

EXAMINING THE ROLE OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN THE EXTRACTIVE INDUSTRY

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DECLARATION

I, Ssekitto Klaus Augustine hereby declare that this Dissertation titled " **The Role of Alternative Dispute Resolution in the Extractive Industry**" is my own original work. It has been prepared in accordance with the regulations for the Bachelors degree of Laws (LL. B) at Uganda Christian University.

I confirm that this work has not been previously submitted for any degree or other qualification at this university or any other institution. I have acknowledged all sources of information, and have referenced them in accordance with academic standards.

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APPROVAL

This Dissertation titled "**The Role of Alternative Dispute Resolution in the Extractive Industry**" by Ssekitto Klaus Augustine has been approved for the degree of Bachelor of Laws (LL. B) at Uganda Christian University

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Date: **15/02/2026**

DEDICATION

I dedicate this research to my mother Ms. Margaret Ssentongo Nakkanjako, my mother Naluzze Cathy Ssentongo, my aunt Namyalo Marjorie, my aunt Sis Nakayiza Juliet, my brother Richard Kabuye, my uncle Ssegawa Vincent and Apostle Sofie Sserwadda who have gone an extra mile to see me succeed at this stage of my life.

To my mom I will forever be grateful and indebted to you for everything you have done for me since I started my education journey, the cold early mornings as you prepared me to start schooling, the discipline you have instilled in me from the early stages of my life, I really and truthfully appreciate.

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ABSTRACT

Globally, the extractive sector is habitual with complex transactions, high financial stakes, and intricate regulatory environmental issues, often leading to disputes among stakeholders. This research rigorously assesses the role of alternative dispute resolution mechanisms in the extractive sector as far as addressing conflicts within the industry is concerned. The research will also examine why the extractive industry needs to boost the role of ADR in conflict management. Furthermore, the study examines the challenges and limitations of ADR in the extractive sector, such as enforceability issues and the potential for power balance between disputing parties. The findings underscore the need to identify and choose from the various ADR frameworks on a case by case basis because each of these mechanisms have unique characteristics that might be suitable for one dispute but not suitable for the other in order to find a right path for effective conflict management in the extractive sector both in Uganda and globally.

CHAPTER ONE

INTRODUCTION

1.0 Introduction

Alternative Dispute Resolution refers to any methods used to resolve a dispute between parties without resorting to litigation. Having regard to the evolution of modern techniques such as case load management, it is more appropriate to describe ADR as a technique which is germane in the context of dispute resolution generally. ADR operates through a spectrum that firstly seeks to prevent any forms of disputes through the various forums available other than the traditional way of litigation.¹ The most common forms of ADR that have been adopted in the extractive industry are negotiation, mediation and arbitration. The extractive industry particularly oil, gas and mineral development is widely recognized as one of the most conflict pronged sectors globally.² Disputes frequently arise between host states, multinational corporations, contractors, subcontractors, and transnational partners. Traditional litigation has consistently been criticized for delay, high cost, limited sector specific expertise, politicization, and its inability to preserve long term investment relationships³ As a result, Alternative Dispute Resolution (ADR) has become a preferred mechanism for managing extractive sector disputes because of its flexibility, enforce-ability, confidentiality, and technical competence⁴

1.1 The Most Common Forums of Alternative Dispute Resolution Adopted in the Extractive Industry and how they operate.

1.1.1 Negotiation

Negotiation is any form of communication between two or more people for the purpose of arriving at a mutually agreeable solution. In a negotiation, the disputants may be present themselves or may be represented by a negotiating agent or agents. The people involved in the negotiation whether the disputants or their agents, maintain control over the negotiation process.

In the context of ADR when speaking about negotiation, there are certain terms such as competitive bargaining, co-operative bargaining and principled negotiation. In competitive bargaining, the negotiators are so concerned with substantive results that may advocate extreme positions, create false issues, mislead the other negotiator or bluff in order to gain

¹ Albert Fiadjoe, *Alternative Dispute Resolution: A Developing World Perspective* (Cavendish Publishing Limited, 2004), Pg. 19.

² Thomas Walde, *International Energy Investment* (Journal of World Energy Law & Business 2008) 12.

³ Redfern & Hunter, *Law, and Practice of International Commercial Arbitration* (6th Edition, OUP 2015)

⁴ Gary Born, *International Commercial Arbitration* (Kluwer Law International 2021)

advantage, try to ascertain the other negotiators bottom line and only make concessions rarely and grudgingly.

On the other hand, co-operative negotiators, focus on building a relationship of trust and co-operations, they may therefore be prepared to make concessions on substantive issues, principally in order to preserve the relationship.

Principled negotiation, on the other hand, requires the negotiators to focus on the Interests of each of the disputants, with the goal of creating satisfactory and elegant options for resolution which may be assessed by objective criteria.

1.1.2 Mediation

Mediation is a non-binding process in which an impartial third party, called the mediator facilitates a mediation process between the disputants. As the mediator has no decision-making power, the disputants maintain control over the substantive outcome of the mediation.

However, the mediator controls the process with the help of the disputants, the mediator sets and enforces the ground rules for the mediation process and as such mediation can be interest based or rights based.

Interest based mediation, broadly speaking, refers to a style of mediation in which the mediator facilitates communication between the disputants and encourages the disputants to focus on their interests. In an interest-based kind of mediation, the parties are encouraged to focus on the underlying interests, goals, and needs rather than on the perceived outcome of litigation.

In a rights-based kind of mediation, the mediation provides an opinion on the disputant's legal rights and encourages resolution of the dispute in accordance with the law in the view of the mediator.

In either form of mediation, both parties are encouraged to consider what cause of action they will pursue if no agreement is reached, and the resulting consequences. The disputants have the option whether to attend mediation or not. Mediation may be court annexed or private.

