THE TRANSFORMATIVE ROLE OF ALTERNATIVE DISPUTE RESOLUTION IN OIL AND GAS CONTRACT DISPUTES

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DECLARATION

I, **NAMUSOBYA HADIJA** do hereby declare that this research paper is a presentation of my original research work. Wherever contributions of others are involved, every effort is made to indicate this clearly with due reference to the literature and appropriate citation.

Signature: _____

Date: 26th June, 2026

APPROVAL

I, the undersigned approve that I have read through the research report and his work is ready for submission in partial fulfilment of the requirements for the award of A master's in international Energy Law and Policy of laws at Uganda Christian University.

Dr. Susan Nakanwagi

Signature: ……………………………………………….

Date: ………………………………………………………..

DEDICATION

I dedicate this research to my parents Hajji Habib Musobya and Madina Nambiro, for their encouragement, love, and support they rendered to me while doing this research.

I also dedicate this research to all my family members for all their prayers, love, and support, and lastly to my lovely son Mawanda Abdul Swabul for allowing me time to do this research without any disturbances.

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To my friends, life holds so many simple blessings, and you are blessings that life brought to me.

The greatest thanks to God for every blessing, I could not do this alone without Him.

ABSTRACT

With the complexity and global nature of the oil and gas industry, there is a need for effective dispute resolution procedures that are able to effectively resolve complex contractual and multi-jurisdictional legal disputes. The study aims to examine the transformative role of Alternative Dispute Resolution (ADR) in oil and gas contract disputes in the context of the oil industry in Uganda. Alternative dispute resolution (ADR) techniques such as arbitration and mediation can be an alternative to traditional litigation and provide fast, cost-effective and confidential settlement processes. They are particularly essential in an industry that could suffer significant financial loss and damaged company relationships if delays occur. The study relies on the doctrinal research technique to assess the effectiveness of alternative dispute resolution (ADR) in the oil and gas sector and analyses various legal documents, judicial decisions, and international treaties. The results of this study highlight how important strong legal frameworks—like Uganda's commitment to the ICSID and the New York Convention—are to improving the enforcement and dependability of ADR results. There are disadvantages, including various country laws regarding the enforceability of ADR decisions and general lack of party willingness to engage in ADR due to concerns about fairness and enforceability of the process. The study makes a number of suggestions to improve the ADR environment in the oil and gas sector. They involve introducing more robust ADR provisions in oil and gas agreements to prevent future disputes, improving the legal environment to support ADR processes and more education and training for industry stakeholders of the benefits of ADR. The research aims to promote alternative dispute resolution (ADR) in the oil and gas industry to ensure stability and effectiveness of the industry in Uganda and beyond. This study fills a gap in the literature and

provides valuable guidance for industry, legislators and lawyers to help promote the growth and viability of the oil and gas industry.

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CHAPTER ONE

INTRODUCTION

1.1. Background of Study

Through the structured negotiation process known as Alternative Dispute Resolution (ADR), the parties to a dispute negotiate their own resolution with the assistance of an impartial third party who has received ADR training. [1] It describes a number of techniques for settling legal issues outside of court.[2] The international petroleum sector, 'along with its associated construction projects', 'is one of the most dispute-intensive industries in the world' and 'makes up the largest portfolio' of state and international disputes worldwide.[3] 'Disputes usually arise when an issue occurs which has not been prepared for and agreed on in the principal agreement between the parties'.[4] The parties may be unable to anticipate all possible potential disputes, mainly because 'circumstances, economics, governments and parties invariably change' over the 'long span' of an international petroleum project.[5]

Within the petroleum industry, there are four types of disputes. Firstly, the disputes between states, which are 'primarily boundary disputes' concerning petroleum fields 'that cross international borders, most of which are located in maritime-waters'. Some examples include disputes between Libya and Malta, Cyprus and Turkey, as well as Iran and Qatar. Secondly, the disputes between investors versus the state, which

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[1] Albert Einstein, What is Alternative Dispute Resolution? (ABM Chambers, 1 April 2022) https://www.abmadvocates.com/what-is-alternative-dispute-resolution/ Accessed on 19/1/2023.
[2] Ibid.
[3] Timothy A. Martin, 'Dispute resolution in the international energy sector: an overview' [2011] 4(4) Journal of World Energy Law and Business http://timmartin.ca/wp-content/uploads/2016/02/Dispute-Resolution-in-Int-Energy-Sector-JWELB-Martin2011.pdf Accessed on 9/2/2023.
[4] Mohammad Alramahi, 'Dispute Resolution in Oil and Gas Contracts' [2011] 3 I.E.L.R https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2159702 Accessed on 9/2/2023.
[5] Timothy A. Martin, 'Dispute resolution in the international energy sector: an overview' [2011] 4(4) Journal of World Energy Law and Business http://timmartin.ca/wp-content/uploads/2016/02/Dispute-Resolution-in-Int-Energy-Sector-JWELB-Martin2011.pdf Accessed on 9/2/2023.

may occur when governments significantly change the terms of the original deal or nationalise or expropriate an investment. Thirdly, the disputes amongst petroleum companies, which commonly occur between companies participating in a joint venture or between operators and service contractors. ‘These disputes make up the majority of disputes in which petroleum companies find themselves’.[6] Some examples of cases which include disputes over quantity and quality of the products, jurisdictional disputes, and disputes involving equipment.[7] The final type of disputes is between individuals and petroleum companies. They may occur, among other reasons, when individuals initiate tort claims against petroleum companies, or when individuals’ lives are negatively affected by an incident caused by these companies, as the catastrophes occurred in Indonesia by the PT Lapindo Brantas and in Mexico by the British Petroleum (‘BP’).[8]

All things considered, disagreements pose a serious danger to international petroleum projects and can cost petroleum firms "millions of pounds." As a result, it is crucial to include procedures in petroleum agreements to settle disagreements in the future. ADR is the aggregate term for these processes, which are alternatives to litigation. The oil and gas sector is especially susceptible to conflicts because of its extensive global exposure and dynamic environment. As this research report shall demonstrate, the risks associated with disputes can be mitigated by parties utilising governing law and dispute resolution clauses in contractual agreements within the sector.

[6] Karen Mills and Mirza A. Karim, ‘Disputes in the oil and gas sector: Indonesia’ [2010] 3(1) Journal of World Energy Law and Business https://academic.oup.com/jwelb/article-abstract/3/1/44/1085884 Accessed on 9/2/2023.

[7] Anthony Connerty, ‘Dispute Resolution in the Oil and Gas Industries’ (2012) 20(1) Energy & Nat Resources Journal https://rgu-repository.worktribe.com/OutputFile/1544215 Accessed on 9/2/2023.

[8] Timothy A Martin, ‘International Arbitration and Corruption: An Evolving Standard’ (Institute for Transnational Arbitration, 1 May 2019) http://www.timmartin.ca/qualifications/publications accessed 18/1/2023.

The study employs a doctrinal research methodology, focusing on legal texts, case law, international agreements, and statutory frameworks to analyze the role of Alternative Dispute Resolution (ADR) in oil and gas contract disputes in Uganda. The study looks into the role of alternative dispute resolution (ADR) procedures in the oil and gas industry of Uganda. It provides a fair and thorough examination of the law used to back up these mechanisms, including domestic laws like the Arbitration and Conciliation Act, the Petroleum Act and the Civil Procedure Act, and international treaties including the New York Convention, the ICSID Convention and the Energy Charter Treaty. Additionally, the study considers the pros and cons of ADR when compared to traditional litigation, including cost and efficiency, enforceability of the outcomes, and the maintenance of commercial relationships. It also explores the legal and contractual implications that can result when the contractual parties fail to meet with with clauses in oil and gas contracts. The research concludes by suggesting targeted policy reforms considered to fortify ADR frameworks, improve legal predictability, and adopt extra effective dispute solution routines across Uganda's upstream and downstream energy sectors. Eventually, this paper points out the substantial influence of these mechanisms.

1.2. Problem Statement

Because there are many parties and interests involved, disputes in the oil and gas sector can take a long time to resolve. Due to the potential for bad press, the delay has a detrimental impact on the reputations of businesses and nations. Additionally, disagreements in the sector typically include organizations and interests of different countries (multinational corporations). These characteristics imply that, in order to achieve efficacy, conflict settlement would be fevered over litigation. However, others contend that in situations where punitive penalties should be awarded to discourage future unlawful or careless behaviour, alternative dispute resolution (ADR) may not be suitable. For instance, the court is in a better position to handle the case and impose a penalty for the environmental harm caused if the petroleum corporation breached environmental legislation.[9] Furthermore, because most ADR techniques do not benefit from international enforceability under the NY convention, they confront enforcement challenges both domestically and, more importantly, internationally. They become less appealing for international petroleum deals as a result. It might also be claimed that when disagreements include complicated legal problems, litigation can be a better way to resolve them. Additionally, in contrast to arbitration, third parties may participate in court proceedings once they have begun.[10] Furthermore, "litigation may be the preferred option" if the issue involves large quantities of money. Consequently, the paper provides clear recommendations on the best choice of law and dispute resolution forum for oil and gas contracts, analyzing the important concerns and outlining the legal contours involved, by looking at a variety of international jurisdictions.

1.3. Objectives of study

1.3.1. General Objectives of study

The general intention of this study is to examine the transformative role of Alternative Dispute Resolution (ADR) in oil and gas contract disputes within the context of Uganda.

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[9] Dominic Rushe, 'BP set to pay largest environmental fine in US history for Gulf oil spill' (The Guardian, 2 July 2015) Available at: https://www.theguardian.com/environment/2015/jul/02/bp-will-pay-largest-environmental-fine-in-us-history-for-gulf-oil-spill Accessed on 18/1/2023.

[10] Amoco (UK) Exploration Co v Teesside Gas Transportation Ltd [2001] UKHL 18; BHP Billiton Petroleum Ltd v Dalmine SpA [2012] EWHC 970 (Comm).

1.3.2. Specific Objective

1. To examine the legal framework governing ADR mechanisms in the oil and gas sector.
2. To evaluate the pitfalls and benefits of using ADR methods to resolve disputes compared to litigation in court.
3. To identify the consequences of breaching ADR clauses embedded in oil and gas contracts when disputes arise.
4. To suggest plausible recommendations for the subject under investigation.

1.3.3. Research Questions

1. What is the legal framework governing ADR mechanisms in the oil and gas sector?
2. What are pitfalls and benefits of using ADR methods to resolve disputes compared to litigation in court?
3. What are the consequences of breaching ADR clauses embedded in oil and gas contracts when disputes arise?
4. What are the plausible recommendations for the subject under investigation?

1.4. Justification of study

This research into the transformative role of Alternative Dispute Resolution (ADR) in oil and gas contract disputes is mutually appropriate and crucial for various compelling reasons. The importance of this study is highlighted in each rationale, taking into account its impact on legal practice, trade processes, policy formulation and academic development. The oil and gas sector is characterized as having high financial risks, technical challenges, and geopolitical ramifications. Issues in this area can become very complex, arising from a number of parties in various jurisdictions, including investor-state disputes (such as Tullow Uganda v. Republic of Uganda over tax obligations), cross-border resource conflicts (such as Ghana v. Côte d'Ivoire concerning offshore oil reserves), and joint venture disagreements (such as Chevron v. NNPC over revenue allocation). The cases further demonstrate their density with environmental cases such as Shell Nigeria's pollution case and pipeline disputes such as the gas transit dispute between Russia and Ukraine. Traditional litigation, while at times required, is normally expensive, time-wasting, besides can direct to public relations disputes because of its adversarial nature and denial of privacy. For those looking for an alternative solution, ADR offers an additional effective way that can be more expedient, less expensive and more private. This research will critically assess the role of ADR in addressing the specific industry pressures in order to offer key stakeholders insights into how best to optimise dispute resolution strategies. In an industry that is global in nature, good inter-jurisdictional legal and regulatory mechanisms are needed to address the inter-jurisdictional aspects of the industry. There are considerable variations between recent frameworks from jurisdiction to jurisdiction, which can result in anomalies and concerns in disputes. This study aims to describe best practices and effective ADR mechanisms that could be combined in more cohesive and effective legal and regulatory instruments. These insights are extremely important to have. for strengthening global governance in the oil and gas sector, more equitable and effective dispute resolution and stable operating conditions. Although considerable literature has been developed on ADR, there is a lack of literature that specifically focuses on the application of ADR to the oil and gas industry. The objective of this research is to address this gap by giving an in-depth analysis of the role and effectiveness of ADR in this sector. It will explore the socio-cultural, legal and economic contexts that affect the effectiveness of ADR and will provide a more in-depth analysis that is often missing from the broader conversation on ADR. ADR. The findings will be added to the Academic body of knowledge and will be available to researchers, law practitioners and policy makers. Good dispute settlement procedures are essential for a positive investment climate. Investment attraction and retention is often one of the concerns for countries with abundant oil and gas resources. Disputes efficiently and fairly resolved are more likely to make investors commit resources to the jurisdiction. The findings from this research may have a significant impact on policy decisions that will affect the investment climate and overall economic development objectives, as evidence of the effectiveness and potential benefits of ADR. Last, the research has a legitimate aim in terms of the promotion of sustainability in oil and gas dispute resolution practices. In addition to resolving a conflict, ADR can also help to foster a cooperative atmosphere between the parties, maintain good relationships, and promote continued cooperation. The study aligns As it searches for ways that ADR can contribute to sustainable business, it confronts environmental and corporate social responsibility issues sweeping the industry.

1.5. Significance of the study.

The research findings in this study can be policy implications that can be taken to the national and international level. The study will assist in determining the current strengths and weaknesses of the existing ADR policies of the oil and gas sector that can be used to revise the ADR policies to make the process more robust. This knowledge can be used in countries like Uganda where oil and gas industries are being constructed to develop sturdy legislation to attract and protect foreign investment and to establish effective and fair methods to settle conflicts. In addition, the results could contribute to the current discussions at International forums and regulatory bodies on the best way to integrate ADR into sector-specific laws and bilateral investment treaties. The results of this research are very relevant to the oil and gas industry where conflict can be costly and time intensive. The study offers a detailed treatment of the various approaches to Alternative Dispute Resolution (ADR) and efficacy of each, and subsequently recommends which ADR is most appropriate for a specific kind of dispute for industry players to factor into dispute resolution. It is practical guidance that may enable businesses to more effectively shape their dispute resolution process, save legal fees and minimise disruption to business. Further, the knowledge of ADR can also be used to improve negotiation and contract drafting for the purposes of introducing better dispute resolution mechanisms into the contract to avoid a dispute from becoming a lawsuit. From the perspective of the academic literature, this study represents an academic contribution because there are gaps in the literature regarding the oil and gas industry and ADR. It makes a detailed account of the different kinds of ADR mechanisms which are available in different jurisdictions and adds to the theory and practice of adapting such mechanisms to address sector-specific needs. The study fills the academic gap and provides a research agenda for future research in the field by examining issues that have not been researched such as the effect of socio-cultural factors on effectiveness of Alternative Dispute Resolution (ADR). The results of this study play an important role in improving legal provisions enabling ADR. The study discusses the problems and accomplishments of the use of ADR in other legal systems and identifies the important factors leading to successful ADR. Such knowledge can lead to better-informed decisions on including ADR clauses in national laws and regulations that regulate the oil and gas industry and can ultimately provide more predictable and fair results in dispute resolution. Lastly, the study is valuable owing to its holistic study of ADR in the context of oil and gas related disputes and the lessons it provides for the policy makers, industry leaders, scholars and the legal community. The study's results will benefit the academic community, but also will deliver practical suggestions that could be applied to dispute resolution in the oil and gas industry and enhance the dynamics of oil and gas operations and legal structures across the globe.

1.6.1. Scope of study

The scope is offered within three sub-sections: geographical scope, content scope and time scope.

1.6.2. Geographical Study

The research will not be restricted to any particular jurisdiction, but it will be carried out primarily in the 195 km2 Kampala district, which is situated on the northern beaches of Lake Victoria in the southeast of Uganda and is flanked to the north, east, west, and southwest by Wakiso District. First and foremost, this location was selected due to its closeness and convenience of information access. Secondly because the Petroleum Authority of Uganda (PAU) and the Uganda National Oil company (UNOC) headquarters are found in Kampala together with other companies like Tullow oil Uganda, Uganda Refinery holding company among others.

1.6.3. Content Scope

The disputes in the oil and gas (or "petroleum") business will be the only focus of this study, which will then analyze the four most prevalent kinds of disputes. The definition and idea of an oil and gas contract as well as the legal framework controlling alternative dispute resolution (ADR) procedures in the oil and gas industry will be covered. Additionally, it will go over the many "ADR" mechanisms—negotiation, expert-determination, mediation, and arbitration—that are included in the petroleum accords. Finally, it will assess the advantages and disadvantages of alternative dispute resolution (ADR) as opposed to courtroom litigation.

1.6.4. Time Scope

The study shall focus on the period between 2010-2022 because the researcher is interested in reviewing with proper analysis the recent events in the oil and gas sector in the country.

1.7. Conceptual Framework

This conceptual framework is to the effect that Alternative Dispute Resolution is the independent variable and its use in oil and gas disputes is the dependent variable. These variables help explain among others the legal framework in relation to ADR, the pitfalls and benefits of using ADR methods to resolve disputes compared to litigation in court. The variables shall also determine the consequences of breach of ADR clauses embedded in the oil and gas contracts.

INDEPENDENT VARIABLE

DEPENDENT VARIABLE

ALTERNATIVE DISPUTE RESOLUTION (ADR)		**DISPUTES IN THE OIL AND GAS INDUSTRY**
• Arbitration • Mediation • Negotiation • Expert determination	→	• Disputes between states. • Disputes between investors versus the state. • Disputes amongst petroleum companies. • Disputes between individuals and petroleum companies.

1.8. Limitations of study

Obtaining the contracts that have ADR contracts to determine the consequences of breaching ADR clauses embedded in oil and gas contracts when disputes arise may be difficult. This was solved by writing formal letters to the relevant authorities on time.

