therefore incumbent upon the government to create awareness as well as sponsor more citizens to undergo training.

Based on the report of a general concern for the arbitrators' accountability, the solutions proposed vary from the introduction of a payment system that is dependent on the achievement of certain milestones in the proceedings, to the introduction of guidelines similar to ICC techniques for controlling the time and costs of arbitration. To enhance the quality of awards, contributors propose two major solutions, namely: the scrutiny of awards by the relevant arbitral institution; and a screening process by arbitral institutions to ensure that arbitrators possess the requisite skills and experience. The Researcher advocates for Civil Society Organisations to take lead on ensuring this is done by government.

The Researcher further recommends law reform to address the issue of multiparty arbitrations where each of the parties should have the same right in appointing an arbitrator is demonstrated above.

Since arbitration takes more the form of an International plane than litigation and other forms of dispute resolution, the Researcher recommends law reform aimed at making uniform, and updating, our Arbitration Act Regulation to the current and dynamic trends in the industry at an international level.

Serious scrutiny should be done so as to make the Act to comply with the UNCITRAL RULES or other International Arbitration Rules that have gained notoriety and acceptability.

The Researcher further recommends to have a legislative framework that handles the accreditation and disciplining of the major players in the arbitration process especially the umpire, arbitrator and counsel on either side.

By so doing, the virtues of competitiveness, accountability, good conscience and morality will be complied with.

In Ghana and Nigeria for example, a person cannot be qualified to be an arbitrator if he/she has not practiced for at least ten years. The Researcher recommends such minimum standards so that whether the arbitrator is a certified accountant, auditor, surveyor, engineer or advocate, he ought to have a minimum qualification, experience and standard in that discipline. This will lead to confidence building in the Institution. The advantages of experience and expertise cannot be over-emphasised.

The Research further recommends training for Lawyers and other stake holders in the commercial world so that they embrace arbitration without any reservations.

By increasing awareness and the need to have an arbitration clause in all contracts (agreements and memoranda of understanding), the reference of matters to arbitration will be equal or even out compete referring matters to Court's Law. This will not only reduce case backing in Courts of Law but give efficiency to commerce and other affairs of men.

Upon realising the above and with repeated matter that will be referred to arbitration, the competitiveness of Uganda's arbitration industry will be greatly enhanced.

If the Judicially has parameters of a Judge to a minimum experience of ten years for a Judge of the High Court, why doesn't the same rule apply to people qualifying to be appointed as arbitrators?

6.5 Oil and Gas Disputes Tribunal.

Since the oil and gas industry is just taking shape, there is need for creation of a special body (tribunal) that handles oil and gas disputes. We anticipate a situation where the agreement may be oral (throughout or in part), where the parties may intentionally or otherwise omit to insert an arbitration clause in their contract, or a situation where it is impracticable to enforce an arbitration clause, a situation where the process leading to the appointment of an arbitrator or arbitrators may be too lengthy or where doing so may lead to serious business complications and other situations where the parties to a dispute or contract may choose to refer their dispute to a specialised tribunal.

The researcher thus recommends the creation of the Oil and Gas Disputes Tribunal which should constitute eminent and professional members who are well versed with the oil and gas industry.

Such a tribunal will help in circumventing some of the loopholes in the arbitration framework that shall be engineered to avoid any delay in the resolution of disputes in the oil and gas industry.

Such a tribunal can even be used to remedy a situation where there is a likely dispute before it arises. At the end of the day this proposed tribunal will be useful in supplementing the arbitration industry.

It should be noted that other recommendations were following the discussion of each area of concern.

6.6 Suggestions of Further Study

It seems appropriate to include in this thesis the consideration of other areas requiring further research, which, although necessary in international commercial arbitration, are beyond the remit of this study: Assessing the effects of current legislation of international commercial arbitration on East African national economies; Explanatory studies on the role of legal professionals, mainly lawyers, judges and academics as well as other interest groups like corporations, multinationals and nongovernmental organisation (NGOs) promoting the reform process; and explanatory studies to formulate a code of conduct in relation to international commercial arbitration reflecting common legal values accepted by all countries within the East African region.

It is hoped that with comprehensive and extensive studies being carried out in the suggested areas of further research, comprehensive measures can be adopted to establish a model law of reform incorporating a regional code of conduct within the framework of the UNCITRAL Model Law of international commercial arbitration.

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APPENDIINTERVIEW GUIDE

The Researcher is pursuing a masters' degree in Oil and Gas. He is required to carry out and write a research paper on the topic of arbitrating oil and gas disputes. The research seeks to take a bit of your time and attention. Kindly provide answers to the following questions:

1. What is the legal framework for the arbitration of oil and gas disputes?
2. How does the legal framework encourage or discourage arbitration as an alternative dispute resolution mechanism?
3. Are there areas to you feel need to be reformed or introduced in the law?
4. Does Uganda have the requisite infrastructure for carrying out the arbitration of oil and gas disputes?
5. Are there said structures (if any) good enough to carry out arbitration proceedings be they local or otherwise?
6. Is Uganda's law sufficient to handle arbitration and gas disputes?
7. Does Uganda have a conducive environment for conducting arbitration oil and gas disputes?
8. Does Uganda have a well-equipped arbitration center?
9. Does Uganda have respected, competent and responsible personnel to run the center?

10. Are Ugandan lawyers well positioned to be about to effectively handle oil and gas disputes?

11. Do you have faith in Uganda's arbitration centre (CADER)?

12. Do you have confidence in Ugandan arbitrators to handle oil and gas disputes?

13. Any other observations?