1.1.3 Arbitration

Arbitration is a process in which a neutral third party, or an odd-numbered panel of neutral parties, renders a decision based on the merits of the case. It is the most common type of ADR method that has been employed to settle disputes in the extractive sector. The available forums through which disputes can be settled under arbitration are embedded in international

arbitral procedural law.⁵ The most comprehensive procedural law governing an arbitration will be set out in the arbitration rules of the institution selected to administer the arbitral proceedings in case of a dispute outburst, for example the arbitral tribunal may apply the International Rules of the American Arbitration Association (AAA), the Arbitration Rules of the International Chamber of Commerce (ICC), International Court of Arbitration (ICOA) or the Arbitration Rules of the London Court of International Arbitration (LCIA).⁶ In lieu of the rules of an institution, the Tribunal may apply the UNCITRAL Arbitration rules which are a set of procedural rules for conducting an International arbitration that were prepared by the United Nations commission and are not connected to any particular institution and will only be applied if parties agree to their use.⁷ It is important to note that the basis of referring a matter to an International arbitration body stems from an **arbitration clause** that is **part of the contract** between the parties seeking redress from the International arbitration body. Arbitration commences based on what the **arbitration clause** in a contract stipulates as regards the numbers of arbitrators, the venue, the accepted languages and other key considerations that are vital to the success of arbitration proceeding.

Chapter one speaks about the research proposal, a lead on summary of what is expected to be covered in the subsequent topics of this research inclusive of the introduction, Background of the study, research problem General objective, specific objectives, research questions, scope of the study and justification of the study. Chapter one also has the literature review, a survey of scholarly sources (books, articles, decisions) on the research topic. The aim is to summarize, synthesize, and critically evaluate existing knowledge to identify themes, gaps and areas for future research. It will also involve organization of sources by themes, theories, or trends, showing how they relate to each other and the research helping to establish context and justify this research paper.

Chapter two will examine the role of ADR in the Uganda extractive industry highlighting its progress and also showing the gaps within the dispute resolution spectrum (the mechanisms of ADR) under the extractive industry of Uganda.

Chapter three will examine the role of ADR in the extractive sector(s) of other jurisdictions such as Norway, Australia, Canada, Nigeria and Ghana among others, looking at how ADR mechanisms have been beneficial and highlighting various ways through which the extractive sector in Uganda can borrow a leaf. Chapter four will also highlight the gaps and the need for reform in the extractive industry of these jurisdictions despite them having a better

⁵ Cited in American Bar Association; Jay Gray Martin, Mark S Ansham ABA section of Environment, Energy and Resources, 2001 Original work (2001), Cited in ADR Resolution for Oil and Gas by Mukasa Dinah, Secondary work (2015), 5

⁶ Ibid

⁷ Ibid

streamlined and organized extractive sector compared to Uganda, there are still gaps and reforms that need to be addressed.

Finally, Chapter four, the last chapter of this research paper will look at the recommendations aimed at fixing and closing the gaps within the extractive sector and the available reforms that the extractive sector can resort to in the application and submission to ADR so as to solve disputes and have a better working relationship amongst key stake holders.

Uganda's emerging oil and gas sector particularly the Lake Albert Development (Tilenga, King Fisher) and the East African Crude Oil Pipeline (EACOP) presents significant potential for conflict, given the complex contractual obligations, and investor-state engagements.⁸ Similar challenges have been observed in established extractive jurisdictions such as Nigeria, Ghana, Kenya, Tanzania, South Africa, Australia, Canada, the United States, and Norway.

Against this back drop, this study seeks to examine the role of ADR in the extractive industry focusing on Uganda and other jurisdictions while drawing comparative lessons from the international jurisdictions with mature petroleum dispute management systems and addressing the gaps and the need for reform of ADR mechanisms in the extractive sector globally.

1.2 Background of the Study

The extractive sector has historically been associated with high value, long term and politically sensitive investments making disputes inevitable.⁹ These disputes often involve several intricacies inclusive of contractual instruments such as Production Sharing Agreements (PSAs), Host Government Agreements (HGAs), Joint Operating Agreements (JOAs), among others. In many jurisdictions, ADR, especially arbitration, mediation, conciliation and expert determination has become the backbone of dispute management.¹⁰

International Arbitration Institutions such as UNCITRAL, PCA, LCIA, ICSID, ICC have handled a significant number of extractive industry cases including **Tethyan Copper Company v Pakistan**¹¹ In this case the dispute began when the government of Baluchistan rejected TCCs application for a mining lease in 2011, despite years of investment and development by the Company. In 2019, the ISCID awarded TCC damages of \$5.976 billion, finding that Pakistan had unlawfully denied the lease and committed an unlawful expropriation.

In **Occidental v Ecuador**¹², a legal dispute between Occidental and Ecuador occurred over the termination of the IOCs oil exploration contract. The dispute arose when Ecuador

⁸ *Petroleum Authority of Uganda (PAU), Annual Sector Performance Report 2023.*

⁹ *Sornarajahs, The International Law on Foreign Investment (5th Edition, CUP 2021)*

¹⁰ *UNCTAD, Investor-State Dispute Settlement Review (2022)*

¹¹ *ICSID Case No. ARB/12/1*

¹² *PCA Case No 2009-23*

terminated the contract after Occidental transferred part of its interest to a third party without government approval. Occidental filed claims against Ecuador arguing that the termination and refusal of VAT reimbursements violated the international investment treaties.

In **Heritage v URA**¹³, a long-running dispute over capital gains tax arising from Heritage Oils sale of its Ugandan oil exploration interests to Tullow Oil. A significant arbitration was held in London, where the tribunal ruled it lacked jurisdiction over the core tax claim, which favored Uganda, though it did allow Heritage to amend other related claims. This ruling meant Uganda did not have to pay a large amount of money to Heritage and gave Uganda a significant vantage in the proceedings. Other cases handled by International Arbitration Institutions include **P&IDv Nigeria**¹⁴ and **Burlington v Ecuador**¹⁵ hence demonstrating the global preference for ADR in natural resource governance.