Synopsis: Chapter One: Introduction This chapter sets the stage for the research with an extensive background of the importance of Alternative Dispute Resolution (ADR) to the oil and gas industry. gas sector. It provides a description of the problem statement, research objectives and questions, and highlights the need for ADR mechanisms in the industry to deal with high-stake and complex disputes. The chapter also outlines the rationale and importance of the study, as well as its implications for legal practice and business operations and the development of legal policy. The boundaries of the study, both geographical, content and temporal, are framed and a conceptual framework is provided that acts as a blueprint for the following analysis. In this chapter, the literature on the subject is reviewed. Literature review critically reviews the previous research conducted in the field of ADR in the oil and gas industry. It examines the different types of ADR mechanisms, their effectiveness and the issues surrounding sociocultural, legal and economic influences that impact on the effectiveness of ADR. The review reveals the lack of literature, as there is a lack of a comprehensive examination of pitfalls of ADR and a lack of evaluation of the legal frameworks. The research will fill these gaps and offer insights into the effectiveness of ADR and recommendations for its improvement to maximize its application in the oil and gas sector. Chapter Three Research Methodology This chapter provides an overview of the research methodology in the area of doctrine. It explains the research, data gathering, and analysis techniques, specifically primary and secondary legal sources. The approach has been to work out key legal rules, principles and structures underpinning ADR in oil and gas conflicts. Also discussed within the chapter are data quality control measures and limitation, as well as ethical considerations which ensure that the research is reliable and valid. The chapter on the legal framework covering ADR mechanisms in the oil and gas sector is found here. This chapter explores the Uganda national and international legal mechanisms that support ADR in the oil and gas industry. It analyzes key legislations such as the Arbitration The Principal Acts include the Global Compact Act, and the Petroleum Act, and the various international acts such as the New York Convention and ICSID Convention. The chapter also covers pertinent case law, providing examples of the application and interpretation of ADR mechanisms in actual disputes in the sector. Chapter 5 examines the advantages and disadvantages of resolving disputes through arbitration, a process of ADR, rather than through litigation in court. The chapter discusses the pros and cons of the use of ADR including arbitration over conventional litigation. It covers a range of issues including time, cost, privacy, flexibility and the ability to keep business relationships. The chapter also addresses issues with ADR such as enforcement and selection of arbitral seats and arbitrators. This chapter aims to identify key factors in the selection of suitable dispute resolution processes in the oil & gas sector based on the analysis. Chapter Six: Consequences of violation of ADR clauses in oil and gas contracts in the event of a dispute. This chapter examines the legal, operational and financial implications of default in ADR provisions of oil and gas contracts. It discusses the consequences of non-compliance, such as enforcement action, legal sanctions, project delays, damage to reputation and higher costs, in the context of real world scenarios. The chapter highlights the need to respect ADR clauses for speedy and effective dispute resolution. Conclusions and Recommendations (Chapter Seven) The last chapter brings together the results of the research to draw comprehensive conclusions regarding the role and effectiveness of ADR in the oil and gas industry. It offers practical suggestions for improving ADR practices and for solving identified problems. The chapter also provides directions for future research and keeps the debate on the best methods of dispute resolution in the industry going.

CHAPTER TWO

LITERATURE REVIEW

2.1. Introduction

This chapter summarizes the wide range of scholarly and legal literature that has already been found on the subject of the use of Alternative Dispute Resolution (ADR) in the field of comparative law. Oil and gas is a multi-billion dollar industry that is complicated by a myriad of deals and constantly evolving geopolitical circumstances. In the event of conflict, which in an industry is inevitable, the way it is handled will make all the difference in the world to the survival of projects and indeed in the lives of projects. Alternative Dispute Resolution (ADR) has become an increasingly popular process for resolving these conflicts due to the speed, confidentiality and expertise that it provides in the resolution process compared to traditional litigation. One of the reasons that ADR is so relevant to this industry is the diversity of parties that are involved. The legal traditions, commercial expectations and cultural norms brought to the table by national oil companies, private investors, host governments and international contractors are all different. Nothing works as "one size fits all" when it comes to settling arguments. The effectiveness of the functioning of ADR depends on legal frameworks. Parties can more confidently enter into an ADR process where their obligations are recognized and enforced under national legislation for arbitration awards, mediation agreements and expert determinations. On the other hand, in jurisdictions without a clear rule of law and judicial oversight, even a carefully crafted ADR provision can prove to be of little use. Although it's increasingly used, there are still some areas that are not covered. Much of the discussion on the constraints of individual ADR processes on petroleum agreements and how sociocultural factors affect the negotiation and mediation process has yet to be fully explored in the literature. These gaps need to be addressed to enhance ADR's contribution to sustainable industry. The effectiveness, and the various legal frameworks, in facilitating ADR. Government regulations are crucial to the effectiveness of ADR mechanism in oil and gas contracts. Alaka notes that various international and domestic laws, which underpin ADR practices in Uganda, include the UNCITRAL Model Law on International Commercial Arbitration. These systems are all designed to give the legal certainty and enforceability that makes it possible to make ADR an alternative to litigation. Caleb Alaka understands that the growth of an economy is directly correlated with the resolution of disputes in industries like oil and gas. [11]Alternative conflict settlement (ADR), often known as the non-legal aspect of conflict settlement, is one of the most important dispute resolution processes. When it comes to settling disputes between the IOC and states over oil and gas, alternative dispute resolution (ADR) has become the standard.

This is due to the fact that it offers a prompt and private method of resolving conflicts, and it may take place at a location that the parties have decided upon. In contrast to the traditional litigation system, which has lengthy appellate procedures and is sometimes beset by charges of corruption, particularly in developing nations, it is therefore one of the most important factors in luring investments. Like many other jurisdictions, Uganda has a strong legal framework that aims to improve alternative dispute resolution. It is a party to numerous conventions, such as the UNCITRAL Model Law on International Commercial Arbitration, ICSID, and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention),

[11] Caleb Alaka, *The Efficacy of Dispute Resolution Provisions in Uganda's Production Sharing Agreements and Developing Uganda's Upstream Oil and Gas Sector*. (1st Edition, Grin Verlag, 2021).

as well as its own domestic laws that are essential to promoting alternative dispute resolution. To promote conflict resolution in Uganda's oil and gas industry, the PSAs Models of Uganda include provisions for alternative dispute settlement. This literature is relevant as it identifies the legal framework governing the ADR mechanisms in Uganda. However, the author does not make an analysis on the effectiveness of the law and whether it is implemented. This research paper shall address that issue.

2,2 The pitfalls and benefits of using ADR methods to resolve disputes

ADR has several well-established advantages in the oil and gas industry. Pou Charles claims that the financial implications of commercial transactions and regulatory rulings, as well as the expense of court or regulatory delays, are significant in the multibillion-dollar oil sector.[12] Better and faster judgments are becoming more and more important to stakeholders in fast-paced, competitive energy markets, yet they are frequently unavailable through onerous litigation and other adversarial processes. Improvements in the resolution of disputes over regulatory and private energy deals are necessary and should be demanded by public agency and private industry leaders, as well as capital markets, given market and regulatory developments. Pou Charles advocates for more use of ADR and explains why it is so important. He points out that alternative dispute resolution (ADR) gives decision-makers and stakeholders a way to maintain control over important decisions that may otherwise be subject to protracted litigation and appeals. According to Redfern and Hunter, alternative dispute resolution (ADR) results in improved and frequently faster outcomes, increased certainty, greater procedural flexibility, possible cost savings, and other

[12] Pou, Charles, 'Assuring Quality, or Merely Reassuring? Policy and Practice in Promoting Mediator Quality' (2004) 1(303) Journal of Dispute Resolution https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1470&context=jdr&httpsredir=1&referer= Accessed on 9/2//2023.

efficiency.[13] They point out that many industrial bodies are having difficulty using ADR, even while certain businesses and agencies have changed how they manage dispute to arrive at quick, adaptable, and substantively sound outcomes. This literature is crucial because it helps practitioners and stakeholders in the energy sector fully comprehend their alternatives for resolving conflicts, evaluate them critically, and make deliberate decisions that benefit them. The same is the goal of this study paper.

According to Leeson, alternative dispute resolution (ADR) was not widely used as a tool for resolving business disputes until the early 1980s, despite the fact that various forms of ADR have been used for centuries, with the exception of traditional arbitration, which has long been used in certain industries like securities and traditional mediation of labor disputes.[14] However, alternative dispute resolution (ADR) is now frequently employed to settle commercial conflicts and has as much widespread support as any procedure in our legal system. Because ADR is effective, it has gained a lot of popularity. According to Duncan, attorneys would advise litigation less frequently if they kept in mind that individuals with issues, such as those who are in pain, want relief, and they want it as soon as possible and at the lowest possible cost.[15] ADR is frequently the quickest, most efficient, and least expensive method of settling conflicts. There may be more to problems involving oil and gas. It is frequently the most effective way to maintain current relationships, provide suitable, forward-looking solutions, and give the parties the greatest amount of influence over

[13] Alan Redfern and Martin Hunter, *Law and Practice of International Commercial Arbitration* (6th edn, Oxford University Press 2015).
[14] Susan M. Leeson & Bryan M. Johnston, *Ending It: Dispute Resolution in America : Descriptions, Examples, Cases, and Questions Paperback* (1st Edition, Anderson Pub Co, 2018).
[15] Claudia A. Duncan, 'Mediation in the Oil and Gas Industry: Taking the Best for the Future' (2013) 68(4) Dispute Resolution Journal 1.

how their conflicts are resolved. Further information on the topic will be provided by this research investigation.

ADR has drawbacks despite its benefits. Waqas notes that the oil and gas business has seen a rise in the use of various Alternative Dispute Resolution (ADR) techniques in recent years.[16] Today, a lot of agreements and legal documents that regulate business practices frequently include clauses that consider resolving conflicts outside of the legal system. The range of concerns covered by these clauses is mostly negotiated by the contractual parties. These parties must have a full understanding of the factors that might lead a disputant (or potential disputant) to decide to settle a dispute outside of a court of law in order to create or execute such a provision effectively. However, some of these dynamics are not examined by the author in relation to disputes that frequently occur in the oil and gas industry's upstream sector. This study report will deal with those. Furthermore, Carver and Vondra stress that given the complexity of drilling and production activities, as well as the high costs and hazards involved, disagreements within the oil and gas industries are virtually probably unavoidable.[17] Conflicts don't just happen. In oil and gas contracts, disagreements or non-performance of the agreement may arise from the parties' misinterpretation of its contents.[18] They could also lead to a contract or agreement being broken or not being fulfilled. When disagreements lead to a violation of a contract or agreement, the party that was wronged has an immediate right to seek damages.

[16] Muhammad Waqas, 'Dispute resolution in oil and gas' (Oil & Gas Journal, 14 June 2014). https://www.ogj.com/home/article/17294919/dispute-resolution-in-oil-and-gas Accessed on 9/2/2023.
[17] Todd B. Carver and Albert A. Vondra, 'Alternative Dispute Resolution: Why It Doesn't Work and Why It Does' (Harvard Business Review, 1 May 2009) https://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-it-does Accessed on 9/2/2023.
[18] Tolulope Olufisayo Taiwo, *An Evaluation of Contractual Clauses Used to Mitigate Risks in Long Term Oil and Gas Agreements* (University of Birmingham 2020) (unpublished LLM dissertation).

Understanding these facts, host governments and foreign businesses make sure to include Alternative Dispute Resolution (ADR) before signing contracts or agreements in an effort to resolve any misunderstandings or disagreements. ADR can be used before, during, or outside of litigation. It is most likely best done prior to litigation as this approach helps the parties understand the advantages and disadvantages of their arguments before court proceedings are initiated. However, when the parties use the alternative dispute resolution (ADR) method to settle their differences, the conditions that are created become contractual in character, and their violation may be enforced through litigation, and they emerge before they become issues.[19] However, this study paper will devote an entire chapter to the implications of violating the ADR terms included in the oil and gas contracts, as Carver and Vondra do not.

Alramahi examines the advantages and disadvantages of utilizing Alternative Dispute Resolution (ADR) methods such as negotiation, mediation, expert determination, and arbitration in the context of oil and gas agreements.[20] He highlights that ADR offers benefits like speed, cost-effectiveness, confidentiality, and the preservation of business relationships, which are particularly valuable in the complex and high-stakes oil and gas industry. Alramahi also notes some drawbacks in the ADR results, such as the fact that some of the results may not be enforceable, the potential for bias in the expert determination, and difficulties in ensuring impartiality and uniformity across different jurisdictions. The devil lies in drafting these dispute resolution clauses carefully to minimise risks and ensure the process adopted is suitable for the needs and circumstances of the contractual parties, he says. In general, ADR can be a viable

[19] Agnieszka Ason, *International Gas Contracts*, OIES Paper: NG No 175 (Oxford Institute for Energy Studies 2022).
[20] Mohammad Alramahi, 'Dispute Resolution in Oil and Gas Contracts' (2011) 3 *International Energy Law Review* 78.

alternative to litigating, but the success of using ADR will depend on the extent to which it is clear and precise when it is implemented in a contractual agreement. Shade is one of the first works to explore the issue of compatibility between the oil and gas industry and ADR. He believes that the litigation process can be damaging to the business relationship that usually exists over a long time in energy projects. Shade highlights some of the advantages of ADR, specifically arbitration and mediation, which help to maintain relationships, provide confidentiality, and facilitate having the dispute resolved by technically qualified practitioners. He admits, though, that there are drawbacks, such as the lack of enthusiasm among traditional legal professionals, possible arbitration inconsistencies, and vagaries in poorly drafted ADR provisions. Celebi develops on more modern issues. She describes these practical benefits of ADR mechanisms, including their neutrality, flexibility and enforceability under provisions such as the provisions of the New York Convention in cross-border petroleum contracts. However, Celebi raises several concerns about the limitations of arbitration, including the potentially high cost, the time required for more complex cases, and the imbalance of power between the multinational oil company and the state where the arbitration is taking place, which could affect the fairness of the arbitration results. She emphasizes the lack of enforceability of some non-binding mechanisms (like mediation outcomes) and questions whether ADR always delivers justice where developing countries are parties to the dispute. Her analysis reveals that despite ADR's strengths, structural imbalances and legitimacy issues persist.[21]

[21] Ibid.

Bouvery contributes a more doctrinal and theoretical dimension.[22] Bouvery explores the concept of Lex Petrolea a transnational body of norms emerging from arbitral awards in oil and gas disputes and argues that ADR, especially arbitration, contributes to a form of globalized petroleum law. While acknowledging ADR's benefits in terms of flexibility, neutrality, and expert adjudication, Bouvery critiques the lack of transparency in arbitration processes and the fragmentation of legal norms due to the privatized nature of dispute resolution. Additionally, she underscores the inaccessibility of ADR mechanisms to small players and the inconsistency in decision-making, particularly where tribunals lack precedent-following obligations.

Although the three works offer valuable perspectives on ADR in oil and gas contracts from practical utility (Shade), global regulatory challenges (Celebi), to doctrinal evolution (Bouvery) they collectively fall short of addressing the transformative potential of ADR in holistically reshaping dispute resolution cultures within petroleum contracts. None of the sources sufficiently explores how ADR mechanisms could evolve not just to resolve disputes more efficiently, but to prevent them, empower weaker parties, build trust, and support sustainable contractual relationships through hybrid or proactive dispute management tools. Hence the need for this study.

2.3 The Consequences of Breaching ADR Clauses

Breaching ADR clauses can have significant consequences, particularly in the complex and high-stakes environment of the international oil and gas industry. Anar Isayev emphasizes that while avoiding disputes is a key concern for business managers, not

[22] Louise Bouvery, *Lex Petrolea, Arbitration and Other Alternative Dispute Resolution Mechanisms in Oil and Gas Investment Contracts: A Critical Analysis* (University of Exeter 2020) (unpublished LLM dissertation).

all disputes can be circumvented.[23] When disputes do arise, companies must carefully evaluate their legal, financial, and reputational exposures and decide whether to engage in formal litigation or adhere to ADR tools agreed upon in their contracts. Failure to respect ADR clauses may expose a company to substantial risks.

According to Anar Isayev, one of company managers' biggest concerns is avoiding conflicts wherever possible, yet they cannot always be avoided. [24] International oil and gas firms should assess their legal, financial, and reputational risks when disagreements are unavoidable and either develop formal litigation strategy or employ alternative dispute resolution (ADR) techniques. According to Merry, a comprehensive understanding of the sociocultural and commercial context of the laws the ADR intervention addresses is crucial to the effectiveness of ADR procedures.[25] Therefore, while assessing the various forms of alternative conflict resolution, it is crucial to examine the ways of justice structures, the presence or absence of the rule of law, previous laws, dispute resolution procedures, and settlement customs. This literature is important to the study as it examines the elements necessary in selecting an appropriate dispute resolution mechanism.

Thus, Isayev's work underlines that breaching ADR clauses can lead to legal penalties, financial costs, and reputational damage, as well as the loss of a tailored, context-sensitive dispute resolution approach. This research will further explore these

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[23] Anar Isayev, 'Use of Alternative Dispute Resolution, as opposed to the traditional methods of litigation, associated with oil and gas contracts.' (LinkedIn, 30 August 2016) Available at: https://www.linkedin.com/pulse/use-alternative-dispute-resolution-opposed-methods-oil-anar-isayev Accessed on 18/1/2023.

[24] Anar Isayev, 'Use of Alternative Dispute Resolution, as opposed to the traditional methods of litigation, associated with oil and gas contracts.' (LinkedIn, 30 August 2016) Available at: https://www.linkedin.com/pulse/use-alternative-dispute-resolution-opposed-methods-oil-anar-isayev Accessed on 18/1/2023.

[25] Sally Engle Merry, 'Anthropology and the Study of Alternative Dispute Resolution' (1984) 34 Journal of Legal Education 277.

consequences to provide a comprehensive understanding of the risks associated with breaching ADR clauses in the oil and gas sector.

Breaching ADR clauses in oil and gas contracts can result in several consequences that affect both parties' legal standing and operational efficiency. Greenspan's work, while primarily focused on defining the various types of ADR mechanisms, touches on the consequences of not adhering to agreed ADR clauses.[26] Greenspan emphasizes the broad advocacy for ADR, such as arbitration and mediation, as responses to an overly litigious society and a clogged legal system. The shift towards ADR reflects a preference for practical, cost-effective solutions over formal court proceedings. When a party breaches an ADR clause by opting for litigation instead of the agreed ADR method, they undermine this fundamental rationale for ADR.

Freehills's analysis suggests that breaching ADR agreements can negate the primary benefits of ADR, such as quicker resolution, confidentiality, and reduced costs.[27] This breach can lead to significant legal and financial repercussions. For instance, courts may enforce the original ADR clause, dismissing the case or compelling the breaching party to return to the agreed ADR process, which results in further delays and added costs. Moreover, ignoring ADR procedures can escalate disputes unnecessarily, leading to the very litigation burden that ADR seeks to avoid.[28]

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[26] Amy L Greenspan, *Handbook of alternative dispute resolution Paperback* (1st Edition, State Bar of Texas, 2018).

[27] Contractual clauses requiring ADR before litigation – what happens when they are breached?' (Herbert Smith Freehills, 17 April 2023) https://www.herbertsmithfreehills.com/notes/adr/2023-04/contractual-clauses-requiring-adr-before-litigation-what-happens-when-they-are-breached accessed 19 February 2025

[28] Ibid.

Additionally, Martin states that a breach may damage the parties' reputational standing within the industry.[29] As Greenspan highlights, ADR is intended to maintain business relationships and foster a cooperative environment, which is particularly important in the interconnected oil and gas sector. When a party breaches an ADR agreement, it can strain or even sever commercial relationships, resulting in long-term negative impacts on future business dealings. Therefore, the consequences of breaching ADR clauses are multifaceted, encompassing legal penalties, increased costs, delayed dispute resolution, and reputational damage all of which undermine the core advantages of ADR as highlighted in Greenspan's literature. This research will further explore these consequences to provide a comprehensive understanding of the implications associated with breaching ADR clauses in the oil and gas industry.

Breaching ADR clauses in the energy sector, including the oil and gas industry, can lead to a range of negative consequences, as highlighted by Sander and Goldberg.[30] They explain that many organizations, both public and private, often default to litigation when conflicts arise, driven by habit, a lack of awareness of other options, or because legal counsel is more comfortable with traditional litigation methods. However, they also emphasize that this approach is often not the most beneficial for the parties involved, as litigation is typically costly, time-consuming, adversarial, and damaging to business relationships.

According to Sander & Goldberg, conflicts arise between public and private entities in the energy sector on a daily basis, whether due to choice, necessity, accident,

[29] A. Timothy Martin, 'Dispute Resolution in the International Energy Sector: An Overview' (2011) 4(4) Journal of World Energy Law and Business 332.

[30] Sander, F.E.A. & S.B. Goldberg, ''Fitting the Forum to the Fuss – A User-Friendly Guide to Selecting an ADR Procedure'' (1994) 10(1) Negotiation Journal https://link.springer.com/article/10.1007/BF02183377 Accessed on 9/2/2023.

ignorance, or just being in the wrong place at the wrong time.[31] Because litigation may be the best way to settle their dispute, sometimes because the attorneys are most at ease with litigation, and sometimes because they are ignorant of alternative viable choices, many people instinctively desire to sue their opponents or bring them before a regulatory body. In actuality, a number of options may be significantly more advantageous to companies, authorities, and others than traditional adjudicatory methods.

According to Haines, litigation is expensive, frequently drawn out, demanding, intensely contentious, and detrimental to relationships. [32] Furthermore, it can be ineffective and time-consuming to try to settle disagreements over the creation of energy policy using traditional rulemaking procedures. [33] Generally speaking, the conclusion is unpredictable and out of the parties' control, and as we all know, capital markets dislike uncertainty. The financial stakes of corporate transactions and regulatory decisions are quite high in the multibillion dollar power, oil, and natural gas industries. Regulatory commissions, administrative agencies, and courts have been using drawn-out litigation to settle disputes and make business and policy choices for far too long. Consequently, unknown results make it difficult for businesses to prepare strategically.

According to Gray, contentious litigation damages and frequently ends business ties.[34] Judges and regulators frequently enforce solutions that are unsuited to the realities

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[31] Sander, F.E.A. & S.B. Goldberg, ''Fitting the Forum to the Fuss – A User-Friendly Guide to Selecting an ADR Procedure'' (1994) 10(1) Negotiation Journal https://link.springer.com/article/10.1007/BF02183377 Accessed on 9/2/2023.

[32] Megan S. Haines, 'Emerging Litigation Trends Are a Warning: Assess and Mitigate Risks Preemptively' (2023) Energy & Commodities Outlook, Reed Smith LLP

[33] Ibid.

[34] Ingeuneal Gray, 'Arbitrating Energy Disputes Benefits All Parties Involved' (2019) Corporate Counsel Business Journal

of the sector. Better dispute resolution strategies are needed in today's fast-paced, fiercely competitive energy industries. Stakeholders in the public and commercial energy sectors require improved and faster decision-making, increased certainty, greater procedural flexibility, cost savings, and other conflict resolution efficiency. The sector, including companies, regulators, and consumers, will have greater influence over its future and be able to develop practical solutions that fit specific situations if Alternative Dispute Resolution (ADR) is used more effectively and widely. Additionally, it will reduce risk and uncertainty, provide more realistic, genuine findings, and enhance energy decision-making processes and their consequences. As a result, the financial markets will see it favorably.

Therefore, Gray, Haines, Sander and Goldberg's analysis demonstrates that the consequences of breaching ADR clauses extend beyond immediate legal repercussions. The decision to abandon agreed-upon ADR mechanisms in favor of litigation can result in increased costs, delayed decisions, strained or damaged relationships, and reduced certainty and flexibility consequences that are particularly detrimental in the highly competitive and capital-intensive oil and gas industry. These consequences will be further explored in the research to gain a comprehensive understanding of the risks of non-compliance with ADR clauses in the sector. Conclusion The review of literature highlights the importance of ADR in resolving disputes in the oil and gas industry, which is one of the most regulated industries with significant economic impacts. Authors such as Anar Isayev and Caleb Alaka emphasize the need to use ADR to avoid the long, public litigation process, and view it as a way to not just settle disputes, but to maintain business relationships and promote economic growth. There are still some gaps in the literature, however, especially regarding the in-depth discussion of the nature of the different types of ADR and their respective applications and results in the oil and gas industry. This research aims to address these gaps by examining different forms of ADR, evaluating the success of ADR under different types of laws, and examining the effects of ADR on business operations and business relations. The study will help develop a deeper understanding of the role of ADR in the oil and gas industry and provide direction on how to optimize ADR for effective dispute resolution and industry development. The results of this review and future studies will play a key role in helping industry stakeholders, policy makers and legal professionals make informed decisions and develop strategies that are not only commercially viable, but also legally compliant.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

The purpose of this chapter is to highlight the doctrinal research methodology used to better understand the transformative nature of Alternative Dispute Resolution (ADR) in the context of oil and gas contract disputes. This study would be well suited to doctrinal research (also referred to as "black-letter" law methodology) which entails a thorough examination of legal rules, principles and frameworks. Doctrinal research, or "black-letter law" research, is a method of research that involves examining legal principles, statutes, case law, and regulations to help offer a systematic and critical evaluation of legal doctrines. Doctrinal research, according to McConville and Chui, is the systematic exposition, analysis and evaluation of legal rules to establish whether they are coherent, consistent and applicable. Interestingly, doctrinal research plays a crucial role in legal studies because it explains the law, helps answer doctrinal questions, and can also be used to inform proposals for legal reform, as Hutchinson and Duncan point out. This approach has been prevalent in research on international arbitration, oil and gas contract disputes and regulatory regimes. The fact that doctrinal research has been used in this study is justified because it offers a comprehensive and critical perspective on legal framework of ADR in oil and gas contract disputes, specifically Uganda. The benefits are that it has a. Technical research, depth of legal analysis, clarity, precision, sources of legal information and supports. legal argumentation with well established legal principles. Moreover, it is suitable for discussion of He has drawn on statutory provisions and judicial precedents as well as international law sources, such as the New York In this research, convention must be used and the most appropriate one is ICSID Convention. This approach will consist of strategies for creating an will be developed through the analysis of statutes, regulations, judicial decisions, and legal writing. An overview of the ADR mechanisms' role in the legal framework of oil and gas contracts. To identify, discuss and analyse the law and legal principles supporting the use of ADR as well as offer a structured exploration of the law and how this will affect the nature of dispute resolution with the use of ADR. In the oil and gas industry. 3.2. This research was implemented with a research design that Consistently gathers and examines legal documents concerning the subject of ADR in oil/gas conflicts. Literature Review is the backbone of this design, and includes an analysis of secondary sources including legal journals, Recent articles, literary works, conferences etc. about ADR. The purpose of this literature review is to chart Any existing academic discourse in the field of ADR that exists, noting what it needs to be further explored. and the topics and lacunae in the existing literature. Analytical Framework is created to assist in the analysis. Based on the primary sources of law including statutes, case law, and arbitration awards. It is structured on the basis of The fundamental principles of law that underpin the area of ADR and which may place the outcome of the process within the context of the law. Current legislation and rules. To meet the purpose of this study, a qualitative research design was used because of the following: doctrinal analysis method will be used. The study will also include a comprehensive review of the current legal understand trends, challenges and opportunities through frameworks, academic research and industry specific regulations. The study will explore the current legal context and opportunities for ADR in the oil and gas sector. trends, challenges and opportunities through frameworks, academic research and industry-specific regulations. Opportunities to use ADR in the oil and gas industry. Data will be collected from legal data bases and relevant industry journals and industry institutions' reports. The results will be analysed, critically, to Critically assess the importance of ADR mechanisms in effective dispute resolution and then to make recommendations increased recommendations to enhance their contribution to oil and gas. 3.3 Data Collection Strategy Data collection will be done very carefully with two approaches: Primary Sources and Secondary Sources. Primary sources will include statutes, including the Arbitration and Conciliation Act, relevant provisions of the Evidence Act and any other pertinent legislation. Oil and Gas laws, awards and judgments of the arbitration. These documents will give the basis of both the application and effectiveness of ADR in the sector. Secondary sources will comprise interpretations and commentaries on the text by scholars and articles, commentaries, and other content in the legal tradition that provide legal interpretation. critiques of ADR in practice. 3.3. Data Analysis Methods The analysis will be done through a Document Analysis technique, which will examine and interpret the legal materials collected. The strategy will require coding of the documents to highlight common issues, legal principles and patterns used in the application of ADR within the oil and gas sector. 3.4. Data quality Control The capacity of an instrument to measure what it is supposed to measure is referred to as validity. To check the validity and quality of the instrument, the researcher intends to take a look at what is called content validity. The degree to which an instrument consistently measures the object it is measuring is referred to as reliability. In addition, consistency refers to an instrument's ability to yield the same results on repeated testing of variables. These controls will be used by the researcher to guarantee quality. 3.5. The limits and ethical considerations will be explained. The limits and ethical considerations will be discussed. Enforcing ADR contracts to define the consequences for a failure to perform ADR obligations in oil and gas contracts may be difficult in the event of a dispute. Recognising the practical constraints that are inherent in doctrinal research is important, especially the interpretative nature of legal analysis and the selection of sources which can have a potential bias. Aimed at alleviating these constraints are measures to diversify the sources of data and to be critical and objective in analysing the data. Ethical aspects will include adhering to all the rules for citing sources correctly, respect intellectual property rights, and conduct an analysis that is balanced and impartial in order to maintain integrity and be credible. Conclusion This methodology chapter provides the foundation for a systematic and comprehensive research to study the role of ADR in oil and gas contract disputes. The purpose of this study is to achieve deep legal insights into the transformation of dispute resolution processes by the application of the mechanisms of ADR from a doctrinal research approach with numerous advantages including cost savings, maintaining business relationships and improving procedural efficiency. . The results will provide important insights into academic and practical debates about dispute resolution in the oil and gas sector.

CHAPTER FOUR

THE LEGAL FRAMEWORK GOVERNING ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN THE OIL AND GAS SECTOR

4.1 Introduction

The oil and gas industry in Uganda is a cornerstone of the country's economic development, attracting significant domestic and international interest. Given the complex nature of the sector, disputes are not uncommon, ranging from contractual disagreements to environmental concerns. The efficacy of Alternative Dispute Resolution (ADR) mechanisms is critical in managing these disputes efficiently, minimizing legal costs, and maintaining business relationships. This section explores the national laws, international agreements, and case law that frame and facilitate the use of ADR in Uganda's oil and gas sector.

4.1.1 International legal framework

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

4.1.2 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 United Nations Convention on Recognition and Enforcement of Arbitral Awards, often known as the New York Convention, which Uganda adopted in 1992, serves as the foundation for its arbitration system. The New York Convention is specifically incorporated into the Arbitration and Conciliation Act Cap 4, which was passed in 2000. This Convention has 159 member nations. "The Republic of Uganda will only apply the Convention to recognition and enforcement of awards made in the territory of another Contracting State" is the declaration that accompanied Uganda's ratification of the New York Convention. As a result, Uganda recognizes and upholds international arbitral rulings from contracting parties to the New York Convention.[35]

The Arbitration and Conciliation Act specifically grants arbitration priority when parties decide to use it to settle their disputes. It also mandates that courts halt judicial procedures and submit cases to arbitration when a defendant asks it. By limiting judicial involvement with an award to matters of law, the Arbitration and Conciliation Act further protects the integrity of arbitral rulings. This means that courts cannot reopen and rehear a dispute that has been submitted to arbitration. The Center for Arbitration and Dispute Resolution ("CADR") was created by the Arbitration and Conciliation Act to oversee and carry out arbitration as well as carry out auxiliary duties in accordance with the United Nations Commission for International Trade Law ("UNCITRAL") Arbitration Rules.[36]

4.1.3 ICSID Convention

Additionally, Uganda is a party to the Convention on Settlement of Investment Disputes between States and Nationals of Other States 1965 (commonly known as "the ICSID Convention"), which was approved on June 7, 1966, and came into effect in Uganda on October 14, 1966. This makes it possible to submit investment claims against Uganda to the International Centre for Settlement of Investment claims ("ICSID") for arbitration or mediation.[37] Regarding the execution of ICSID rulings, the

[35] Zahari, Wan Mohd Zulhafiz Wan, and Nurah Sabahiah Mohamed. "Common Disputes In Oil And Gas Industry And The ADR Process." *Copyright@ 2017 Ahmad Ibrahim Kulliyyah of Laws International Islamic University Malaysia Kuala Lumpur* 6 (2017): 127.
[36] Faith, Atukunda. *Alternative Dispute Resolution in the Oil and Gas Sector*. Diss. Institute of Petroleum Studies-Kampala, 2022.
[37] Connerty, Anthony. "Dispute Resolution in the Oil and Gas Industry: Recent Trends." *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 67.2 (2001).

Arbitration and Conciliation Act specifically permits any party wishing to enforce an ICSID award in Uganda to request that the award be registered with the High Court.[38]

At least two lawsuits between the Ugandan government and IOCs have already been addressed by ICSID in Washington, DC; however, both cases included tax issues and were dropped before the arbitral ruling. These were Tullow Uganda Operations PTY LTD against. Republic of Uganda ICSID Case No. ARB/12/34 and Total E&P Uganda BV vs. Republic of Uganda ICSID Case No. ARB/15/11.[39]

4.1.4 The Energy Charter Treaty (ECT)

The Energy Charter Treaty (ECT) is a significant international agreement that Uganda is a part of, and it plays a crucial role in shaping the legal landscape for dispute resolution within the energy sector, including oil and gas. The ECT was established to create a framework for cooperation in the energy industry across borders, offering a platform for resolving disputes that may arise between investors and states, or between states themselves. It represents a commitment to mutual respect and adherence to the rule of law in energy matters, which is especially important for a country like Uganda, with its growing focus on developing its petroleum sector.[40]

The ECT provides extensive protection for investments. It ensures that investments made by investors of one contracting state in the energy sector of another contracting state will receive fair and equitable treatment, full protection and security, and no less favorable treatment than that accorded to its own investors or investors of any

[38] Olawuyi, Damilola S. "Legal strategies and tools for mitigating legal risks associated with oil and gas investments in Africa." *OPEC Energy Review* 39.3 (2015): 247-265.
[39] Janeva, Natukunda. *An Analysis of The Efficacy of Arbitration as A Form of Alternative Dispute Resolution in Enhancing Quick Dispute Resolution in Uganda's Oil and Gas Sector*. Diss. Institute of Petroleum Studies-Kampala, 2023.
[40] Alramahi, Mohammad. "Dispute Resolution in Oil and Gas Contracts." *IELR* 3 (2011): 78-85.

other contracting state. These provisions aim to create a stable and predictable investment environment.[41]

Article 26 of the Energy Charter Treaty provides for the resolution of disputes between an investor and a host state through several mechanisms. Initially, parties are encouraged to settle disputes amicably via direct negotiations. If these fail, the investor can opt for international arbitration, choosing from established forums such as the International Centre for Settlement of Investment Disputes (ICSID), the Arbitration Institute of the Stockholm Chamber of Commerce, or an ad hoc tribunal that may operate under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules. This system allows for a clear process to be followed for dispute resolution, which helps to foster a stable and secure investment environment. The ECT has transitory provisions that enable the state in Uganda, among others, which are undergoing major regulatory reforms under the energy sector, to catch up with the obligations of the ECT gradually. This is especially timely in the context of the ongoing process of developing laws in Uganda to exploit and control the country's petroleum. This protocol, as part of the ECT framework, highlights the need to work to enhance the efficiency of energy use and promotes responsible environmental management in the energy sector. It emphasises the relationship between energy use and sustainability of the environment, which is crucial for Uganda's emerging oil and gas sector. As part of the ECT, the government and future oil and gas investors must abide by a set of internationally agreed rules and standards for the resolution of disputes. It offers a level of security and predictability and investors are aware there are processes in place to deal with

[41] Obi, Chidinma Augusta, et al. "Evaluating Arbitration As A Dispute Resolution Mechanism In The Nigerian Oil And Gas Industry." *AJIEEL* 7.01 (2023): 121-139.

conflicts of interest that may emerge from foreign investment. Additionally, the arbitration and conciliation elements offer a flexible dispute resolution approach, meeting varied requirements and contexts in the sector. The ECT has a wider impact than dispute resolution. It also affects the way Uganda is contracting with international oil companies and influences the development of its own legislation to make it more international. This integration supports Uganda to keep a competitive and attractive energy market and have a streamlined and equitable dispute resolution process.[42]

4.1.5 Model Production Sharing Agreement

The Ugandan Cabinet approved a new Model Production Sharing Agreement (MPSA) for the exploration, development, and production of petroleum in 2018. According to Article 24.1, a dispute will be referred to arbitration in line with the UNCITRAL Arbitration Rules if it cannot be settled within 120 days. Three judges will preside over this arbitration, which will take place in London, United Kingdom. However, issues pertaining to taxes, health and safety, and the environment are not covered by this article since they are decided only in compliance with the processes outlined in the relevant municipal laws. Any arbitral award or decision made in accordance with this article is final, enforceable, and admissible in any court.

4.5 Regional legal framework

4.5.1 The Treaty Establishing the East African Community ("EAC Treaty")

The East African Court of Justice ("EACJ") was created under article 9 of the Treaty establishing the East African Community ("EAC Treaty"). The EACJ's primary mandate is to handle interstate disputes concerning interpretation of the EAC Treaty. However,

[42] Ibid.

article 30 empowers legal entities and natural persons who are resident in a partner state to challenge any action, directive, decision or legislation of a partner state on the ground that it violates the EAC Treaty. Article 32 empowers the EACJ to handle arbitration proceedings where parties, by agreement, decide to refer disputes to it for arbitration.

4.5.2 The East African Community (EAC) Energy Policy

By establishing uniform regulatory standards and dispute resolution procedures, the East African Community's (EAC) Energy Policy seeks to improve the administration of the oil and gas industry in all of its member nations, including Uganda. This strategy makes cross-border activities easier, allowing nations like Uganda to pool resources and participate more successfully in regional energy initiatives. It places a strong emphasis on the creation of specific Alternative Dispute Resolution (ADR) procedures designed for energy disputes, which are essential for settling problems pertaining to resource management, revenue sharing, and cross-border infrastructure. [43] In addition to attracting investment, the strategy strengthens regional cooperation by creating a stable and predictable regulatory framework, which benefits Uganda's strategic interests and its position in the regional energy market.

4.5.3 National Legal Framework

4.5.4 The Arbitration and Reconciliation Act (ACA) Cap 5

Uganda is a party to both the ICSID convention 1965 and the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.[44] Hence, in May

[43] Luki, Bayuasi Nammei, and Nusrat-Jahan Abubakar. "Dispute Settlement in the Oil and Gas Industry: Why is International Arbitration Important?." *Int. J. Energy Technol* 6.4 (2016): 30.