Uganda's legal frame work inclusive of the **Constitution of the Republic of Uganda**¹⁶, the **Petroleum (Exploration, Development and Production) Act**¹⁷, the **Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act**¹⁸ and the Uganda National Oil Company Act incorporate ADR as a viable method of resolving disputes. However, despite statutory recognition, the available research indicates a consistent trend of limited utilization of the laws in place to solve the disagreements in the extractive sector. Consequently, there is no satisfactory evidence and preparedness of the institutional framework to implement ADR in the fast-growing numbers of disagreements in the extractive industry.¹⁹

Relatively, states such as Norway, Canada, and Australia have advanced ADR mechanisms in their extractive sectors, focusing on cost effective, specialized, and often consensual solutions to manage complex relationships between operators, governments and communities. All three nations leverage mediation and arbitration, though they differ in their specific focus on indigenous rights versus specialized commercial efficiency.²⁰

1.3 Statement of the problem

The extractive sector encompasses activities that involve exploration, development and production of nonrenewable raw materials from the earth, specifically oil, natural gas and minerals. Uganda is well endowed with an abundance of natural resources; The Government of the Republic of Uganda is now giving greater prominence to the extractive sector in line

¹³ *London Arbitration, April 4, 2013*

¹⁴ *ICC Case No.1172*

¹⁵ *ICSID Case No. ARB/08/5*

¹⁶ *1995 As Amended*

¹⁷ *2013, section 183*

¹⁸ *2013.*

¹⁹ *Kizito T.& Muhumuza R., "ADR Uptake in Uganda's Petroleum Sector` (2022) Makerere Law Journal.*

²⁰ *Nordic Commercial Arbitration Forum 2025; Nordic Arbitration: A Strategic Choice for Business, Advokatfirmaet Thommessen Law Firm, Norway*

with the Uganda vision 2040 and National Development Plan (NDP III) that prioritized investments in extractives²¹

In 2006, deposits rich in oil were discovered in Uganda equivalent to approximately 6. Billion barrels of crude oil, with an estimated 1.4 billion barrels deemed recoverable. In addition, an estimated 500 billion standard cubic feet (BCF) of natural gas resources were also discovered (The Albertine Graben Region is the most prospective sedimentary basin with 40% of it explored and less than 15% under license).²² The extractive sector like any other sector has had challenges that have for a long time affected the desired outcomes of the industry at large. These problems range from contractual ambiguities, imbalanced shared prospects, inconsistent revenue collection standards to environmental conservation challenges among others. Globally all disputes have for a long time been known to be solved by courts as the standard traditional option disagreeing parties have with hopes of achieving the desired remedies. The introduction of ADR mechanisms as an alternative to the traditional court litigation has since created the other option disagreeing parties can resort to other than flooding courts whose largest and greatest challenge has been limited sector specific expertise hence matters taking long, eventually creating a backlog that has played a very key role in slowing down the progress of the extractive industry.

However, in as much as the ADR mechanisms have for a fairly long time been adopted in the extractive industry, the likelihood of desired results is still low. In Uganda the focus has only been on eye catching and public attention seeking matters such as the **Tullov Oil case**.²³ Other crucial concerns have not been keenly attended to such as matters to do with environmental conservation, local content among others. ADR and its related mechanisms can however solve all these challenges with the deserved support.

Ideally, the operational framework of ADR mechanisms is rooted within the uniqueness of the different mechanisms, a perfect explanation as to why ADR has a high likelihood of success on a case by case basis. It is important to also acknowledge that the different challenges within the industry also have peculiar circumstances that should be critically examined so as to determine the appropriate ADR mechanism.²⁴

In Uganda, the laws available take notice of ADR as a dispute-resolution option within the extractive industry, however it is justified to deduct that there is an application gap between the statutory recognition and the would be practice. In Uganda, the available sector statutory legislation and the other regulations in line provide for dispute resolution by ADR theoretically, but domestic support towards the practicability of ADR and its mechanisms remains limited.²⁵

²¹ [UGEITI – Uganda Extractive Industries Transparency Initiative](#) Accessed at 11:10 am, Thursday May 14th 2026

²² *Ibid* 1

²³ [2013] EWHC 1656 (Comm) [2014] EWCA Civ 1048

²⁴ *UN Conference on Trade and Development, ISDS: Review of Developments in 2018-2019 (UNCTAD 2019)*

²⁵ *Petroleum Authority of Uganda (PAU), Legal and Institutional Framework Review (PAU 2022)*

Comparatively, the other jurisdictions demonstrate a progressive trend of ADR outcomes. Jointly, they demonstrate institutional separation between regulatory and commercial roles, the creation of specific centered ADR courts and panels trained in issues concerning the extractive industry.²⁶ In Canada, notably (Alberta), ADR has been embodied into regulatory processes hence the creation of specialist technical panels that offers practical models for regulator-led mediation and expert determination of technical questions that preserve public oversight while delivering timely outcomes.²⁷

Taken together, the ideal vs reality gap in Uganda and in other jurisdictions points to several recurring problems that this study will examine empirically: The mismatch between contractual preferences for international arbitration and the need for domestic, transparent remedies in public interest disputes, The limited availability of sector specific ADR designs (expert determination panels, regulator-led mediation) adapted to technical and social dimensions of extractive, Capacity deficits within domestic institutions (legal, technical and administrative) that impede timely technically informed ADR outcomes; and the risk that ADR-based confidentiality and adjective complexity excludes affected communities and civil society from meaningful participation or public scrutiny of outcomes.²⁸

The extractive industry as one of the fast-growing industries globally, needs to be safeguarded from the recurring challenges that are spreading wide like a cancer that cannot be controlled. The ADR mechanisms should be streamlined to combat these challenges as we embrace the economic global boost the extractive industry has so far contributed. Short of this, investor confidence will be lost, the revenue will also be reduced by a great deal and we risk continuous environmental challenges.

1.4 General Objective

The general objective of the study is to examine the role of Alternative Dispute Resolution in the Extractive industry.

1.5 Specific Objectives

The specific objectives of the study are:

- a) To identify what suitable ADR mechanisms should be used in the extractive-industry of Uganda and other selected jurisdictions.
- b) To cynically assess the available gaps in the institutional and legal frameworks supporting ADR in Uganda's extractive sector, and other jurisdictions.