[44] Kakooza, A. Conrad (2020). Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects. Uganda Living Law Journal, Vol. 7 No. 2 pp. 268-294. Uganda Law Reform Commission. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1715664 . Accessed on 21/6/2024.

2000, the ACA was enacted to provide for the law relating to domestic and international commercial arbitration, enforcement of foreign arbitral awards, and define the law relating to conciliation of disputes.[45]The ACA, which repealed the 1930 Arbitration Act, was envisaged to provide an effective and expeditious dispute resolution framework.[46]The Act, needless to say, would inspire confidence in the Ugandan dispute resolution system, attract foreign investments and reassure international investors on the reliability of the Ugandan legal system – as one which can provide an expeditious dispute resolution mechanism.[47]

The ACA incorporates the provisions of the 1985 UNCITRAL Model Law on International Commercial Arbitration as well as the UNCITRAL Arbitration Rules 1976 and the UNCITRAL Conciliation Rules 1976.[48] Pursuant to Section 73 of ACA, the Government accepts binding arbitration with foreign investors. The act, which also incorporates the 1958 New York and ICSID Conventions, authorizes binding arbitration between private parties.

On the whole, the ACA is made up of six parts. Part I is concerned with the application and interpretation of the act, Part II provides for any arbitration conducted in Uganda and enforcement of awards thereunder. Part III and IV provide for enforcement of foreign New York convention[49] and ICSID[50] awards, respectively.

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[45] See the long tittle of the Arbitration and Conciliation Act.

[46] Kiryabwire Geoffrey (2015). Alternative Dispute Resolution: A Ugandan Judicial Perspective. A paper delivered at a continuation Seminar for Magistrates Grade One at Colline Hotel Mukono on 12st April, 2015

[47] Ibid.

[48] Kakooza, A. Conrad (2020). Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects. Uganda Living Law Journal, Vol. 7 No. 2 pp. 268-294. Uganda Law Reform Commission. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1715664 Accessed on 21/6/2024.

[49] Section 39 of ACA defines a "New York Convention award" to mean an arbitral award made, in pursuance of an arbitration agreement, in the territory of a State (other than Uganda) which is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York

Part V provides for the establishment of CADER, as a statutory institution managing arbitration in Uganda, while part VI provides for conciliation of parties. However, unlike the UNCITRAL Model Law which was designed to apply only to international commercial arbitrations, the ACA applies to both international and domestic arbitrations.[51]

The act provides that while an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement, it must be in writing.[52] What is peculiar also is that the act requires that legal proceedings must be stayed until arbitration process is concluded. Section 5 (1) is to the effect that a judge or magistrate before whom proceedings are being brought in a matter which is the subject of an arbitration agreement shall, if a party so applies refer the matter back to the arbitration.[53] However, the judge or magistrate can do so after the defendant has filed a statement of défense and both parties have been given a hearing. This provision, however, ceases to apply where the arbitration agreement is null and void, inoperative or incapable of being performed; or where it is in fact established that hat there is not any dispute between the parties with regard to the matters agreed to be referred to arbitration.[54]

Convention") adopted by the United Nations Conference on International Commercial Arbitration on 10th June, 1958.

[50] Section 45 of ACA defines an "ICSID Convention award" to mean an arbitral award rendered pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "ICSID Convention") which was opened for signature on 18th March, 1965

[51] Kakooza, A. Conrad (2020). Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects. Uganda Living Law Journal, Vol. 7 No. 2 pp. 268-294. Uganda Law Reform Commission. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1715664 Accessed on 21/6/2024

[51] Ibid.

[52] Section 2 (1) and (2) of the ACA.

[53] Section 5(1) of the ACA.

[54] 5 (1) (a) and (b).

However, where a matter is pending before the Court, arbitral proceedings may be commenced or continued and an arbitral award may be made.[55] According to the Executive Director of CADER, in the case of Dr. Clemens Fehr V Prof. George, [56] the question of conflicting jurisdiction between courts and arbitral tribunals is covered by section 5(2) of the ACA. According to Section 9 of the ACA, the courts' authority in matters covered by the arbitral legislation is restricted to the prescribed instances outlined in the ACA. These instances have nothing to do with the merits of the case, but rather with issues that support the arbitral process by either confirming the validity of the completed arbitral process or by verifying the excesses or failures of the parties or the arbitral tribunal.[57]

According to Kakooza, [58] arbitration has been ingrained in Uganda's judicial system as a result of the ACA's significant improvements. In the East African Development Bank v. Ziwa Horticultural Exporters Ltd. [59] case, it was decided that arbitration is required when issues before the court are covered by an arbitration agreement. If the court is convinced that the arbitration agreement is legitimate, functional, and able to be carried out, it may use its discretion to send the case to arbitration.

The Center for Arbitration and Dispute Resolution (CADER) is established by Section 67 of the ACA. Its duties include, among other things: appointing arbitrators; creating and enforcing a code of ethics for arbitrators, conciliators, neutrals, and experts; qualifying and accrediting arbitrators, conciliators, and experts; providing

[55] Section 5(2) of ACA
[56] CAD/ARB/09/06.
[57] Kakooza, A. Conrad (2020). Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects. Uganda Living Law Journal, Vol. 7 No. 2 pp. 268-294. Uganda Law Reform Commission. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1715664 Accessed on 21/6/2024
[58] Ibid.
[59] High Court Misc. Appln. No. 1048 of 2000 arising from Companies Cause No. 11 of 2000.

administrative services and other technical services to support arbitration; facilitating certification, registration, and authentication arbitration of awards and conciliation settlements; and carrying out the UNCITRAL Arbitration Rules of 1976.[60]

4.5.5 The Judicature Act, Cap. 16

In general, arbitration under court order is permitted under the Judicature Act.[61] The Act specifies circumstances in which cases may be sent to a special referee or arbitrator, who has been authorized by the High Court to investigate and report on any cause or issue other than a criminal action.[62] The Judicature (Commercial Court Division) (Mediation) Rules, No. 55 of 2007 originated from these provisions read in conjunction with section 41 of the Act, which specifies the duties of the Rules Committee.[63]

4.5.6 The Civil Procedure Act (Cap. 282) and the Civil Procedure Rules S.I 71-1

ADR and conference scheduling are made possible under Order 12 of the Civil Procedure Rules (CPR). It is evident that Rule 1(1) of Order 12 stipulates that the Court will convene a scheduling conference to discuss areas of agreement and dispute, as well as the potential for mediation, arbitration, and other forms of resolution. It is noted that the purpose of this clause is to assist the parties in contemplating the possibility of reaching a settlement prior to the start of the court hearing.[64]

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[60] See section 68 of the ACA.
[61] Ibid.
[62] See sections 26 to 32 of the Judicature act cap 13
[63] Kakooza, A. Conrad (2020). Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects. Uganda Living Law Journal, Vol. 7 No. 2 pp. 268-294. Uganda Law Reform Commission. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1715664 Accessed on 21/6/2024
[64] Ibid.

The Court's reliance on ADR is further highlighted in Order 12 Rule 2. According to this regulation, if the parties are unable to come to an agreement, the court has the authority to order alternative dispute resolution (ADR) before a bench member. This process must be finished within 21 days of the court exercising its discretion. It may be claimed that this clause, which is closely followed, has set the pace for the process of organizing a conference prior to the start of any suit hearing. However, in certain cases, litigants view this process as a requirement rather than a way to perhaps resolve the dispute out of court.[65]

Order 47 of CPR also provides for arbitration under order of Court. This rule is very enriching in so far as it provides for parties to a suit, who are not under any disability to agree, that any disagreement between them in the suit be referred for arbitration at any time before the judgment is pronounced.[66] The parties in this case are allowed to choose an arbitrator that is mutually agreed upon. One can therefore argue that the foregoing provisions points to all but one thing: the principal basis of arbitration is the maintenance of mutual respect for each other’s interests between the parties.[67]

The Petroleum (Refining, Gas Processing and Conversion, Transportation, and Storage) Act, Cap 161. The Petroleum (Refining, Gas Processing and Conversion, Transportation, and Storage) Act of 2013 is a key piece of legislation in Uganda's oil and gas industry, highlighting the use of alternative dispute resolution (ADR) mechanisms, including arbitration, to resolve disputes. The legislation underscores a

[65] Kakooza, A. Conrad (2010). Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects. Uganda Living Law Journal, Vol. 7 No. 2 pp. 268-294. Uganda Law Reform Commission. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1715664 Accessed on 21/6/2024.
[66] Ibid
[67] Kakooza, A. Conrad (2020). Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects. Uganda Living Law Journal, Vol. 7 No. 2 pp. 268-294. Uganda Law Reform Commission. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1715664 Accessed on 21/6/2024.

commitment to settling disputes via means other than conventional court litigation, especially in a field like this, where the technical intricacies and financial effects can be significant. Section 86 of the Act is pivotal as it explicitly provides for the settlement of disputes. It provides that parties to the oil and gas midstream operations may choose to arbitrate their disagreements. This is essential to ensure that any disputes can be handled in an efficient and effective manner, with the industry specific dispute issues better understood by arbitrators. The ability to submit to arbitration reflects Uganda's efforts to ensure a stable and attractive investment environment and is consistent with international practice – which has the advantage that arbitration is held in a confidential setting and is fast, essential for continuing business and relationships. Moreover, although Section 56 on the use of the license as security doesn't deal specifically with arbitration, the ramifications for dispute resolution are substantial. Conflicts over the enforcement of security agreements and/or the terms of these agreements frequently end up in arbitration. This is mostly because such issues need to be handled with a balanced and informed argument, and an arbitrator can represent both parties' interests due to their knowledge of the legal and financial aspects. Several clauses of the Act as a whole place requirements on operating under the Act and under the terms of the licence. Breaches of these terms are ripe for dispute resolution by arbitration. In cases of environmental compliance, safety regulations, or compliance with other government requirements, arbitration may be a more targeted and efficient process than traditional litigation. In fact, the Petroleum Act of 2013 outlines Uganda's resolution processes in the oil and gas industry, and highlights arbitration as the preferred method. This is not only to speed up the resolution process and contribute to industrial harmony, but also reflects the country's commitment to maintaining a regulatory framework that is investment friendly to both domestic and foreign investors. The inclusion of these measures in its legal structure helps make the oil and gas industry stable and resilient to disputes, which is essential for its growth and the country's economic future. Conclusion The chapter has taken a critical look at the advantages and disadvantages of the Alternative Dispute Resolution (ADR) mechanisms, specifically arbitration, versus litigation in the settlement of disputes in the oil and gas industry in Uganda. Although all the advantages of ADR—speed, cost, flexibility and confidentiality—preserving business relationships and enabling expert decision-making are often stated to be absolute, this chapter has shown that they are not always true, especially in Uganda. Chapter Four addressed the fact that Uganda has a fairly strong legal framework for supporting ADR, both at the international and national levels. One of these is the Arbitration and Conciliation Act (ACA), Cap. The 4th, which includes the New York Convention 1958 and the ICSID Convention, which will serve as a basis for the recognition and enforcement of foreign arbitral awards. The ACA is limited in the scope of judicial intervention, strengthens party autonomy and introduces the Centre for Arbitration and Dispute Resolution (CADER) as the national arbitral institution. In addition, the existing laws, such as the Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Act, 2013, specifically include arbitration as a preferred mode of resolving disputes, thus demonstrating the strong presence of arbitration in the sector's regulatory framework. However, the use of ADR in Uganda is not problem-free. As indicated, arbitration in Uganda can be very expensive and slow, partly because there are no regulated fee structures, too many retired judges acting as arbitrators (with court-like procedures), and no statutory time limits for arbitration proceedings. These issues arise from the conflict between theory and practice of the use of ADR in Uganda's existing system. Furthermore, with various instances of investor mistrust and countries such as Uganda being scarcely used as an arbitral centre of dispute resolution in conflicts involving large-scale oil and gas operations, such as Tullow Uganda Operations Pty Ltd v Republic of Uganda, investor confidence is eroded. Notably, ADR is being integrated into Uganda's legal system in a multi-layered fashion. The Judicature Act, the Civil Procedure Rules and Order 12 and 47 of the CPR provide for court directed and court referred ADR including arbitration and mediation, which further supports ADR as an alternative means of dispute resolution that is sometimes supervised by the court. Uganda has also commitments to ADR within the broader picture of regional and international agreements, such as the East African Community Treaty and the Energy Charter Treaty (ECT). The overall Ugandan legal climate is a dynamic, but developing, one for oil and gas ADR. For ADR to prove as a viable alternative to litigation, however, Uganda must tackle some key gaps including: inadequate enforcement framework, lack of confidence in local arbitral institutions, lack of transparency in the selection of arbitrators and fee rules, and uneven capacity of arbitrators. However, ADR mechanisms are typically more suited to complex, high-value and confidential petroleum disputes, and are not without their limitations. They work well in practice to the extent that the legal and institutional arrangements are effective. Hence, parties in Uganda’s oil and gas sector should include ADR clauses in their contracts, but must also ensure that they are underpinned by clear procedural safeguards, trustworthy institutions, and state commitment to reform if ADR is to serve as a truly credible and superior alternative to litigation.

CHAPTER FIVE

THE PITFALLS AND BENEFITS OF USING ADR METHODS (ARBITRATION) TO RESOLVE DISPUTES COMPARED TO LITIGATION IN COURT

5.0 Introduction

Arbitration involves the use of an independent and neutral third party who 'renders a decision' to the dispute after determining the rights and obligations of the parties to a contract.[68] 'The arbitrator's decision will be binding on the parties and there is no right of appeal unless otherwise agreed.[69]The courts are generally 'willing to uphold the arbitrator's decision provided that there have been no serious irregularities'.[70]

The parties are free to choose between the two types of arbitration namely ad-hoc and institutional. If they choose ad-hoc arbitration, the parties will write 'their own arbitration procedures and rules'.[71] It is argued that 'ad-hoc arbitration is good for short-lived contracts with little or no likelihood of serious conflict'.[72] 'Unlike ad-hoc arbitration, institutional arbitration is conducted under the auspices of an arbitral institution'.[73] Such institutions have 'their own predetermined rules' on which the

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[68] B.T.P Tioxide v Pioneer Shipping Ltd and Armada Marine S.A. (The Nema) [1982] A.C. 724; Antaios Compania Naviera S.A v Salen Rederierna A.B. The Antaios [1985] A.C. 191.H L; M Rutherford, "Arbitration: be there dragons?" (Law Society Gazette 1987) 2423; (n 27) 616-617; Robert D. Fischer, and Roger S Haydock, 'International Commercial Disputes: Drafting an Enforceable Arbitration Agreement', [1996] 21 Wm. Mitchell L. Rev. 941; 356-357

[69] Arbitration Act 1996 s.58(1); Christian Buhring-Uhle, Arbitration and mediation in international business: designing procedure for effective conflict management (Hague, Netherlands, Kluwer Academic Publishers 1996); Bayuasi Nammei Luki and Nusrat Jahan Abubakar, 'Dispute Settlement in the Oil and Gas Industry: Why is International Arbitration Important?' [2016] 6(4) Journal of Energy Technologies and Policy,32.

[70] Emmott v Michael Williams & Partners Ltd [2008] EWCA Civ 184; [2008] Bus. L.R. 1361; O'Donoghue v Enterprise Inns Plc [2008] EWHC 2273 (Ch); [2009] 1 P. & C.R. 14.

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

[72] Clause Duval, Honore Le Leuch, Andre Pertuzio, Jacqueline Lang Weaver, International Petroleum Exploration and Exploitation Agreements: Legal, Economic and Policy Aspects, (2nd edition Barrows Company New York USA Barrows, 2019).

[73] Martin Hunter, ''International Commercial Dispute Resolution: The Challenge of the Twenty-first Century'' [2000] 16 (4) Arbitration Int. 379, 384; 337; Bayuasi Nammei Luki and Nusrat Jahan Abubakar,

parties can rely to address their contractual differences.[74] For the parties to be able to rely on such arbitration rules, they may refer to a specific recognised arbitral institution in their petroleum agreement. Some examples of institutions include London Court of International Arbitration (LCIA), American Arbitration Association (AAA), Euro Arab Chambers of Commerce (EACC), Netherlands Arbitration Institute (NAI), Stockholm Chamber of Commerce (SCC), International Chamber of Commerce (ICC), United Nations Commission on International Trade Law(UNCITRAL). Although parties engaging in institutional arbitration follow the procedural-law of their chosen institution, when it comes to substantive-law, they are free to choose their governing-law.

The arbitral awards whether given in ad-hoc or institutional arbitration, may 'be recognised, enforced, and challenged internationally if the country of the seat of the arbitration and the country of the counter-party(or its assets) against whom an agreement or award is to be enforced, are parties to the New York Convention 1958'('NY-Convention').[75]

Since most petroleum contracts are international in nature, it is argued that arbitration is the best alternative to addressing any contractual disputes that may arise.[76] This chapter will now evaluate the pitfalls and benefits of ADR compared to litigation.

'Dispute Settlement in the Oil and Gas Industry: Why is International Arbitration Important?' [2016] 6(4) Journal of Energy Technologies and Policy, 33.

[74] United Nations Convention on trade and development, New York and Geneva, 2005.

[75] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 <https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf> Accessed 14 May 2024; 152; Alexia Brunet and Juan Agustin Lentini, 'Arbitration of International Oil, Gas, and Energy Disputes in Latin America' [2017] 27 Nw J Int'l L & Bus 591, 603; 340.

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

5.1. Time and cost

An ambiguous advantage that ADR mechanisms have in common is that often they are less costly, and their proceedings are more expeditious than litigation.[77]During litigious proceedings, parties spend countless hours for depositions, discovery and trial preparation. Additionally, the final judgement 'typically takes years', because of bureaucracy and because it can be subject to appeal.[78] Consequently, a lot of money is involved during these years, because of legal and court fees. On the contrary, ADR mechanisms are typically cheaper, and they are concluded within a shorter period of time, mainly because the reasons to appeal a decision are limited.[79] It is noteworthy that some ADR methods are less costly and time effective than others. For instance, mediation 'costs less than 5%' and 'takes less than 15% of the time' of arbitration.[80]

Petroleum-companies earn or lose money per-second of production or non-production respectively. Thus, it is important to resolve disputes in a speedy and cost-effective manner because 'prolonged contractual disputes' can cost parties millions of pounds through decreased profits and reputational damage. Therefore litigation, is not suitable for resolving such disputes, and ADR is more favourable.[81]

It is important to consider that arbitration may end-up being as expensive, and as slow as litigation. This is because it involves 'fees and expenses of arbitrators, interpreters, translators and counsellors'. Also, 'delays are sometimes attributed to

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[77] A.F.M Maniruzzaman, 'The problems and challenges facing settlement of international energy disputes by ADR methods in Asia: the way forward' [2003] 6 I.E.L.T.R 193-202
[78] Peter Lovenheim, Mediate, don't litigate: How to resolve disputes Quickly, Privately and Inexpensively without going to court (McGraw Hill Higher Education, 1989), 10;
[79] Konstantin Pilkov, "Stereotypes of International Arbitration. Stereotype No 1. Speed and Economy" http://www.hg.org/article.asp?id=20078 accessed on 10 May 2024.
[80] Timothy A. Martin, 'International mediation: an evolving market' in A Rovine (ed) Contemporary Issues in International Arbitration and Mediation, The Fordham Papers, 2010; Centre for Effective Dispute Resolution (CEDR), The Fourth Mediation Audit: A Survey of Commercial Mediator Attitudes and Experience (London, 2020) 8; M Ross, 'Dispute Management and Resolution' in Gordon and Paterson (eds), Oil and Gas Law-Current Practice and Emerging Trends (Dundee University Press, 2021).
[81] Ibid.

the difficulty of communication, language and inconsistency' and in a case of institutional arbitration 'the final award sometimes takes months and even years to be enforced'.[82]

Arbitration in Uganda is rampant with delays that hamper the efficient dispensation of dispute resolution. This is because, although the ACA confers greater autonomy on arbitrators and insulates them from judicial interference, it does not expressly fix any time period for completion of proceedings. It has been noted that the time frame for completion of the arbitration proceedings was done away with, on the presumption that the root cause of delays in arbitration is judicial interference, and that granting greater autonomy to the arbitrators would solve the problem.[83] Also, it is to be seen that a significant number arbitrators who are accredited by CADER are mostly retired judges, and there is a likelihood that they treat the arbitration proceedings in the same manner as traditional litigation.

As noted above, one of the reasons why parties resort to arbitration is the presumption that it is generally cheaper over traditional litigation.[84] However, the ground realities show that arbitration in Uganda, particularly institutional arbitration can be quite expensive when compared to traditional litigation. Arbitration costs incurred by the parties may include; the arbitrator's fees, rent for arbitration venues, administrative/clerical expenses, and professional fees for the representatives of the parties (which may include lawyers and expert witnesses).

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[82] Smith E. Ernest et al, International Petroleum Transactions (3rd edition, Westminster, Colorado USA: Rocky Mountain Mineral Law Foundation 2020), 129.

[83] Krishna Sarma, Momota Oinam &Angshuman Kaushik (2019). Development and Practice of Arbitration in India–Has it evolved as an Effective Legal Institution. Available on: http://www.ipedr.com/vol2/40-P20019.pdf. Accessed on 29th May, 2024.

[84] Kakooza, A. Conrad (2020). Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects. Uganda Living Law Journal, Vol. 7 No. 2 pp. 268-294. Uganda Law Reform Commission. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1715664 Accessed on 29th May, 2024.

Executive Director of CADER in the case of Attorney General V Sino Africa Medicines & Health Limited[85]held that while fees payable in arbitration are not covered by the ACA, the ADR chambers can provide guidance.[86] Going by ADR Chambers guidelines as the cost of arbitration in Uganda, the following is worth noting:

i. Arbitrators' fees range from $250 to $800 per hour, plus applicable taxes depending on the arbitrator and the location of the arbitration;
ii. A deposit is required for each day reserved for the arbitration, the estimated time for preparation, preliminary matters, and award writing, venue expenses, and taxes;
iii. If the arbitration is cancelled more than 30 calendar days before the commencement of the arbitration hearing, the cancellation fee will be $500 plus the hourly rate of the arbitrator(s) times the number of hours spent by the arbitrator(s) prior to notification to ADR Chambers of the cancellation; and
iv. The fee for the arbitration room is $750 plus taxes per day. Additional breakout rooms are $400 plus taxes per day for each

While the aforementioned costing guidelines are only symptomatic, and apply to arbitration tribunal located in Canada, by referring to such guidelines from a private firm in Canada, one would argue that CADER has abdicated its duty to establish and administer a schedule of fees for arbitrators, as enshrined in the ACA.[87]

In the absence of rules regulating the fees structure for arbitrators in Uganda, ADR chambers 'guidelines, having been cited by CADER, are bound to be followed, leading

[85] CAD/ARB/NO/34 OF 2016.
[86] ADR Chambers is a company based in Canada providing alternative dispute resolution services internationally. See: http://adrchambers.com/ca/arbitration/regular-arbitration/arbitration-fees/ Accessed on 29th May, 2024.
[87] See section 68(k) of ACA.

to payment of humongous arbitration bills way to high than in traditional litigation. This is because under traditional litigation, the cost involved in Court proceedings is limited to lawyers' fees and Court fees, which are calculated ad valorem on the claim amount or the value of the suit.[88]

The aforementioned remark aligns with a rising complaint in India, for example, that arbitration has become an expensive process because of the arbitrators' exorbitant fees and frequent adjournments. [89] However, it has been noted that arbitration may only be less expensive than litigation if there are few arbitration procedures.[90]

The following steps are typically taken before the arbitrators: the claimant files his claim statement and supporting documentation at the first hearing; the opposing parties file their reply and supporting documentation at the second hearing; and the claimant files his rejoinder at the third hearing. [91] Furthermore, it is asserted that there are typically two or three adjournments at each of these stages. Both parties may occasionally make applications for interim directives, which raises the number of arbitration sessions required to decide these requests.

Usually, the arbitral tribunal must grant at least six adjournments before the first opportunity to address any jurisdictional issue arises. Additionally, it has been noted that there are more adjournments when the respondent is the State or a public sector enterprise since these parties need more time to internally finalize the pleadings and

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[88] Krishna Sarma, Momota Oinam &Angshuman Kaushik (2019). Development and Practice of Arbitration in India –Has it evolved as an Effective Legal Institution. Available on: http://www.ipedr.com/vol2/40-P20019.pdf. Retrieved on 29th May 2024

[89] Ibid.
[90] Ibid.
[91] Ibid.

papers that must be submitted to the arbitral tribunal. The parties spend a significant sum of money since they must pay the arbitrators a fee for each hearing.[92]

5.2 Privacy and confidentiality

An additional common advantageous characteristic of ADR mechanisms is that they are private and confidential proceedings, whereas ‘everything said or submitted in a lawsuit, except in rare cases, becomes public information’.[93] In the petroleum industry, disputes involve some trade secrets, ‘intellectual property issues, high-technology information and other competitive practices which are sensitive and vital’.[94]

In order to protect themselves and "avoid their competitors from taking undue advantage of them," the parties may choose to keep them confidential. Furthermore, it is better to keep competitors from gaining "an insight into the company's contract," which may offer them a "competitive edge in future bids." Additionally, if the market knows that two businesses are at odds, it may harm their reputation, negatively impact their relationships with investors, and lower their share price.[95]

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[92] Se generally the report Law Commission of India (2001). The 176th Report on Arbitration and Conciliation (Amendment) Bill, at p 68.

[93] Esso Australia Resources Ltd v Plowman (1995) 183 CLR 10; Henry J. Brown and Arthur L. Marriot, ADR Principles and Practice (2nd edn, sweet and Maxwell, London 1999); 625; Association for International Arbitrators (ed), Alternative Dispute Resolution in the Energy Sector (Maklu 2019).

[94] Lynn, P. H., “Use and Misuse of Confidentiality and Nondisclosure Agreements in Oil and gas Agreements: The Exploration Phase” (Westminster, United States of America: Rocky Mountain Mineral Law Foundation, 2014); American Arbitration Association: A Handbook on International Arbitration and ADR, New York USA: American Arbitration Association, 2016; 35.

[95] Henry G. Manne, ‘‘Mergers and the Market for Corporate Control’’ [1965] 73 J. Pol. Econ. 110, 113; Eugene F.Fama, ‘Efficient Capital Markets: A Review of Theory and Empirical Work, [1970] 25 J.OF FIN. 383; Matthew Cole, ‘Behavioural Economics and the Non-Frustration Rule: Accounting for Bias’ [2019] 12 J Bus Entrepreneurship & L 35.

In light of the aforementioned, litigation including publicly documented "proceedings and judgments" is an unsuitable method.[96] ADR is therefore the best option as conflicts are settled out of the public eye, protecting secrecy and privacy. Regarding arbitration, it should be mentioned that although it is private, the specifics of the arbitration may become public when the parties attempt to contest or enforce an arbitral ruling in court.[97]

A **disadvantage** generated by the private nature of ADR is that no precedents are set by the outcome. Hence, unlike litigation, the process does not contribute to the law's development or to the standards of public justice and fairness.

5.3 Flexibility

Moreover, ADR mechanisms have the benefit of being more flexible than litigation, since the parties retain control of the procedural aspects of the process.

In ADR, the parties have the choice to select an expert, a mediator and/or an arbitrator who has specialised knowledge in the specific petroleum dispute, unlike in litigation, where they cannot choose the judge and thus face the 'uncertainty that the judge will not have the necessary expertise to deal with the nature of the dispute'. Also, the parties can choose how costs will be paid, in which country the dispute will be resolved, the language of the dispute hearing as well as the venue and the timing of the proceedings. Oppositely, in litigation, the parties do not enjoy such freedoms. Specifically, they 'have no control over the timeline of the process and therefore, a dispute may not be resolved for a great-length of time'. This is also

[96] Peter Roberts, Gas Sales and Gas Transportation Agreements Principle and Practice (sweet and Maxwell, London, 2014) 318.
[97] Fraser v Thames Television [1984] Q.B. 44; [1983] 2 W.L.R. 917; Dolling-Baker v Merrett [1990] 1 W.L.R. 1205, [1991] 2 All E.R. 890, Ali Shipping Corp v Shipyard Trogir[1999]1W.L.R.314, [1998]1 Lloyd's Rep. 643.

relevant to the high costs since during such lengthy procedures, the 'expenses involved will continue to spiral-higher'.[98]

Some ADR methods provide more flexibility than others. For example, in mediation, the parties can 'work out their own solutions' which is not the case in arbitration. Also, it can be argued that the flexibility enjoyed by the parties in institutional-arbitration is limited, considering that they need to follow the procedural-rules of their chosen institution.[99]

5.4 Maintain business relationship and minimum disruption

Furthermore, ADR mechanisms are useful in maintaining and protecting the business relationship between the parties and offer minimal disruption to the existing projects. For instance, in mediation, the 'absence of fault-finding plus the experience of working cooperatively toward a mutually agreeable solution can help preserving the relationship' which existed prior to the dispute or even sometimes strengthen it. [100]

In litigation, however, a hostile environment is created, and regardless of the outcome, business-relationships of the parties may be destroyed 'by the bitterness engendered', and the parties may become unable to cooperate 'subsequent to the litigation, even when it is in their best interest to do so'.

Since 'disruption of current activities is very unwelcomed' in the petroleum industry, and because once the dispute is resolved the parties would 'normally wish to continue

[98] Chong, Heap-Yih, and Rosli Mohamad Zin. "Selection of dispute resolution methods: factor analysis approach." *Engineering, Construction and Architectural Management* 19.4 (2012): 428-443.
[99] Ibid.
[100] Lon L. Fuller, 'Mediation-Its Forms and Functions', [1971] 44 S. CAL. L. Rev. 305, 326; 23; 621-622.

a commercial relationship', ADR mechanisms are appropriate to resolve petroleum-disputes.[101]

5.5 Remedies

Moving on, a major drawback of litigation is that in many disputes, it cannot provide the best remedies for both parties. On the contrary, remedies provided under ADR mechanisms may suit the interests of both parties better than litigation, as they are tailored, practical, and creative. For instance, sometimes the best solution often entails renegotiating the petroleum contract rather than awarding damages which is the usual remedy provided by the court.

However, it is argued that ADR may not be appropriate in cases where a punitive damages award should be imposed so as to deter future illegal or negligent behaviours. For example, in a case where the petroleum company violated environmental-law, the court is in a better position to handle the case and impose a punishment for the environmental-damaged caused. For instance, the environmental-damaged caused by BP, which was fined 18.7billion.[102]

5.6 International Enforcement

One of the factors for determining arbitration as an effective legal institution is the efficiency and efficacy of its award enforcement regime.[103] It is argued that arbitration can be more effective since the arbitral award is recognised and enforced

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[101] Goldberg, Stephen B., et al. *Dispute resolution: Negotiation, mediation, arbitration, and other processes*. Aspen Publishing, 2020.

[102] Dominic Rushe in New York (2 July 2015) https://www.theguardian.com/environment/2015/jul/02/bp-will-pay-largest-environmental-fine-in-us-history-for-gulf-oil-spill accessed on 21/6/2024.

[103] Kakooza, A. Conrad (2020). Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects. Uganda Living Law Journal, Vol. 7 No. 2 pp. 268-294. Uganda Law Reform Commission. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1715664 Accessed on 14th April, 2024.

internationally under the NY-convention, as explained above.[104]On the other hand, the local court judgements can only be enforced in the jurisdiction of the court 'unless bilateral recognition and enforcement treaties exist between the parties' countries of dispute'. Due to the inability to enforce court judgments in foreign jurisdictions, litigation is not the appropriate mechanism of resolving international petroleum disputes, but is frequently used in the domestic petroleum business especially in US, Canada, UK and Australia when parties are from the same jurisdiction'.

As a result, an arbitral award is enforceable as a court decree and may be carried out in a lawsuit in accordance with the Civil Procedure Act and Civil Procedure Rules.[105] The 1958 New York Convention and the ICSID Convention,[106] which are included in Part III and Part IV of the ACA, respectively, [107] regulate the enforcement of foreign awards in Uganda. Any party interested in international awards must submit a written application to a court with jurisdiction over the award's topic. The decree holder is required to provide the award, the agreement supporting it, and proof that the award falls under the ACA's definition of a foreign award.[108]

In a case involving the Reciprocal Enforcement of Foreign Judgments Act, cap. 21, [109] Justice Hon. Stephen Musota ruled that the ACA, not the Reciprocal Enforcement of

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[104] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, < https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf> Accessed on 14th April, 2024.
[105] See section 36 of the ACA.
[106] Section 39(1) of ACA defines "New York Convention award" to mean an arbitral award made, in pursuance of an arbitration agreement, in the territory of a State (other than Uganda) which is a party to 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
[107] Section 45 of ACA.
[108] See sections 35, 42, and 47 of the ACA.
[109] Miscellaneous Cause No. 0308 Of 2016.

Foreign Judgments Act, cap. 21, should be used to enforce a foreign arbitral decision. He also claimed that on February 12, 1992, Uganda stated that it would only apply the New York Arbitration Convention 1958 to the acceptance and execution of awards issued inside the borders of another Contracting State.

The New York Convention, which has 149 states,[110] and the ICSID Convention,[111] which has 159 states, have broader membership and applicability. Therefore, one may argue that the ACA expands Uganda's ability to recognize and enforce foreign judgments. But enforcing foreign arbitral rulings is a complicated procedure that depends on a number of variables. [112] A party may object to the acceptance and execution of an arbitral ruling on seven grounds specified in the New York Convention of 1958. The public policy ground is noteworthy among these. [113] Courts have construed several of these reasons rather liberally and widely in order to deny arbitral awards recognition and execution.[114]

As a result, the law that applies to enforcement could not be clear-cut. This is due to the victorious party's difficult work of locating and identifying the losing party's assets, quickly determining the best course of action in a given circumstance, and

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[110] See list of the sates on http://www.newyorkconvention.org/new-york-convention-countries. Accessed on 14/6/2024.
[111] See the list of signatory States on https://icsid.worldbank.org/apps/ICSIDWEB/icsiddocs/Documents/List%20of%20Contracting%20States%20and%0Other%20Signatories%20of%20the%20Convention%20-%20Apr%202014.pdf Accessed on 14/6/2024.
[112] Francis Kariuki (2015). Challenges facing the Recognition and Enforcement of International Arbitral Awards within the East African Community. Available online on: http://www.kmco.co.ke/attachments/article/163/Paper%20on%20Recognition%20and%20Enforcement%20of%2oreign%20Arbitral%20%20Awards.pdf. Accessed on 14/6/2024.
[113] Article 5 of the convention and Section 34 of the ACA
[114] Francis Kariuki (2015). Challenges facing the Recognition and Enforcement of International Arbitral Awards within the East African Community. Available online on: http://www.kmco.co.ke/attachments/article/163/Paper%20on%20Recognition%20and%20Enforcement%20of%20Foreign%20Arbitral%20%20Awards.pdf. Accessed on 14/6/2024.

consulting and investigating whether a certain nation would uphold the verdict.[115]This might entail consulting with attorneys in that nation or, if necessary, hiring them to pursue enforcement in the local court. The debtor's assets may occasionally be dispersed over several countries, necessitating several enforcement actions and the associated costs. Therefore, before the award is executed, the winning party must petition to a local court.[116]

As the explanation above makes evident, the other ADR techniques have enforcement challenges both domestically and internationally. This is especially true since the NY convention does not grant them worldwide enforceability. As a result, they become less appealing for international petroleum deals.

5.7 Choosing Arbitral Seat

The number of international arbitration cases involving African parties or interests has increased, especially in the mining, telecommunications, oil and gas, and construction industries. Although African parties or interests are involved in these arbitrations, the majority of them take place outside of Africa and seldom include African arbitrators or administrative institutions; instead, they are mostly carried out through international organizations like the ICC or the LCIA.[117]

The selection of the arbitral seat is said to be a crucial component of successful arbitration. [118] The arbitral seat is crucial because it gives the arbitration a structure and grants the courts there supervisory jurisdiction. It should be mentioned that obtaining an arbitral judgment that will be effectively enforced in the local courts at

[115] Ibid
[116] Ibid.
[117] See: http://arbitrationblog.kluwerarbitration.com/2018/03/10/africa-stand-africa/ Accessed on 14/6/2024.
[118] Ibid.

the seat is the ultimate goal of the contesting party to arbitration. However, it is evident that using an African nation as an arbitral seat is generally viewed with suspicion. London, Geneva, Paris, and Singapore continue to be popular destinations because their legal systems are thought to be more conducive to arbitration.[119]

One could, perhaps, argue that the requirement for setting aside an arbitral award on grounds of public policy[120] may deter investors from choosing Uganda as an arbitral seat. This could be a justification as to why, for instance, countries like Nigeria and Tanzania have excluded public policy as a ground to challenge a foreign arbitral award.[121]

Despite the existence of the CADER, international investors in Uganda are yet to trust the Centre to manage arbitration proceedings, competently.[122] A vivid example is the case of Tullow Uganda Operations Pty Ltd and Tullow Uganda Limited V Republic of Uganda,[123] where a dispute relating to a production sharing agreement on the exploration, development and production of petroleum between the parties was forwarded to the ICSID under the ICSID Convention. Kariuki (2016) argued that despite the case having its origin from Uganda, none of the appointed arbitrators was a Ugandan, later alone from Africa region. The three arbitrators as appointed by parties were: a national of the United States and Switzerland; a national of Bangladesh; and a national of the United States.[124]

[119] Ibid.
[120] Section 34(2)(b)(ii) of ACA.
[121] See: http://arbitrationblog.kluwerarbitration.com/2018/03/10/africa-stand-africa/ Accessed on 14/6/2024.
[122] Ibid.
[123] ICSID Case No. ARB/13/25.
[124] Kariuki Muigua (2016). Effectiveness of Arbitration Institutions in East Africa. Available online on: http://www.kmco.co.ke/attachments/article/170/Effectiveness%20of%20Arbitration%20Institutions%20in%20East%20Africa%2022%20February%202016.pdf. Accessed on 14/6/2024.