²⁶ Thomas Walde, 'The Norwegian Model of Petroleum Governance' in comparative energy governance literature; (Norwegian Ministry of Oil & Energy publications 2018-2022)

²⁷ Alberta Energy Regulator, *Dispute Resolution and ADR Guidance* (AER 2021); Canada Energy Regulator materials on mediation and technical panels (CER 2020-2023)

²⁸ World Bank, *Extractives Governance* (2021)

- c) To recommend the best practices and reforms for Improving ADR in the extractive sector.

1.6 Research Questions

The research questions of the study are:

- a) What legal and institutional frame works currently govern ADR in Uganda’s extractive sector and other selected jurisdictions?
- b) How effective are the ADR frameworks in managing extractive-sector disputes in Uganda and other jurisdictions?
- c) What reforms can strengthen ADR mechanisms to ensure more efficient, accessible, and credible dispute resolution in the extractive sector. (Uganda and other jurisdictions)

1.7 Significance of the Study

This study contributes to academic, policy, and practical understanding of ADR in the extractive industry. It provides evidence-based insights to government regulators, oil companies, local governments, communities, and civil-society actors on how ADR can improve dispute management. The findings will inform reforms to strengthen institutional capacity, reduce costly litigation, foster investor confidence, and promote sustainable petroleum development.

1.8 Justification of the Study

The world at large is open to oil production, making dispute-management mechanisms critical to preventing costly investor-state disputes and community conflicts. The study will therefore fill critical gaps in policy design, regulatory practice, community engagement, and investor relations.

1.9 Scope of the Study

1.9.1 Thematic Scope

The study focuses on ADR mechanisms; arbitration, mediation, negotiation, conciliation, expert determination as applied in the extractive industry (oil, gas, and minerals)

1.9.2 Geographical Scope

Primary focus: Uganda’s Albertine region and petroleum governance structures

Other jurisdictions: Nigeria, Ghana, Kenya, Tanzania, Norway, Canada, Australia.

1.9.3 Temporal Scope

2000-2025, covering the modern era of Uganda's Petroleum sector in comparison with other jurisdictions.

1.10 Methodology

The research employs a qualitative doctrinal methodology, examining statutes, regulations, case law, international treaties, PSAs and institutional reports. A comparative approach evaluates Uganda's ADR framework with other selected jurisdictions. The study also uses document review from ICSID, ICC, UNCITRAL, World Bank, PAU, UNOC, DOP and African Arbitration Association archives.

1.11 Literature Review

1.11.1 Introduction

Literature review is an overview of the previously published works on a specific topic. The extractive industry, that includes oil, gas, and mining activities, is characterised by complex contractual agreements, significant financial investments, and interactions between states, multinational corporations, and local communities. These characteristics make disputes in the sector frequent and often difficult to resolve through traditional court litigation. As a result, Alternative Dispute Resolution (ADR) mechanisms, particularly arbitration and mediation, have become increasingly central to solving challenges that arise out of extractive activities. The literature will examine existing works that are in line with the research topic and also aid the quest of filling the gaps that the existent research didn't cover on how the ADR framework can solve the existent challenges even when there were previous attempts to solve them using the ADR framework.

1.11.2 Alternative Dispute Resolution (ADR) in Uganda

The Ugandan extractive sector has consistently identified arbitration as the primary mechanism for resolving disputes between the state and investors. The available works on Uganda's oil and gas legal framework indicate that Production Sharing Agreements (PSAs) generally exclude the jurisdiction of domestic courts and instead provide for international arbitration under recognised institutional rules. Lubogo observes that this approach reflects a deliberate policy choice aimed at assuring investors of neutrality and enforceability of dispute outcomes, particularly given the high value and long-term nature of petroleum contracts.²⁹ However, this fondness for arbitration has also been criticised for limiting the development of domestic jurisprudence in the laws governing the extractive industry and marginalising national courts in disputes involving public resources.³⁰

²⁹ Isaac Christopher Lubogo, *The Law of Oil and Gas in Uganda*

³⁰ *Ibid*

Factual research examining ADR clauses in Uganda's PSAs reveals that, although contracts often include stratified dispute resolution mechanisms such as mediation or negotiation prior to arbitration, these preliminary stages are rarely utilised in practice.³¹ Research on the effectiveness of dispute resolution provisions in Uganda's Production Sharing Agreements (PSAs) finds that arbitration is frequently invoked as the first formal mechanism once disputes arise, suggesting that mediation is treated more as a contractual formality than a genuine avenue for settlement.³² This trend is largely due to the power disparity between state governments and multinational oil corporations, inadequate institutional capacity for mediation, and the lack of clear procedural frameworks governing non-binding Alternative Dispute Resolution (ADR) mechanisms.³³

The literature also shows that ADR in Uganda's extractive sector goes beyond just contract fights and gets into fiscal and tax disputes. Research on petroleum tax conflicts in Uganda says arbitration is now commonly used to settle arguments about capital gains tax, cost recovery, and revenue assessment.³⁴ Arbitration is praised for its technical expertise and efficiency but scholars worry that using international arbitration for tax related issues can hurt a country's sovereignty and make procedures less transparent, especially when the hearings are secret and not checked by local oversight bodies.³⁵

At the community level, studies on extractive activities in places like Karamoja and Bunyoro show extreme gaps in how Alternative Dispute Resolution (ADR) mechanisms work. Civil society groups note that while companies and regulations often point to grievance procedures and local dispute resolution processes, affected communities usually don't know about these mechanisms or can't access them. Informal mediation by local leaders is common but provides little enforceability or protection.³⁶ The literature concludes that ADR in Uganda's extractive sector is mainly set up to serve investor-state relations, with very little focus on community level justice and participation of vulnerable groups.

1.11.3 Alternative Dispute Resolutions (ADR) in the African Extractive Industries

Uganda's experience with ADR reflects broader trends across Africa, where arbitration has become the dominant method for resolving extractive industry disputes.³⁷ Regional studies on oil, gas, and mining disputes indicate that African states widely include arbitration clauses in extractive contracts as a means of attracting foreign investment and avoiding perceived

³¹ *Production Sharing Agreements in Uganda's Oil and Gas Sector; Applicable Law for Dispute Resolution*. May 22, 2025

³² Caleb Alaka, *The Efficacy of Dispute Resolution Provisions in Uganda's Production Sharing Agreements (LLM Thesis)* 2019/2020

³³ *Ibid*

³⁴ Mukalere Hope Mwagale, Tajudeen Sanni, *International Tax Arbitration and Petroleum Dispute Resolution: A case study of Uganda* (2019)

³⁵ *Ibid*

³⁶ *Advocates Sans Frontiers' (ASF), The Impact of Extractives Industry Activities in Karamoja and Bunyoro*

³⁷ Simon Greenberg, Karolina Rozycka, Rodolphe Ruffie Farrugia and Joshua Banks Clifford Chance, 15 April 2025, *Mining arbitrations in Africa*

inefficiencies or biases in domestic courts.³⁸ Arbitration is particularly favoured for disputes involving expropriation, contract termination, and regulatory changes, which often have significant financial implications.

Comparative analyses further show that, while arbitration remains prevalent, there is growing dissatisfaction among African states with investor–state dispute settlement (ISDS).³⁹ Practitioner and policy literature note an increasing shift towards contract-based arbitration rather than treaty-based arbitration, as states seek to regain greater control over dispute resolution processes.⁴⁰ Nonetheless, arbitration continues to dominate due to its perceived neutrality and the enforceability of awards under international conventions.

Several scholars emphasise the potential role of regional arbitration centres in Africa as alternatives to traditional international venues. Studies examining regional institutions argue that strengthening African arbitration centres could promote greater localisation of dispute resolution while maintaining international standards.⁴¹ However, uptake remains limited, as both states and investors often prefer established arbitration centres outside the continent, citing concerns over independence, capacity, and international recognition.⁴²

In the mining sector, comparative research from jurisdictions such as Tanzania, Nigeria and Kenya reveal similar patterns. Arbitration is consistently identified as the primary dispute resolution mechanism, while mediation and other consensual ADR processes remain underdeveloped.⁴³ At the community level, disputes are often addressed through informal or customary mechanisms, which operate outside formal legal frameworks and provide limited remedies. Human rights focused literature criticises these arrangements, arguing that community grievance mechanisms frequently lack independence, transparency, and enforceability, and may serve more as risk-management tools for companies than as genuine avenues for justice.⁴⁴

1.11.4 Global Perspective of ADR in the extractive Industry

Globally, the research on ADR in the extractive industry strongly supports the use of arbitration as the preferred mechanism for resolving complex and high-value disputes.⁴⁵ Foundational works by international development institutions describe disputes as inevitable throughout the extractive project lifecycle and argue that ADR offers a more efficient and technically competent alternative to litigation.⁴⁶ Arbitration is particularly valued for its

³⁸ Wilfred A Mutubwa & Eunice Njeri Ng'anga, *Resolving Oil and Gas Disputes in an Integrating Africa* (2022)

³⁹ *Ibid*

⁴⁰ *Global Arbitration Review, Mining Arbitrations in Africa* (2025)

⁴¹ *Ibid*

⁴² *Ibid*

⁴³ Jamillah Juma Mdanku (Dar es salaam Tumaini University) ADR in Mining Law

⁴⁴ FIDH, *New Oil Same Business?* (2020)

⁴⁵ K Caroline, *A Critical Evaluation of the Role of Alternative Dispute Resolution*

⁴⁶ Peter D Cameroon & Michael C Stanley (World Bank Group) *Oil, Gas and Mining Disputes* (2001)

flexibility, confidentiality, and the ability to appoint arbitrators with industry-specific expertise.

Some practitioner literature reinforces the central role of arbitration in the extractive sector. Analyses of oil, gas, and mining disputes demonstrate that arbitration is best suited to resolve several forms of ambiguities within the institutional and legal frameworks of the industry.⁴⁷ Mediation is increasingly acknowledged as a complementary mechanism, often used alongside arbitration to facilitate negotiated settlements and reduce costs. However, its use remains secondary, particularly in disputes involving states. It is my considered opinion that the various challenges faced by the extractive industry as a whole have unique causation factors that lead to their existence and as such it is important to examine the ADR mechanisms independently to identify the kind of challenges that can be handled through arbitration, negotiation among others.

At the same time, academic and policy-related existent works offer critical perspectives on the dominance of arbitration. Critics argue that arbitration often favours investors, limits regulatory autonomy, and excludes affected communities from meaningful participation.⁴⁸ In response, several authors advocate for multi-tiered ADR frameworks that prioritise negotiation and mediation before arbitration.

Non-judicial grievance mechanisms are also discussed as a form of ADR aimed at addressing community-level disputes. While these mechanisms are promoted as tools for conflict prevention and corporate accountability, empirical studies reveal mixed results. Many grievance mechanisms lack clear standards, oversight, and enforcement, raising concerns about their effectiveness in delivering remedies.⁴⁹

1.11.5 Conclusion

The reviewed literature demonstrates that ADR, particularly arbitration, plays a central role in resolving extractive industry disputes in Uganda, across Africa, and globally. Arbitration is widely regarded as effective for managing complex investor–state and commercial disputes, while mediation and other consensual ADR mechanisms remain underutilised. In Uganda and similar jurisdictions, the literature reveals a strong investor-oriented approach to ADR, with limited attention to community access to justice and the public interest.

Despite the available rich literature, there is limited empirical research on the effectiveness of ADR mechanisms in protecting community rights and promoting sustainable development in emerging extractive economies. This gap highlights the need for further research into how ADR frameworks in the extractive industry can be restructured to balance investor protection, state sovereignty, and community participation.