Parties' autonomy in choice of arbitrators notwithstanding, Kariuki (2016) argued that it is a matter of great concern that African arbitrators are not considered competent to handle such matters. Parties to disputes rarely select African cities as venues for international arbitration.378

Notably, the Tullow Uganda Operations Pty Ltd and Tullow Uganda Limited v. Republic of Uganda (above) procedures took place in Europe rather than on the African continent. Karikuki (2016) contended that the choice of London as the arbitral venue may have been motivated by the long-standing concern about the suitability of African arbitrators to represent businesses or even governments in such disputes, where developing states typically prefer to appoint their non-natives as arbitrators, citing among other reasons the dearth of people with enough influence, expertise, exposure, and contacts to be appointed as international arbitrators.[125]

It is important to remember, nevertheless, that even if the parties or their legal counsel have little to no real-world expertise in the sector, a reputable and well-run arbitral institution may do a lot to guarantee that an international arbitration proceeds smoothly.[126] Elvira[127] noted that the host nation's perception of an arbitration body is strongly correlated. Therefore, in order to establish a pro-arbitration image, a state that wishes to improve the worldwide standing of its national arbitration organizations must work to strengthen its legal system, update

[125] Asouzu, A.A. (2016). Some Fundamental Concerns and Issues about International Arbitration in Africa,' African Development Bank Law Development Review, Vol. 1, p. 81, p.84.
[126] Redfern & Hunter (1991) Law and Practice of International Commercial Arbitration, 2nd Edition, London: Sweet & Maxwell, p. 155 (As quoted in Asouzu, A.A. (2016). 'Some Fundamental Concerns and Issues about International Arbitration in Africa,' African Development Bank Law Development Review, Vol. 1, p. 81, p.86).
[127] Elvira R. Gadelshina (2013). What plays the key role in the success of an arbitration institution? Available on https://www.financierworldwide.com/what-plays-the-key-role-in-thesuccess-of-an-arbitration-institution/#.WstDYIhubDc Accessed on 14/6/2024.

national laws pertaining to arbitration and other matters, and fight corruption. [128] Consequently, the institution's and the state's combined efforts result in an arbitration facility's competitiveness.

5.8 Choice of the arbitrator

The parties may select an impartial tribunal, arbitrator, or arbiters depending on their expertise. On the other hand, in litigation, it is always feared that a court may lack the knowledge and experience needed to make an appropriate decision on the matter at hand.

Under the ACA, appointment of the arbitrators can be made in various ways: first by the parties,[129] second by nomination of the third party,[130] and third, by the appointing authority, where parties fail to agree.[131] The arbitration act has little say on qualifications of the arbitrator. Thus, it would appear that any natural person may be an arbitrator.[132] It is, generally, no objection that the person nominated is unsuitable for the office. However, under the ACA, the appointing body must take into account any requirements set forth by the parties for an arbitrator as well as factors that are likely to ensure the nomination of an impartial and independent arbitrator.[133]

It is, however, a ground of objection that the nominee lacks impartiality. This is the case when the nominee is either closely associated with one of the parties or the subject matter of the dispute as to cast a doubt over his ability to conduct the

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[128] Elvira R. Gadelshina (2013). What plays the key role in the success of an arbitration institution? Available on https://www.financierworldwide.com/what-plays-the-key-role-in-thesuccess-of-an-arbitration-institution/#.WstDYIhubDc Accessed on 14/6/2024.
[129] Section 12(2) of ACA.
[130] Ibid.
[131] 9 Section 12(3) of ACA.
[132] Robert Merkin (2004). Arbitration law. Llyd's Commercial Law library. Issue no. 38. Chapter 20.
[133] Section 16(2).

reference judicially.[134] This remark is consistent with section 12(2) of the ACA, which states that an arbitrator may be contested if there are circumstances that raise reasonable concerns about their independence and impartiality. According to CADER's ruling in Roko Construction Ltd. v. Aya Bakery (U) Ltd.,[135] arbitrators are not entitled to an audience under the ACA where their impartiality, independence, or qualifications are contested.

It is the arbitrators' responsibility to always act with the utmost independence and impartiality. In Laker Airways Inc. v. FLS Aerospace Ltd., [136] it was decided that:

> [A]rbitration is a consensual process and therefore it is perhaps particularly unfortunate that one party should feel any apprehension about the impartiality of an arbitrator. Nevertheless, arbitration would become impossible if one party could require an arbitrator to retire by making unjustified allegations about impartiality or bias. The circumstances in which an arbitrator can be removed are therefore defined in section 24 of the Act. The test is an objective one - whether circumstances exist that give rise to justifiable doubts as to an arbitrator's impartiality. The test is thus objective in at least two respects: the Court must find that circumstances exist, and are not merely believed to exist (although I suppose that a belief may itself be a circumstance); and secondly, those circumstances must justify doubts as to impartiality. An unjustifiable or perhaps unreasonable doubt is not sufficient: it is not enough honestly to say that one has lost confidence in the arbitrator's

[134] Krishna Sarma, Momota Oinam &Angshuman Kaushik (2019). Development and Practice of Arbitration in India –Has it Evolved as an Effective Legal Institution. Available on: http://www.ipedr.com/vol2/40-P20019.pdf. Retrieved on 29th May, 2018.
[135] M.A. No.12 of 2008 (Arising out of CAD/ARB/No.10 of 2017).
[136] (1999) EWHC B3.

impartiality. On the other hand, doubts, if justifiable, are sufficient: it is not necessary to prove actual bias.

The law will, however, enforce any express agreement as to the qualifications of the arbitrator. For example, an agreement may stipulate that an arbitrator shall be a particular merchant engaged in a particular trade.[137] Where an appointed arbitrator does not match these qualifications, the appointment is ineffective, and any award made thereunder is void. Thus when it is discovered that the appointed arbitrator does not meet the qualifications, the opposing party must apply to the appointing authority either for a declaration that the arbitrator has no jurisdiction or for an order removing him from office.[138]

When both parties agree that the arbitrator has failed to carry out his duties or to act promptly, the ACA gives the parties the authority to jointly terminate the arbitrator's mandate.[139] The aggrieved party may petition to CADER to resolve the matter if the parties cannot agree that the arbitrator has failed to carry out the duties of the office or to act promptly.[140]

It should be noted, however, that arbitrators are clothed with judicial immunity and hence have no personal liability for decisions made during the arbitration process.

Therefore, under Sections 13 and 14 of the ACA, no claim for general or particular damages may be made. In Rick Malik v. A Fred Ruttenberg,[141] the court rejected the American Arbitration Association's and the arbitrator's culpability for the claimant's severe physical injuries caused by another party during recess. Additionally, in The

[137] Robert Merkin (2014). Arbitration law. Llyd's Commercial Law library. Issue no. 38. Chapter 20.
[138] Ibid.
[139] Section 14(1)(a) of ACA.
[140] Section 14(2) of ACA.
[141] Docket No. A- 6615-06T3.

Honorable Edwin E. Naython v. Stradley, Ronon, Stevens & Young, LLP & Andrew L. Dennis, [142] the court rejected the arbitrator's civil claim that one party had defamed him by contesting his refusal to recuse himself, causing the arbitrator to suffer reputational harm, emotional distress, and lost income.

The arbitral institution must rely on the knowledge of its members, just like any other provider of legal services. This is due to the fact that international arbitration organizations handle processes rather than decide disputes directly, therefore having a respectable pool of qualified arbitrators is not only a need but also a choice. These arbitrators should be qualified in both civil and common law jurisdictions, among other areas.[143]

5.9 Jurisdiction

Additionally, "litigation may not be a promising route to provide a clear jurisdictional path for resolving disputes" in the petroleum sector. For instance, if a petroleum business and a host state are at odds, the petroleum corporation cannot trust the foreign courts because the judges can "have a level of xenophobia" and favor the host state if they are influenced politically. The petroleum agreements must have dispute-settlement provisions "providing for mandatory arbitration and/or mediation" in order to solve this issue and balance "the political risks." [144]

It might also be claimed that when disagreements include complicated legal problems, litigation can be a better way to resolve them. Additionally, in contrast to arbitration, third parties may participate in court proceedings once they have

[142] Civil No. 07-4489 (RMB)
[143] Elvira R. Gadelshina (2013). What plays the key role in the success of an arbitration institution? Available on https://www.financierworldwide.com/what-plays-the-key-role-in-the-success-of-an-arbitrationinstitution/#.WstDYIhubDc Accessed on 14/6/2024.
[144] Fabio Solimene, 'Political risk in oil and gas industry and legal tools for mitigation' [2014] 81 International Energy Law Review, 5.

begun.[145] Furthermore, "litigation may be the preferred option" if the issue involves large quantities of money. Numerous instances, like Amoco v. Teesside Gas Transportation and BHP v. Dalmine SpA, have been settled via litigation.[146]

In general, alternative dispute resolution (ADR) methods are thought to be more advantageous than litigation. They frequently offer the least amount of impact on operations, are adaptable, save time and money, and maintain current partnerships.[147] On the other hand, 'litigation is more costly and lengthy, lacks privacy and confidentiality, does not maintain the commercial relationship of parties and lacks international recognition and enforcement.[148]

5.10 Conclusion

In conclusion, this chapter has critically examined both the advantages and disadvantages of using Alternative Dispute Resolution (ADR), particularly arbitration, as opposed to litigation in resolving disputes within the petroleum sector. The advantages of ADR mechanisms, particularly arbitration, are being increasingly recognised, including: cost and time efficiency, confidentiality, flexibility of the processes, preservation of business relationship and enforcement of awards through international instruments such as the New York Convention or UNCITRAL rules. These advantages make ADR more appealing for cross-border and high-stakes commercial transactions where privacy, expertise and expediency are crucial.

[145] Civil Procedural Rules 1998 r.20; 36.
[146] Amoco (UK) Exploration Co v Teesside Gas Transportation Ltd [2001] UKHL 18; BHP Billiton Petroleum Ltd v Dalmine SpA [2002] EWHC 970 (Comm).
[147] A.F.M Maniruzzaman, 'The problems and challenges facing settlement of international energy disputes by ADR methods in Asia: the way forward' [2003] 6 I.E.L.T.R 193-202
[148] Thomas Walde 'Mediation/ADR in Oil, Gas and Energy Transactions: Superior to Arbitration/Litigation from a Commercial and Management Perspective ' [2013] 2 Oil Gas Energy Law; (n 65) 317; 339.

This chapter, however, also has shown the continuing debate as to the relative effectiveness of the ADR processes as compared to litigation by our courts. Arbitration is touted as being quicker and cheaper than litigation on the one hand.On the other hand, arbitration is promoted as being a more efficient way to resolve the dispute. In practice, however (and particularly in Uganda), arbitration can be as time consuming and cost-intensive as litigation without the involvement of court-like procedures and without fee regulations, and it can be as informal as litigation with excessive adjournments, etc. by many retired judges who have court-like approaches. Also, although arbitration can be confidential, and provide autonomy in the proceedings, this can sometimes be at the expense of transparency and the formation of legal precedent, both of which are very important characteristics of litigation.

In addition, despite the existence of international conventions in favour of the enforcement of arbitral awards, a number of practical difficulties remain – such as locating assets in different jurisdictions, applying for enforcement in jurisdictions with conflicting laws, and objections to enforcement on public policy grounds. The other area of the controversy relates to the lack of trust and use of local seats of African arbitration institutions and the use of foreign arbitrators by foreign investors, which has led to concerns about the lack of arbitration capacity and judicial confidence in Africa in general.

Hence, the chapter highlights that while the use of ADR has been given a positive hue it can be effective only in specific situations; it is important to consider the legal, institutional, and economic context of the host country. If properly [and better] regulated, organized and facilitated by trusted local institutions, such as CADER, the petroleum industry in Uganda can be offered an effective alternative to court-driven litigations that is investor friendly. However, it is important for parties to be aware of the potential pitfalls and weigh each available dispute resolution process against the type of dispute, parties involved and the jurisdictions involved. The use of ADR should not be a conventional tool.

CHAPTER SIX

THE CONSEQUENCES OF BREACHING ADR CLAUSES EMBEDDED IN OIL AND GAS CONTRACTS WHEN DISPUTES ARISE

6.0 Introduction

There may be serious legal and financial repercussions for violating Alternative Dispute Resolution (ADR) clauses in oil and gas contracts. These provisions, which offer a structure that is usually speedier and less expensive than litigation, are crucial in specifying how conflicts should be handled outside of the courts. An outline of the possible repercussions of breaking such provisions is provided below:

6.1 Legal Consequences

6.1.1 Enforcement Proceedings

Under the context of the Arbitration and Conciliation Act, the judiciary in Uganda firmly supports the implementation of Alternative Dispute Resolution (ADR) provisions. Inspired by the UNCITRAL Model Law on International Commercial Arbitration, this Act aims to make arbitration and other forms of alternative dispute resolution (ADR) more efficient. The Act's enforcement provisions offer a strong legal avenue for the aggrieved party to pursue redress when a party violates an ADR clause in a contract.[149]

The Ugandan Arbitration and Conciliation Act lays out precise guidelines for the recognition of arbitral verdicts and the enforcement of arbitration agreements. Unless the court determines that the arbitration agreement is invalid, ineffective, or impossible to carry out, Section 5 of the Act prohibits the courts from admitting

[149] Bouvery, Louise. Lex Petrolea, Arbitration and other Alternative Dispute Resolution Mechanisms in oil and gas investment contracts: a critical analysis. University of Exeter (United Kingdom), 2020.

matters that are subject to an arbitration agreement. In essence, this forces parties to uphold their contractual duties under ADR terms.

The opposite party may petition the courts for enforcement when one party violates these duties by either declining to take part in the ADR procedure or disregarding its results. The court's job is to guarantee adherence to the ADR procedure as first decided by the parties, not to re-adjudicate the matter. Generally, the courts issue orders that force the unwilling party to participate in arbitration or uphold the rulings made through alternative dispute resolution.[150]

As part of a larger movement to reduce the load on the judiciary and promote effective, business-friendly dispute resolution procedures, Ugandan courts have continuously demonstrated support for arbitration and other ADR techniques. This judicial position supports the implementation of arbitration agreements and awards in accordance with international legal norms as well as local regulations.

Additionally, the judiciary's use of ADR rules contributes to the integrity and predictability of business dealings in Uganda, especially in vital industries like oil and gas where disagreements may be extremely complicated and technically demanding. Strict adherence to ADR terms guarantees that disagreements are settled in a way that is not only effective but also legally binding and final, avoiding drawn-out litigation and promoting a stable business climate.

The case of Total (U) Ltd v Buramba General Agencies[151] is about a breach of an oil transportation and distributorship agreement. Three arbitrators were appointed to

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[150] Obi, Chidinma Augusta, et al. "Evaluating Arbitration as a Dispute Resolution Mechanism in the Nigerian Oil and Gas Industry." *Ajieel* 7.01 (2023): 121-139.
[151] High Court of Uganda, Arbitration Application No. 3 of 1998.

resolve the dispute. The losing party applied to court for set aside the award alleging that one of the arbitrators was biased and that the sum awarded was unduly high.

Justice James Ogoola, dismissed the application with costs and held, among other things, that the "court is not at all alarmed by the apparent largeness and volume of damages awarded by the arbitrators in this case." In Chevron Kenya Limited & Chevron Uganda Ltd v Daqare Transporters Ltd.[152], Justice Geoffrey Kiryabwire refused to set aside an arbitration award merely because one party complained that the award was "colossal and unconscionable". In the first Ugandan case cited above, the judge observed that "it is self-evident that ...courts have adopted a decidedly benevolent attitude to the interpretation of arbitral awards".

The law of arbitration is principally concerned with the following: the relationship between the Courts and those aspects of arbitral process which concern the performance and enforcement of the agreement to arbitrate; the question of whether Courts have the jurisdiction to compel the party to arbitrate in accordance with the agreement and honor the resulting award; and whether Court can intervene to cure injustice resulting from defects in conduct of the reference, and the manner in which these powers can be exercised.[153] While the law of arbitration is procedural in content, to some extent, it deals with substantive aspects of arbitral process, in the sense that it creates and regulates the jurisdiction of Court to intervene in cases of erroneous decisions by an arbitrator.[154]

Under the ACA, Courts have jurisdiction on a dispute that is subject to arbitration in the following instances; (i) where the arbitral tribunal rules as a preliminary question

[152] High Court of Uganda, Misc. Application No. 490 of 2008.
[153] Rodríguez González Valadez, Carlos. "ADR at the International Oil & Gas Industry, the Pemex Case. (A legal and socio-legal analysis)." (2022).
[154] Ibid.

that it has jurisdiction, and one of the parties is aggrieved,[155] (ii) application to set aside arbitral tribunal,[156] and (iii) granting an interim measure of protection to any disputant.[157]

The explanatory note by the UNCITRAL Secretariat on the Model Law has the following background notes which shed some light on the extent of Court's jurisdiction on a matter that is subject to arbitrate:

14. As evidenced by recent amendments to arbitration laws, there exists a trend in favour of limiting Court involvement in international commercial arbitration. This seems justified in view of the fact that the parties to an arbitration agreement make a conscious decision to exclude Court jurisdiction and, in particular in commercial cases, prefer expediency and finality to protracted battles in Court.

15. In this spirit, the Model Law envisages Court involvement in the following instances. A first group comprises appointment, challenge and termination of the mandate of an arbitrator (articles 11, 13 and 14), jurisdiction of the arbitral tribunal (article 16) and setting aside of the arbitral award (article 34). These instances are listed in article 6 as functions which should be entrusted, for the sake of centralization, specialization and acceleration, to a specially designated Court or, as regards articles 11, 13 and 14, possibly to another authority (e.g. arbitral institution, chamber of commerce). A second group comprises Court assistance in taking evidence (article 27), recognition of the arbitration agreement, including its compatibility with Court-ordered interim

[155] Section 16 (6) of ACA.
[156] Section 34, Ibid.
[157] Section 6 of ACA.

measures of protection (articles 8 and 9), and recognition and enforcement of arbitral awards (articles 35 and 36).[158]

The strict enforcement of ADR clauses by the Ugandan judiciary under the Arbitration and Conciliation Act is a testament to the country's commitment to uphold the principles of contractual freedom and the efficacy of arbitration and other ADR processes. This approach not only streamlines dispute resolution in the oil and gas sector but also reassures domestic and international investors about the reliability and predictability of Uganda's legal system in handling commercial disputes.

6.1.2 Legal Penalties

The Arbitration and Conciliation Act provides strong legal backing for the implementation of Alternative Dispute Resolution (ADR) agreements in Uganda. This Act recognizes arbitration as a legitimate and preferable means of resolving disputes, especially in business situations, and it both promotes and emphasizes the enforcement of ADR agreements.[159]

When a party in Uganda deliberately ignores an ADR clause, the courts have the authority to impose penalties or sanctions to ensure compliance and enforce discipline. Such penalties are not punitive in nature but are rather meant to reinstate the affected party to the position they would have been in had the ADR clauses been adhered to initially.[160]

One common form of sanction is the requirement for the breaching party to pay the legal costs incurred by the other party in the process of enforcing the ADR clause.