⁴⁷ Darrel Chodorow, Florin Dorobantu, Fernando Banez, *Global Arbitration Review, Quantum in Oil, Gas and Mining Disputes* (2024)

⁴⁸ Vale Columbia Center on Sustainable Investment, *Extractive Industries and sustainable Development 2010*

⁴⁹ International Alert, *Conflict Sensitive Practice* (2005)

1.12 Conceptual Framework

The conceptual framework for this study examines the role of ADR mechanisms in the extractive industry, with a focus on Uganda and other selected jurisdictions. The framework theorizes that the effective implementation of ADR mechanisms can contribute to sustainable development outcomes in the extractive industry by promoting timely and cost-effective dispute resolution, improving community engagement, and fostering a culture of transparency and accountability.

The framework identifies the dependent, independent, and extraneous variables of the research topic.

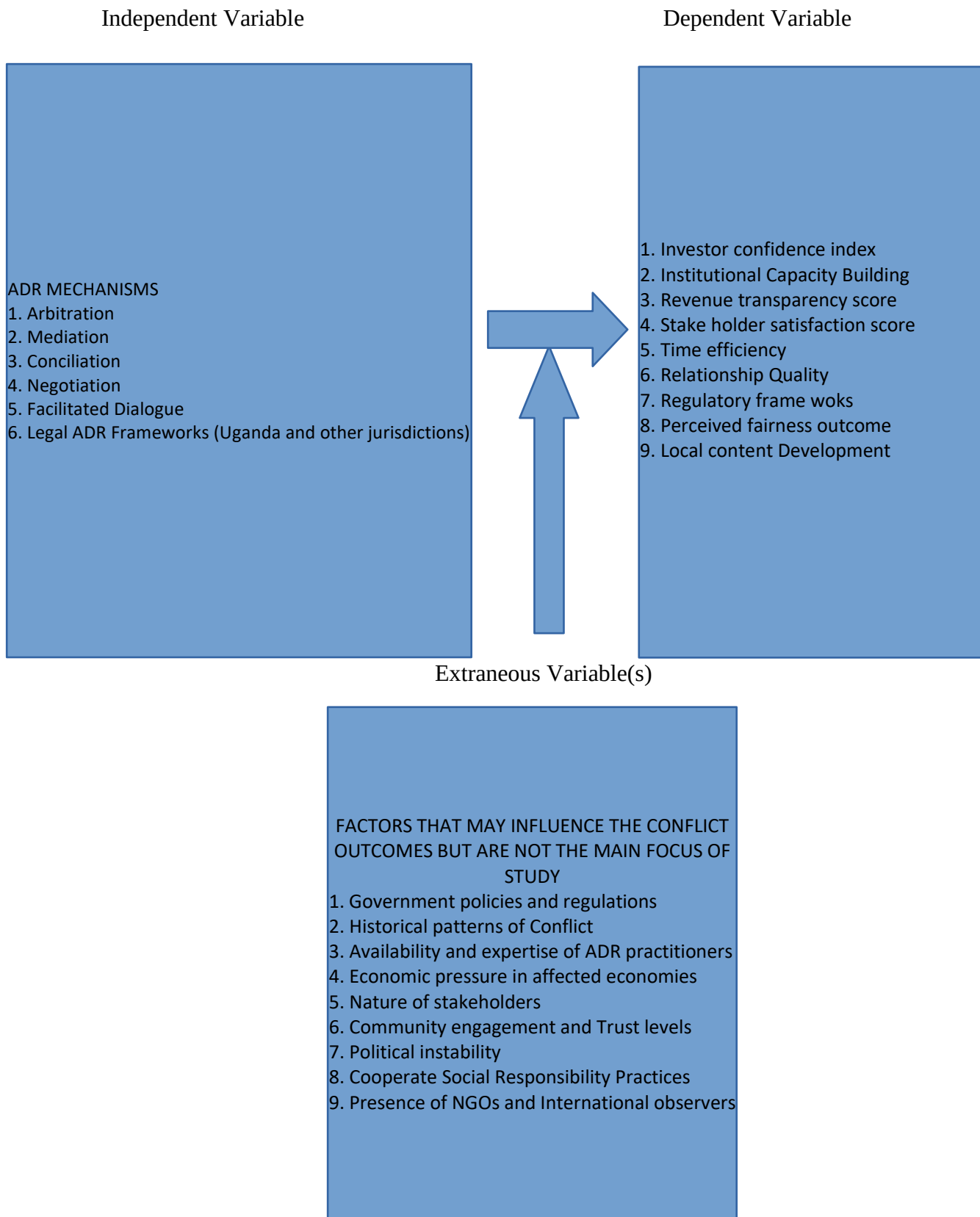
1.12.1 Meaning of the Variables

Dependent Variable: A variable that is being measured or observed in response to changes made to the independent variable. It is the outcome or result being studied.

Independent Variable: A variable that is maneuvered by the researcher to observe its effect on the dependent variable. It is the presumed cause of the outcome being studied.

Extraneous Variable: A variable that is not of primary interest to the research question but may affect the outcome (dependent variable) and can potentially bias the results if not controlled. These variables can include stunning variables, intervening variables, or nuisance variables.

1.12.2 Visual Representation of the Conceptual Framework



CHAPTER TWO

THE ROLE OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN THE EXTRACTIVE INDUSTRY OF UGANDA

2.0 Introduction

This chapter will discuss the various laws in Uganda that govern Alternative dispute resolution mechanisms in the Uganda extractive sector (oil, gas and mining industry). It is essential to recognize that disputes in the extractive sector are similar to those that accrue in other areas of society. Consequently, the general mechanisms for resolving disputes are applicable to the extractive industry as well. The chapter will also go ahead to examine the role of ADR in the Ugandan extractive Industry and also highlight the mismatch and predominant gaps in the functional cycle of ADR as regards resolving disputes in the extractive sector.

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

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

The constitution is the supreme law of the land and all other laws derive their legitimacy from it.⁵⁰ It is the grand norm and it has provisions that spell out mechanisms of dispute resolution and establishes the different courts in Uganda where these mechanisms can be sought from. **Article 28 of the Constitution** provides for the right to a fair hearing. Further, **Article 42** provides for a right to just and fair treatment in administrative decisions. It provides that any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

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

It is crucial to highlight that a key aspect for the extractive sector specifically oil and gas industry is **Article 126(2)(d)**, which emphasizes reconciliation between parties. Given that much of the work in this sector is conducted under Production Sharing Agreements (PSAs) or Joint Venture Agreements, ongoing cooperation is essential even after disputes arise. The

⁵⁰ *Article 2 of the 1995 Uganda Constitution as amended.*

courts established under Chapter 8 are tasked with facilitating this reconciliation to the greatest extent possible.

The constitution has been very effective in promoting ADR because it grants parliament powers to enact laws. This power has been utilized by parliament to enact laws that promote alternative dispute resolution mechanisms such as the **Arbitration and Conciliation Act Cap 5**. Examples of disputes that have been solved using ADR in the extractive sector of Uganda include the following;

- i. Tullow and Uganda Revenue Authority settled a capital gains tax dispute over Tullow 's 2012 sale of its Ugandan stakes to CNOOC and Total. Tullow agreed to pay US \$250 million in instalments, replacing the URA 's initial US \$473 million assessment. Tullow also withdrew an ICSID claim over a VAT dispute after reaching a settlement with the Ugandan government.⁵¹
- ii. Uganda and Total's Dutch affiliate asked ICSID to discontinue arbitration over stamp duty on an oil block near Lake Albert. They reached a settlement, ending the dispute around taxation/alignment for oil licensing.⁵²
- iii. Uganda took legal action at the East African Court of Justice and Kenya after Kenya initially refused UNOC fuel import licenses and pipeline access. Both countries withdrew lawsuits, Kenya granted UNOC fuel import licenses and access to pipeline/transit routes via Mombasa in Kenya.

2.1.2 The Judicature Act Cap 13, Laws of Uganda

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

The Act generally lays out the courts provided for by the Constitution, and their powers. The jurisdiction that these courts have is either original or appellate. The act also provides the scope of law that can be applied by the courts in administering justice or resolving disputes. Specifically, **Section 26** of the Act provides for references to Referees hence gives court powers to refer a case to another forum. **Section 27** further provides that; Where in any cause or matter, other than a criminal proceeding;

- (a) all the parties interested who are not under disability consent;
- (b) the cause or matter requires any prolonged examination of documents or any scientific or legal investigation which cannot, in the opinion of the High Court, conveniently be conducted

⁵¹ [2013] EWHC 1656 (Comm)/ [2014] EWCA Civ 1048

⁵² ISCID ARB (Case No. ARB/15/11)

by the High Court through its ordinary officers and the question in dispute consists wholly or partly of accounts.

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

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

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

Therefore, alternative dispute resolution is a recognized and acknowledged forum for settling disputes other than court. In Uganda Courts have used this power to refer various disputes to ADR mechanism especially where matters are deemed complex and require specialized knowledge in a particular field

2.1.3 The Arbitration and Conciliation Act, Cap 5, Laws of Uganda (ACA).

With the onset of colonization, Uganda adopted numerous laws from England, which were later consolidated following independence. The promulgation of the 1995 Constitution necessitated modifications to many existing laws to ensure compliance with constitutional principles. Consequently, this Act was enacted to amend legislation related to domestic arbitration, international commercial arbitration, and the enforcement of foreign arbitral awards.

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

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

The Act also establishes the Centre for Arbitration and Dispute Resolution under section 67 of the Act. The section provides for the existence of CADER, a body charged with entertaining disputes through ADR mechanisms.

The Act further lays out the functions of this body under section 68 as follows;

(1) There is established a body to be called the Centre for Arbitration and Dispute Resolution.

(2) The centre shall be a body corporate with perpetual succession and a common seal and shall be capable of suing or being sued in its corporate name and may borrow money, acquire and dispose of property and do all such other things as a body corporate may lawfully do.

The Act further lays out the functions of this body under section 68 which provides that;

The functions of the Centre shall, in relation to arbitration and conciliation proceedings under this Act, include the following(a) to perform the functions referred to in sections 11, 12, 13, 14, 15 and 51;

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

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

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

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

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

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

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

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

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

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

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

Uganda 's Arbitration and Conciliation Act based on the UNCITRAL Model Law is generally viewed as a solid legal foundation for arbitration in oil & gas, with robust provisions for party autonomy, arbitrator appointment, minimal court interference, and clear grounds for enforcement. As a signatory to both the New York and ICSID Conventions,

Uganda treats foreign arbitral awards as court decrees, allowing enforcement domestically. Courts have also endorsed parallel enforcement and strictly limited public policy grounds for refusal strengthening confidence in arbitration. The Commercial Court now has an Arbitration Registry, streamlining award enforcement. Arbitration filings (especially in energy, infrastructure, finance) are rising 15% annually since 2022.

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

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

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

2.1.5 Uganda Model Production Sharing Agreement (PSA)

The PSA is a contract entered into by the government with the licensee or an IOC for the exploration, development and production of Oil and Gas. This Contract covers very many areas of the project including, local content, decommissioning, human rights, the environment, labour rights, among others.

Article 24⁵³ provides for dispute resolution subject to **Article 13 and paragraph 25.2**, a dispute arising under this Agreement, except disputes relating to taxation, health, safety and environment, which cannot be settled amicably within one hundred and twenty (120) days, shall be referred to Arbitration in accordance with the United Nations Commission for International Trade Law (UNCITRAL) Arbitration Rules. The arbitration shall be conducted by three (3) arbitrators appointed in accordance with the said Rules. The said arbitration shall take place in London, a place agreed upon by the Parties. Judgement on the award rendered may be entered in any court having jurisdiction or application may be made in such court for a judicial acceptance of the award and an order of enforcement, as the case may be. The Arbitration award shall be final and binding on the Parties to this Agreement.