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[158] UNCITRAL Secretariat Comment on the Model Law on International Commercial Arbitration

[159] Beebeejaun, Zeenat, and Alessio Faccia. "Electronic Alternative Dispute Resolution, smart contracts and equity in the energy sector." *The Journal of World Energy Law & Business* 15.2 (2022): 97-113.

[160] Wälde, Thomas W. "Renegotiating acquired rights in the oil and gas industries: Industry and political cycles meet the rule of law." Journal of World Energy Law & Business 1.1 (2018): 55-97.

This is grounded in the principle of indemnity, which aims to prevent a party from suffering financially due to another's disregard of the contract. By imposing such costs, the courts aim to deter parties from bypassing agreed-upon ADR procedures, thereby upholding the contractual terms. Section 36 of the ACA deals with the enforcement of arbitral awards and is critical for the penalties aspect. If a party fails to comply with an arbitral award, the other party can seek its enforcement through the courts. The court can then impose sanctions such as the payment of legal costs and other penalties as part of the enforcement process.[161]

6.1.3 Voiding of the Dispute Resolution Process:

When parties to a contract agree to an Alternative Dispute Resolution (ADR) clause, they commit to resolving any arising disputes through specified ADR mechanisms, typically arbitration or mediation, before resorting to litigation. Ignoring these ADR clauses can significantly impact the judicial handling of any related disputes.

If a party initiates litigation without first adhering to the agreed-upon ADR processes outlined in the contract, several judicial responses can be expected:[162]

Stay of Proceedings: Courts generally hold the enforcement of ADR clauses in high regard due to principles of contract law that necessitate the fulfilment of agreed contractual terms. A stay of proceedings, which essentially pauses the court action to allow the parties to continue with the agreed-upon ADR procedure, is frequently granted by courts when litigation is pursued too soon. This is a basic legal criterion

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[161] Javadpour, Naqmeh, Hamid Reza Oloumi Yazdi, and Seyyed Nasrollah Ebrahimi. "Oil and Gas Investor-State Dispute Settlement: Is Mediation-Arbitration Considered a Mechanism for Common Interests?." *Petroleum Business Review* 3.1 (2019): 17-28.

[162] Osei-Hwere, R. "Notes and Comments on the Non-Litigious Dispute Resolution Processes Adopted by Oilmen." *KNUST LJ* 6 (2014): 85.

that emphasizes the independence of the parties' contractual agreement rather than merely being a procedural formality.[163]

Dismissal of Proceedings: The court may completely dismiss the litigation in more severe situations if one party consistently violates the ADR provision. However, if statutory limitations or other legal restrictions do not prevent such activities, this dismissal usually does not exclude the possibility of re-filing the complaint when the necessary ADR procedure is finished.

Legal Fees: Courts have the authority to mandate that the party disregarding the ADR clause reimburse the other party's legal fees incurred in attempting to enforce the ADR agreement. This discourages avoiding contractually mandated dispute resolution procedures and demonstrates the courts' endorsement of alternative dispute resolution (ADR) as a quick and affordable conflict settlement process.[164]

The enforcement of alternative dispute resolution (ADR) agreements in places like Uganda is consistent with more general legal norms that motivate parties to uphold their contractual obligations. This strategy is supported by the Arbitration and Conciliation Act, which governs such processes in Uganda and stipulates that courts should force arbitration if one party tries to avoid it in accordance with an existing arbitration agreement.[165]

This means that avoiding an agreed-upon alternative dispute resolution (ADR) process can result in delays in resolving disputes, higher expenses, and perhaps unfavorable

[163] Janeva, Natukunda. *An Analysis of The Efficacy of Arbitration as A Form of Alternative Dispute Resolution in Enhancing Quick Dispute Resolution in Uganda's Oil and Gas Sector*. Diss. Institute of Petroleum Studies-Kampala, 2023.
[164] Abdo, Waleed. *Construction Contracts in Oil and Gas Projects*. Diss. The British University in Dubai, 2016.
[165] Schmitz, Amy J. "Confronting ADR Agreements' Contract/No-Contract Conundrum with Good Faith." *DePaul L. Rev.* 56 (2016): 55.

legal outcomes for organizations and individuals in contractual partnerships. In addition to indicating a judicial preference for parties to settle disagreements in private and amicably wherever feasible, courts' willingness to uphold ADR provisions also preserves judicial resources for situations in which no such pre-agreement exists.[166]

Strategically speaking, adhering to ADR provisions not only complies with legal requirements but may also provide more control over the conflict resolution procedure, frequently producing results that are more suited to the objectives and interests of the parties than those usually attained through litigation. In sectors like oil and gas, where disagreements may be extremely technical and financially sensitive, this is especially crucial.[167]

In conclusion, disregarding an ADR clause can result in serious judicial interventions, such as the staying or dismissal of court proceedings, which prolongs the dispute resolution process and raises related expenses in addition to violating particular contractual requirements.[168]

6.1.4 Operational and Business Consequences

6.1.5 Project Delays

Ignoring ADR provisions can result in major project delays, cost overruns, lost income, and supply chain disruptions in the oil and gas business, where timetables and budgets are critical. Additionally, contractual fines, strained stakeholder relationships, and

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[166] Masood, Masood Hossain. *International arbitration of petroleum disputes*. University of Aberdeen (United Kingdom), 2014.

[167] Sharif, Habibu Ahmed. "An Evaluation into the Use of Arbitration as a Dispute Resolution Method in Supplier-Buyer Relationship." *The International Journal of Business & Management* (2018).

[168] Moin, Donya. "Settlement of disputes over states' nationalization of oil-investment contracts." *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 9.3 (2017): 04517007.

increased regulatory scrutiny may result from these delays, necessitating further compliance procedures. Effectively resolving conflicts using approved ADR procedures, such as arbitration and mediation, may significantly shorten settlement periods, protect project confidentiality, and provide more control over the dispute resolution procedure. In this fiercely competitive and regulated industry, following ADR provisions not only reduces financial risks but also ensures the viability of existing and future projects.

6.1.6 Reputational Damage

Non-compliance with contractual commitments, especially ADR terms, may seriously damage a company's reputation in the oil and gas sector, where trust and long-term partnerships are crucial. A company's dedication to fair play and moral business conduct is frequently seen as reflected in its adherence to ADR terms. Other industry participants may view a corporation as untrustworthy or controversial if it decides to disregard such provisions. Given how linked the industry is and how frequently businesses collaborate on different initiatives, this image has the potential to spread swiftly. Potential partners may become skeptical of future agreements as a result of a tarnished reputation brought on by non-compliance, fearing future disagreements and disregard for conflict resolution procedures.[169]

Furthermore, keeping good ties with governmental organizations and regulatory agencies is essential in a highly regulated industry like oil and gas. These organizations frequently keep an eye on adherence to contractual obligations, including dispute resolution procedures, as well as regulatory standards. A corporation runs the danger of coming under additional attention from regulators when it

[169] Onyeabor, Emmanuel U., and Ifeoma E. Nwafor. "Resolution of Environmental Disputes in Nigeria: The Role of Alternative Dispute Resolution Mechanism." *IRLJ* 4 (2022): 50.

develops a reputation for circumventing established ADR procedures. This might result in more supervision, possible penalties, or challenges getting future licenses and permits. This increased regulatory scrutiny may worsen the harm to the company's reputation, making it more difficult for it to recover and regain its position in the market.[170] Effective adherence to ADR provisions supports a company's long-term operational and strategic goals in the cutthroat oil and gas market by demonstrating its dependability and integrity as well as its adherence to regulatory frameworks and industry norms.

6.1.6 Strained Business Relationships

Maintaining positive business relationships in the close-knit oil and gas sector depends on the seamless settlement of conflicts through established ADR procedures. Each party's commitment to commercial agreements, including dispute resolution procedures, reinforces the mutual respect and trust that underpin these partnerships. When a business violates these provisions, it not only jeopardizes the prompt dispute resolution procedure but also gives its partners a bad impression about its dependability and dedication to contractual duties. Current partners may be reluctant to continue working together as a result of this violation, which might result in a loss of respect and confidence. The capacity to collaborate well with others is essential in a field where long-term partnerships and joint ventures are typical. Therefore, a firm's capacity to function within these networks can be severely hampered by a

[170] Hewitt, Toby. "An Asian perspective on model oil and gas services contracts." *J. Energy & Nat. Resources L.* 28 (2020): 331.

breach of ADR terms, as partners may start to view the company as a legal risk, which could result in isolation within the industry.[171]

Furthermore, the effects of strained relationships go beyond ongoing initiatives. Businesses in the oil and gas sector frequently depend on their reputations to gain new contracts. Other industry participants, such as suppliers, contractors, and possible new joint venture partners, may consider a firm to be a high-risk partner if it has a history of violating ADR terms. Because stakeholders may demand stricter contract conditions or greater premiums to reduce the perceived risk, this reputation may make it challenging to establish new partnerships or obtain advantageous terms in future transactions. Furthermore, a reputation for poor compliance and strained relationships might affect regulatory authorities' willingness to provide permits or licenses, which can affect the company's capacity to develop or continue its operations in an industry where many activities strongly depend on regulatory clearance.[172] Upholding ADR laws thereby encourages more effective dispute resolution and preserves the interpersonal relationships required for long-term company performance in the global oil and gas sector.

6.1.7 Financial Consequences

6.1.8 Increased Costs

The expenses of resolving disputes can be greatly increased by going to court instead of using established ADR procedures like arbitration or mediation. This is especially true in the oil and gas sector, where disagreements can be complicated and have large financial stakes. Long discovery procedures, several court appearances, and a

[171] Munobe, Samuel. *A Critical Appraisal of Oil and Gas Dispute Prone Clauses: A Case for Uganda's Production Sharing Agreements*. University of Malaya (Malaysia), 2013.
[172] Stipanowich, Thomas J. "ADR and the "Vanishing Trial": the growth and impact of "Alternative Dispute Resolution"." *Journal of Empirical Legal Studies* 1.3 (2014): 843-912.

lot of motion practice are common in litigation, all of which raise professional fees and administrative expenses. Furthermore, litigation is public, and the disclosure of private firm data may result in extra strategic expenses that might have an impact on investor confidence, stock prices, and commercial ties. ADR procedures, on the other hand, are intended to be less formal and more efficient, with the goal of reaching a settlement more quickly. This effectiveness decreases indirect costs, such as the diversion of resources and management attention from core company operations, in addition to direct costs, such as court fees and legal service fees.[173]

Furthermore, litigation might go for years, during which time resources are continuously used and the result is still unknown. A company's financial health and competitive posture may be impacted by the protracted nature of court disputes, which can divert funds that could be utilized for development or operational enhancements. Protracted litigation can cause delays that lead to missed chances and lost income in the oil and gas industry, where timely project execution is essential to maximizing on market opportunities and commodity pricing. On the other hand, arbitration and mediation may be customized to the interests of the parties and usually provide more predictable timescales, resulting in a settlement that is acceptable to both parties and maintaining the business relationship.[174] Therefore, by avoiding ADR terms and choosing litigation instead, businesses unintentionally take on bigger financial risks and deal with a larger total economic impact, which makes litigation a less desirable alternative for efficiently managing conflicts.

[173] Aleynikova, Elina, Tuuli Timonen, and Eduardo G. Pereira. "Governing Law Of Oil And Gas Agreements And Of Disputes Arising In The Oil And Gas Industry." *Governing Law and Dispute Resolution in the Oil and Gas Industry*. Edward Elgar Publishing, 2022. 22-58.

[174] Atai, Ardeshir. "A New Paradigm for Attracting Foreign Investments: Restructuring Investor-State Arbitration for Resolution of Petroleum Disputes: Dynamics of the New Iranian Oil Investment Contract." *Transnational Dispute Management (TDM) Journal* 12.2 (2015).

6.1.9 Damages for Breach

When one party violates an alternative dispute resolution (ADR) clause and causes financial injury to the other party, there may be serious legal repercussions, especially with regard to damages. Due to the necessity of pursuing litigation or other legal remedies that were initially meant to be avoided by the contractually agreed-upon ADR procedures, such breaches sometimes cause the non-breaching party to suffer a number of additional expenditures. The breaching party may find itself at risk for a multitude of damages including the additional legal expenses of litigation over an alternative dispute resolution (ADR) process, administrative expenses, and possibly even the costs of a longer project timeline or delayed operations directly resulting from the aggravated dispute resolution process. Furthermore, damages may also cover losses other than legal and/or direct costs. For example, if a project is delayed in starting or operating as a result of violating the ADR provision, the non-breaking party could be entitled to recover lost profits. This lost earning calculation would, however, require a level of confidence sufficient to support the calculation. Courts may also award damages over and above the direct and consequential loss or damages where the reputational harm also can be quantified, where a breach has occurred. The ramifications of breaching an ADR clause thus extend beyond the cost of the extra litigation expenses—there is also the possibility of a financial penalty, which will be the full extent of the economic losses caused by the violation of the clause. As can be seen, ADR provisions in contracts are of critical importance for legal reasons and to minimize the risk of significant liability. Conclusion Finally, contracts need to be adhered to regarding Alternative Dispute Resolution (ADR), especially within the high-value oil and gas industry. Breaches of these provisions can lead to a number of consequences – not just legal ones. These violations usually lead to substantial financial obligations, such as higher litigation expenses, reimbursement for project schedule delays, and lost revenue, all of which could have been lessened or completely prevented by adhering to the initially established alternative dispute resolution procedures. In addition, contractual opportunities and future business ties could be jeopardized because of the damage to reputation and relationships that may result from failing to comply with ADR requirements. Adhering to alternative dispute resolution (ADR) requirements is essentially a legal obligation—it's also an integral part of a business strategy that maintains financial viability, strategic partnerships and company reputation in the cut-throat business environment. Therefore the importance of compliance with ADR clauses should be emphasized as a key component to ensure efficient, cost-effective and peaceful resolution of conflicts in the oil and gas industry, as well as any industry, in a manner that preserves the operational and business interests of the parties.

CHAPTER SEVEN

CONCLUSIONS AND RECOMMENDATIONS

7.0 Introduction

The thorough research on the transformational function of Alternative Dispute Resolution (ADR) in oil and gas contract conflicts is summarized in this last chapter, which also provides practical suggestions based on these observations. During the course of this study we have discussed various aspects and the impact of ADR mechanisms in the complex and tightly regulated oil and gas industry. The output of this journey speaks to the effectiveness and value of alternative dispute resolution (ADR) in navigating the complexities of legal and business disputes in this global industry. The recommendations offered are therefore aimed at enhancing the effectiveness and practicality of ADR in the future, and ensuring that it fulfils the current and future needs of the oil and gas industry. This will enable the creation of a stronger dispute resolution mechanism that is more in line with the interests of all parties, including local communities, host governments and multinational companies. The aim of this chapter is to offer a comprehensive and clear framework for policy makers, industry stakeholders and lawyers to build the resilience of the oil and gas sector through effective dispute resolution systems that will underpin stability, growth and sustainability. 6.1. Conclusions This research has thoroughly explored the role of Alternative Dispute Resolution (ADR) in the oil and gas industry with a focus on conflict situations under contracts. It has explored various aspects of alternative dispute resolution (ADR) processes, their effectiveness, their flexibility, and the common legal frameworks that regulate the use of ADR in Uganda and elsewhere. The report states that ADR procedures are key to managing conflicts in the oil and gas sector due to their effectiveness, cost-effectiveness, and ability to preserve commercial relationships. The outcomes illustrate the potential for ADR to help resolve disagreements more rapidly and privately than litigation. In the high-stakes arena of oil and gas businesses, where delays can have exponentially harmful impacts, alternate dispute resolution (ADR) systems, particularly arbitration and mediation, provide a faster resolution procedure. The study focuses on the importance of adequate legal and regulatory frameworks to support alternative dispute resolution (ADR) mechanisms. It highlights how international agreements like the New York Convention and national legislation like Uganda's Arbitration and Conciliation Act help to recognize and enforce arbitration rulings. These legal tools are key to increasing the legitimacy and predictability of the outcomes of ADR processes. ADR's performance is greatly influenced by the sociocultural context within which it operates, as well as by the business environment. The research indicates that developing culturally sensitive and regionally acceptable ADR strategies necessitates a good understanding of the region and the business culture. Although the advantages of ADR, the report points to some of the challenges that confront the use of ADR in the oil and gas industry. These include different countries' varying recognition of ADR results as legally binding, and parties' (occasionally) not wanting to engage in the process due to perceived bias or inefficiency. Furthermore, it has been proven that the alternative dispute resolution (ADR) process is a tool which not only resolves a conflict, but also plays a significant role in the investment decisions made in the oil and gas industry. It's closely related to dispute resolution and effective efforts to create a positive investment environment because it ensures stability and fairness for potential disputes. This study may contribute to the overall body of scholarship on dispute resolution theory by providing detailed information regarding the implementation of ADR, in a specific industry. On the practical side, it offers policies and industry players helpful guidance on how to design and enhance ADR processes and systems to expand their use and effectiveness in the global oil and gas industry. To summarise, alternative dispute resolution (ADR) is an irrefutably revolutionary process in conflict situations involving oil and gas contracts. It also helps in resolving disputes, ensuring a conducive and stable business environment for the growth and sustainability of the industry. As the oil and gas industry evolves in a changing world and with increasingly complex regulations, ADR remains a vital tool for ensuring continuous operational efficiency and compliance. The study highlights the ongoing need for research and adaptation of ADR methods to solve new problems and make the best of opportunities in the industry. 6.2. Recommendations After a detailed analysis of ADR in the oil and gas industry undertaken in this study, several strategic recommendations are made to enhance the effectiveness and use of ADR mechanisms. These recommendations are meant to help improve the development of conflict resolution processes in this important industry, as they pertain to specific issues that were identified and industry needs. Enhancing Legal Frameworks for ADR: There is a strong desire for well-designed, clear and supportive ADR legal frameworks that more effectively support the use of ADR in the oil and gas industry. The legislation, in particular, should be adopted or adapted in order to make it more explicit and supportive of the ADR processes, without losing its coherence with the international conventions like New York Convention and UNCITRAL Model Law on International Commercial Arbitration, especially in the cases of countries. By aligning this, there is consistency and predictability in the enforcement of the ADR outcomes which is very important for investor confidence and stability of operation. Improved Training and ability Building: The efficacy of dispute resolution in the industry may be greatly increased by strengthening the ability of legal professionals and industry stakeholders via focused ADR training programs. To guarantee that mediators and arbitrators are capable of handling such situations, training should concentrate on the particular subtleties of oil and gas conflicts, including technical and contractual difficulties. Promoting the Use of ADR in Contracts: Contracts should contain clear and binding ADR provisions; more businesses and governments should be encouraged to include these provisions. If there is a conflict, these should outline the ADR process to be followed, including who will be the mediators and arbitrators and their industry expertise. This proactive approach can help defuse conflict and accelerate resolutions. Development of industry specific ADR procedures: Developing ADR procedures specific to the oil and gas business may improve the outcomes of conflict resolution given the unique challenges and complexities of the oil and gas business. Such protocols need to take account of the typical values at risk, the multinationals nature of the sector and the common forms of conflict that occur. Promoting Transparency and Reporting: Greater transparency of results and procedures is needed to promote confidence in ADR procedures. This could include reporting the results of arbitration and mediation in an anonymous manner to help enhance future ADR strategies and provide information on the effectiveness of ADR in resolving business disputes. Promoting International collaboration: More uniform ADR procedures may result from strengthening international collaboration between nations with sizable oil and gas businesses. This partnership could be enhanced by the support of international arbitration and energy conferences and organizations, which could help in the exchange of best practices and in harmonizing ADR strategies across countries. Oil and gas industry dynamism and evolving legal, technological and market factors require ADR procedures to be regularly reviewed and updated. This guarantees that the systems continue to be applicable and efficient in dealing with fresh and developing issues in the industry. This list of suggestions aims to enhance the effectiveness of ADR in the industry of oil and gas, with a particular focus on ensuring smooth business operations, investment protection and maintaining good business relationships. Implementing these strategies can help stakeholders manage conflicts more effectively and sustainably, ultimately improving the industry's viability and success.

BIBILIOGRAPHY

PRIMARY SOURCES

National Laws

Judicature Act, Cap 13 Laws of Uganda

The Arbitration and Reconciliation Act (ACA) Cap 5

The Civil Procedure Act, Cap. 282

The Civil Procedure Rules S.I 71-1

Regional Laws

East African Community Treaty, 1999

The East African Community (EAC) Energy Policy

International Laws

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3

Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) (opened for signature 18 March 1965, entered into force 14 October 1966) 575 UNTS 159

Model Production Sharing Agreement, 2018

The Energy Charter Treaty (ECT)

UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006

Case Law

Ali Shipping Corp v Shipyard Trogir [1999] 1 WLR 314, [1998] 1 Lloyd's Rep 643

Amoco (UK) Exploration Co v Teesside Gas Transportation Ltd [2001] UKHL 18

Antaios Compania Naviera SA v Salen Rederierna AB (The Antaios) [1985] AC 191 (HL)

BHP Billiton Petroleum Ltd v Dalmine SpA [2012] EWHC 970 (Comm)

BTP Tioxide Ltd v Pioneer Shipping Ltd (The Nema) [1982] AC 724

Centre for Effective Dispute Resolution (CEDR), *The Fourth Mediation Audit: A Survey of Commercial Mediator Attitudes and Experience* (CEDR 2020)

Chevron Kenya Limited & Chevron Uganda Ltd v Daqare Transporters Ltd, High Court of Uganda, Misc Application No 490 of 2008

Dolling-Baker v Merrett [1990] 1 WLR 1205, [1991] 2 All ER 890

East African Development Bank vs Ziwa Horticultural Exporters Ltd High Court Misc Application No 1048 of 2000 (Companies Cause No 11 of 2000) (Uganda)

Emmott v Michael Williams & Partners Ltd [2008] EWCA Civ 184, [2008] Bus LR 1361

Esso Australia Resources Ltd v Plowman (1995) 183 CLR 10

Fraser v Thames Television [1984] QB 44, [1983] 2 WLR 917

Laker Airways Inc v. FLS Aerospace Ltd, (1999) EWHC B3

Law Commission of India, *176th Report on the Arbitration and Conciliation (Amendment) Bill* (2001)

O'Donoghue v Enterprise Inns Plc [2008] EWHC 2273 (Ch), [2009] 1 P & CR 14

Rick Malik v. A Fred Ruttenberg, Docket No A-6615-06T3.

Roko Construction Ltd v. Aya Bakery (U) Ltd., M.A. No 12 of 2008 (Arising out of CAD/ARB/No 10 of 2017)

Soft Laws and Guidelines

The Honorable Edwin E. Naython v. Stradley, Ronon, Stevens & Young, LLP & Andrew L. Dennis, Civil No 07-4489 (RMB)

Total (U) Ltd v Buramba General Agencies, High Court of Uganda, Arbitration Application No 3 of 1998

Tullow Uganda Operations Pty Ltd and Tullow Uganda Limited V Republic of Uganda, ICSID Case No ARB/13/25

UNCITRAL Secretariat Commentary on the Model Law on International Commercial Arbitration

Secondary Sources

Books

Born G, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021).

Brunet A and Lentini JA, 'Arbitration of International Oil, Gas, and Energy Disputes in Latin America' in *Northwestern Journal of International Law & Business* (2017) 27 Nw J Int'l L & Bus 591.

Clause Duval, Honore Le Leuch, Andre Pertuzio and Jacqueline Lang Weaver, *International Petroleum Exploration and Exploitation Agreements: Legal, Economic and Policy Aspects* (2nd edn, Barrows Company 2019).

Cownie F, Bradney A and Burton M, *Research Methods for Law* (2nd edn, Edinburgh University Press 2017).

Goldberg SB, Sander FE, Rogers NA and Cole SR, *Dispute Resolution: Negotiation, Mediation, Arbitration, and Other Processes* (Aspen Publishing 2020).

Hunter M, 'International Commercial Dispute Resolution: The Challenge of the Twenty-first Century' [2000] 16(4) Arbitration International 379.

Hutchinson T and Duncan N, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) Deakin Law Review 83.

Leeson SM and Johnston BM, *Ending It: Dispute Resolution in America: Descriptions, Examples, Cases, and Questions* (1st edn, Anderson Publishing 2018).

Lovenheim P, *Mediate, Don't Litigate: How to Resolve Disputes Quickly, Privately and Inexpensively Without Going to Court* (McGraw Hill Higher Education 1989).

Manne HG, 'Mergers and the Market for Corporate Control' [1965] 73 Journal of Political Economy 110.

Merkin R, *Arbitration Law* (Lloyd's Commercial Law Library, Sweet & Maxwell 2004).

Merkin R, *Arbitration Law* (Lloyd's Commercial Law Library, Sweet & Maxwell 2014).

Mills K and Karim MA, 'Disputes in the Oil and Gas Sector: Indonesia' (2010) 3(1) Journal of World Energy Law and Business 44.

Pilkov K, 'Stereotypes of International Arbitration. Stereotype No 1. Speed and Economy' (HG.org, 2010).

Redfern A and Hunter M, *Law and Practice of International Commercial Arbitration* (6th edn, Oxford University Press 2015).

Roberts P, *Gas Sales and Gas Transportation Agreements: Principles and Practice* (Sweet & Maxwell 2014).

Sarma K, Oinam M and Kaushik A, *Development and Practice of Arbitration in India – Has it Evolved as an Effective Legal Institution* (2019).

Smith EE et al, *International Petroleum Transactions* (3rd edn, Rocky Mountain Mineral Law Foundation 2020)

Chapters in Books

Aleynikova E, Timonen T and Pereira EG, ‘Governing Law of Oil and Gas Agreements and of Disputes Arising in the Oil and Gas Industry’ in Pereira EG, Timonen T and Aleynikova E (eds), *Governing Law and Dispute Resolution in the Oil and Gas Industry* (Edward Elgar Publishing 2022) 22.

Atai A, ‘A New Paradigm for Attracting Foreign Investments: Restructuring Investor-State Arbitration for Resolution of Petroleum Disputes: Dynamics of the New Iranian Oil Investment Contract’ in *Transnational Dispute Management* (TDM) (Vol 12, Issue 2, 2015).

Martin TA, ‘International Mediation: An Evolving Market’ in Rovine A (ed), *Contemporary Issues in International Arbitration and Mediation: The Fordham Papers 2010* (Martinus Nijhoff Publishers 2011).

Ross M, ‘Dispute Management and Resolution’ in Gordon G and Paterson J (eds), *Oil and Gas Law – Current Practice and Emerging Trends* (Dundee University Press 2021).

Journal Articles

Alramahi M, ‘Dispute Resolution in Oil and Gas Contracts’ (2011) 3 International Energy Law Review 78.

Ason A, ‘International Gas Contracts’ (2022) OIES Paper: NG No 175, Oxford Institute for Energy Studies.

Bouvery L, ‘Lex Petrolea, Arbitration and Other Alternative Dispute Resolution Mechanisms in Oil and Gas Investment Contracts: A Critical Analysis’ (2020) (unpublished LLM dissertation, University of Exeter).

Carver TB and Vondra AA, ‘Alternative Dispute Resolution: Why It Doesn’t Work and Why It Does’ (1994) Harvard Business Review.

Celebi S, ‘Alternative Dispute Resolution in International Petroleum Agreements: A Critical Analysis’ (2021) 7(15) Uluslararası Beşeri Bilimler ve Eğitim Dergisi 17.

Chong HY and Zin RM, ‘Selection of Dispute Resolution Methods: Factor Analysis Approach’ (2012) 19(4) Engineering, Construction and Architectural Management 428.

Connerty A, ‘Dispute Resolution in the Oil and Gas Industry: Recent Trends’ (2001) 67(2) Arbitration: The International Journal of Arbitration, Mediation and Dispute Management.

Duncan CA, ‘Mediation in the Oil and Gas Industry: Taking the Best for the Future’ (2013) 68(4) Dispute Resolution Journal 1.

Fuller LL, ‘Mediation – Its Forms and Functions’ (1971) 44 S Cal L Rev 305.

Greenspan AL, *Handbook of Alternative Dispute Resolution* (State Bar of Texas 2018).

Haines MS, ‘Emerging Litigation Trends Are a Warning: Assess and Mitigate Risks Preemptively’ (2023) *Energy & Commodities Outlook*, Reed Smith LLP.

Hunter M, 'International Commercial Dispute Resolution: The Challenge of the Twenty-first Century' (2000) 16(4) Arbitration International 379.

Isayev A, 'Use of Alternative Dispute Resolution, as Opposed to the Traditional Methods of Litigation, Associated with Oil and Gas Contracts' (2016) LinkedIn.

Javadpour N, Yazdi HRO and Ebrahimi SN, 'Oil and Gas Investor-State Dispute Settlement: Is Mediation-Arbitration Considered a Mechanism for Common Interests?' (2019) 3(1) Petroleum Business Review 17.

Kakooza AC, 'Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects' (2020) 7(2) Uganda Living Law Journal 268.

Kariuki F, 'Challenges Facing the Recognition and Enforcement of International Arbitral Awards within the East African Community' (2015) http://www.kmco.co.ke.

Luki BN and Abubakar NJ, 'Dispute Settlement in the Oil and Gas Industry: Why is International Arbitration Important?' (2016) 6(4) Journal of Energy Technologies and Policy 30.

Maniruzzaman AFM, 'The Problems and Challenges Facing Settlement of International Energy Disputes by ADR Methods in Asia: The Way Forward' (2003) 6 IELTR 193.

Martin TA, 'Dispute Resolution in the International Energy Sector: An Overview' (2011) 4(4) Journal of World Energy Law and Business 332.

Martin TA, 'International Arbitration and Corruption: An Evolving Standard' (2019) Institute for Transnational Arbitration.

Merry SE, 'Anthropology and the Study of Alternative Dispute Resolution' (1984) 34 Journal of Legal Education 277.

Munobe S, 'A Critical Appraisal of Oil and Gas Dispute Prone Clauses: A Case for Uganda's Production Sharing Agreements' (2013) University of Malaya.

Obi CA et al, 'Evaluating Arbitration as a Dispute Resolution Mechanism in the Nigerian Oil and Gas Industry' (2023) 7(1) AJIEEL 121

Olawuyi DS, 'Legal Strategies and Tools for Mitigating Legal Risks Associated with Oil and Gas Investments in Africa' (2015) 39(3) OPEC Energy Review 247.

Osei-Hwere R, 'Notes and Comments on the Non-Litigious Dispute Resolution Processes Adopted by Oilmen' (2014) 6 KNUST LJ 85.

Roberts P, *Gas Sales and Gas Transportation Agreements* (Sweet & Maxwell 2014)

Rushe D, 'BP Set to Pay Largest Environmental Fine in US History for Gulf Oil Spill' (2015) The Guardian.

Sander FEA and Goldberg SB, 'Fitting the Forum to the Fuss – A User-Friendly Guide to Selecting an ADR Procedure' (1994) 10(1) Negotiation Journal

Sarma K, Oinam M and Kaushik A, 'Development and Practice of Arbitration in India – Has it Evolved as an Effective Legal Institution' (2019).

Shade J, 'The Oil & Gas and ADR: A Marriage Made in Heaven Waiting to Happen' (2014) 30 Tulsa LJ 599.

Stipanowich TJ, ‘ADR and the “Vanishing Trial”: The Growth and Impact of “Alternative Dispute Resolution”’ (2014) 1(3) Journal of Empirical Legal Studies 843.

Taiwo TO, ‘An Evaluation of Contractual Clauses Used to Mitigate Risks in Long-Term Oil and Gas Agreements’ (2020) University of Birmingham (unpublished LLM dissertation).

Wälde TW, ‘Renegotiating Acquired Rights in the Oil and Gas Industries: Industry and Political Cycles Meet the Rule of Law’ (2018) 1(1) Journal of World Energy Law & Business 55.

Waqas M, ‘Dispute Resolution in Oil and Gas’ (2014) Oil & Gas Journal.

Zahar WMZW and Mohamed NS, ‘Common Disputes in Oil and Gas Industry and the ADR Process’ (2017) 6(127) Ahmad Ibrahim Kulliyyah of Laws International Islamic University Malaysia Kuala Lumpur.

Institutional Reports & Publications

American Arbitration Association, *A Handbook on International Arbitration and ADR* (American Arbitration Association 2016).

Association for International Arbitrators (ed), *Alternative Dispute Resolution in the Energy Sector* (Maklu 2019).

Centre for Effective Dispute Resolution (CEDR), *The Fourth Mediation Audit: A Survey of Commercial Mediator Attitudes and Experience* (CEDR 2020).

Law Commission of India, *176th Report on the Arbitration and Conciliation (Amendment) Bill* (Law Commission of India 2001).

United Nations Commission on International Trade Law (UNCITRAL), *Secretariat Commentary on the Model Law on International Commercial Arbitration 1985* (as amended 2006).

United Nations Conference on Trade and Development (UNCTAD), *United Nations Convention on Trade and Development* (New York and Geneva 2005).

Dissertations

Abdo W, *Construction Contracts in Oil and Gas Projects* (The British University in Dubai 2016) (unpublished LLM dissertation).

Bouvery L, *Lex Petrolea, Arbitration and Other Alternative Dispute Resolution Mechanisms in Oil and Gas Investment Contracts: A Critical Analysis* (University of Exeter 2020) (unpublished LLM dissertation).

Faith A, *Alternative Dispute Resolution in the Oil and Gas Sector* (Institute of Petroleum Studies-Kampala 2022) (unpublished dissertation).

Janeva N, *An Analysis of the Efficacy of Arbitration as a Form of Alternative Dispute Resolution in Enhancing Quick Dispute Resolution in Uganda's Oil and Gas Sector* (Institute of Petroleum Studies-Kampala 2023) (unpublished dissertation)

Masood MH, *International Arbitration of Petroleum Disputes* (University of Aberdeen 2014) (unpublished PhD thesis)

Munobe S, *A Critical Appraisal of Oil and Gas Dispute Prone Clauses: A Case for Uganda's Production Sharing Agreements* (University of Malaya 2013) (unpublished dissertation).

Taiwo TO, *An Evaluation of Contractual Clauses Used to Mitigate Risks in Long-Term Oil and Gas Agreements* (University of Birmingham 2020) (unpublished LLM dissertation)

Online Sources

ABM Chambers, 'What is Alternative Dispute Resolution?' (ABM Chambers, 1 April 2022) https://www.abmadvocates.com/what-is-alternative-dispute-resolution/ accessed 19 January 2023.

ADR Chambers, 'Arbitration Fees' (ADR Chambers) http://adrchambers.com/ca/arbitration/regular-arbitration/arbitration-fees/ accessed 29 May 2024.

Gadelshina ER, 'What Plays the Key Role in the Success of an Arbitration Institution?' (Financier Worldwide, 2013) https://www.financierworldwide.com/what-plays-the-key-role-in-the-success-of-an-arbitration-institution/ accessed 14 June 2024

ICSID, 'List of Contracting States and Other Signatories of the Convention' (ICSID, April 2014) https://icsid.worldbank.org/apps/ICSIDWEB/icsiddocs/Documents/List%20of%20Contracting%20States%20and%20Other%20Signatories%20of%20the%20Convention%20-%20Apr%202014.pdf accessed 14 June 2024.

Isayev A, ‘Use of Alternative Dispute Resolution, as Opposed to the Traditional Methods of Litigation, Associated with Oil and Gas Contracts’ (LinkedIn, 30 August 2016) https://www.linkedin.com/pulse/use-alternative-dispute-resolution-opposed-methods-oil-anar-isayev accessed 18 January 2023.

Kariuki F, ‘Challenges Facing the Recognition and Enforcement of International Arbitral Awards within the East African Community’ (KMCO, 2015) http://www.kmco.co.ke/attachments/article/163/Paper%20on%20Recognition%20and%20Enforcement%20of%20Foreign%20Arbitral%20Awards.pdf accessed 14 June 2024.

Kariuki M, ‘Effectiveness of Arbitration Institutions in East Africa’ (KMCO, 2016) http://www.kmco.co.ke/attachments/article/170/Effectiveness%20of%20Arbitration%20Institutions%20in%20East%20Africa%2022%20February%202016.pdf accessed 14 June 2024

Konstantin P, ‘Stereotypes of International Arbitration. Stereotype No 1. Speed and Economy’ (HG.org) http://www.hg.org/article.asp?id=20078 accessed 10 May 2024

New York Convention, ‘List of Contracting States’ (New York Convention) http://www.newyorkconvention.org/new-york-convention-countries accessed 14 June 2024.

Roberts M, ‘Contractual Clauses Requiring ADR Before Litigation – What Happens When They Are Breached?’ (Herbert Smith Freehills, 17 April 2023) https://www.herbertsmithfreehills.com/notes/adr/2023-04/contractual-clauses-requiring-adr-before-litigation-what-happens-when-they-are-breached accessed 19 February 2025.

Rushe D, ‘BP Set to Pay Largest Environmental Fine in US History for Gulf Oil Spill’ (The Guardian, 2 July 2015) https://www.theguardian.com/environment/2015/jul/02/bp-will-pay-largest-environmental-fine-in-us-history-for-gulf-oil-spill accessed 21 June 2024.

Sarma K, Oinam M and Kaushik A, *Development and Practice of Arbitration in India – Has it Evolved as an Effective Legal Institution* (IPEDR) http://www.ipedr.com/vol2/40-P20019.pdf accessed 29 May 2024.

Solimene F, ‘Political Risk in Oil and Gas Industry and Legal Tools for Mitigation’ (2014) 81 International Energy Law Review, 5 https://www.lexology.com/library/detail.aspx?g=... accessed 14 August 2025

UNCITRAL, *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958* https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf accessed 14 April 2024.

UNCTAD, ‘United Nations Convention on Trade and Development’ (UNCTAD) https://unctad.org/ accessed 14 August 2025