Any matter in dispute between the Government and Licensee arising under paragraphs **14.1** and **12.2**, may, at the election of either of such parties by written notice to the other, be referred for determination by a sole expert to be appointed by agreement between the Government and the Licensee. If the Government and the Licensee fail to appoint the expert within sixty (60) days after receipt of such written notice, either of such parties may have such expert appointed by the then President of the Institute of Petroleum (London). If the aforesaid President shall be disqualified to act by reason of professional, personal or social

⁵³ *Model Production Sharing Agreement For (Petroleum Exploration, Development and Production) or (Petroleum Development and Production) In the Republic of Uganda*

interest or contract with the parties in dispute or their Affiliated Companies, the next highest officer for the time being of said Institute of Petroleum, who is not disqualified shall act in lieu of said President. No person shall be appointed to act as an expert under this section:

(a) unless he or she shall be qualified by education, experience and training to determine the subject matter in dispute; or

(b) if at the time of his or her appointment or at any time before he or she makes his or her determination under such an appointment, he or she has or may have some interest of duty which conflicts or may conflict with his or her function under such appointment.

The expert shall render his or her decision within (60) days after the date of this appointment, unless the Parties otherwise agree. In rendering his or her decision, the expert shall do so within the context of the provisions of this Agreement, the Act, Regulations and the standards of Best petroleum industry practices. The decision of the expert shall be final and binding on both the Licensee and the Government. The expert's fees and expenses, and the costs associated with an appointment, if any, made by the President of the Institute of Petroleum (or the next highest officer thereof), shall be allocated to the Parties in dispute in such manner as the expert may determine.

2.2 The Concept of Alternative Dispute Resolution in Uganda

Alternative Dispute Resolution (ADR) is defined as the other mechanisms of resolving disputes that are not the traditional way of litigation.⁵⁴ ADR is collaborative in nature and this allows the parties involved to understand each other 's positions. ADR encompasses various methods that are generally more flexible, informal, and efficient than conventional legal proceedings. The primary goal of ADR is to provide disputing parties with mutually acceptable solutions while saving time and resources. Many ADR methods involve a neutral third party, such as a mediator or arbitrator, who facilitates communication, suggests solutions, or makes binding decisions based on the evidence presented. The neutrality of the third party helps guarantee unbiased resolutions and decisions. ADR procedures can be tailored to the needs of the parties involved. This flexibility allows for customized resolutions that may not be possible in a rigid court setting. Parties can choose the method, the timeline, and the rules governing the process. The different forms of ADR as applied in Uganda include: arbitration, mediation, negotiation, conciliation and early neutral evaluations, among others.

2.2.1 Arbitration

Arbitration is a form of Alternative Dispute Resolution (ADR) in which a dispute is submitted to one or more neutral third parties (called arbitrators) who make a binding

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decision on the matter. It is often used as an alternative to litigation in court and is designed to provide a more sleek and private method for resolving disputes.⁵⁵

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

2.2.2 Investor State Arbitration

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

Many International Investment Agreements, (like the Energy Charter Treaty), establish rules that allow investors to bring claims directly against states. Traditionally, only states possessed rights and obligations under international law, which is why foreign investors often relied on diplomatic protection to resolve their disputes.⁵⁶ International investment agreements are made by state parties to mutually protect their national investors as third-party beneficiaries in case of disputes arising.

2.2.3 The Main Forms of Arbitration

Ad hoc arbitration.

Ad hoc arbitration operates independently of institutional influence and follows the rules selected by the parties involved. In this process, arbitrators are appointed on a case-by-case basis, typically by the parties themselves. One possibility is for the parties to choose an appointing authority that will designate the arbitrators for the case.⁵⁷ The tribunal's composition can range from a single arbitrator to multiple arbitrators, depending on the applicable procedural rules.

An arbitration is considered ad hoc if it is conducted without the involvement of an

⁵⁵ Tweedale A, and Tweedale K, 2007, *Arbitration and Commercial Disputes*, Oxford, p.34

⁵⁶ <https://www.lexisnexis.co.uk/legal/guidance/institutional-arbitration-an-introduction-to-the-key-features-of-institutional-arbitration> accessed on 15th December 2025 at 5pm

⁵⁷ 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

institution. While this approach may not always be ideal for the long-term nature of petroleum transactions, ad hoc arbitration is generally more cost-effective than institutional arbitration. Additionally, the costs associated with institutional arbitration often rise in relation to the size of the dispute or the time invested by the institution and arbitrators. Notable investment disputes resolved through ad hoc arbitration in the past include the Libyan expropriation cases,

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

Institutional Arbitration

Contracting parties seek to resolve their disputes with the help of a specialized institution. The parties in their agreement must specify one or more institutions in an arbitration clause to manage the arbitration process. Numerous arbitration institutions exist, offering both a forum and procedural guidelines for the arbitration proceedings.⁵⁸ The International Centre for Settlement of Investment Disputes (ICSID) is the most notable in investor-state arbitration, followed by the International Chamber of Commerce (ICC), the Permanent Court of Arbitration (PCA), and others, each specializing in different areas such as commercial, investment, and regional disputes. Some of the international arbitration institutions include among others London Court of International Arbitration (LCIA), American Arbitration Association (AAA), Netherlands Arbitration Institute (NAI), International Chamber of Commerce (ICC), United Nations Commission on International Trade Law (UNCITRAL). Specifically, in Uganda there is International Centre for Arbitration and Mediation in Kampala (ICAMEK)

Institutional arbitration provides the benefit of administrative support from the chosen institution, which includes access to a list of arbitrators, established rules including a standard arbitration clause, and facilitates a more efficient and timely resolution.⁵⁹ This option may be preferred unless the parties have concerns regarding costs.

The International Institute for Conflict Prevention and Resolution is another organization that provides guidelines for ad hoc arbitration. Its provisions encompass the management of the arbitration process by the Arbitral Tribunal and counsel, eliminating the need for a separate

⁵⁸ Born, G. B. (2021). *International commercial arbitration (3rd ed.)*. Kluwer Law International

⁵⁹ Mistelis, L. (Ed.). (2015). *Kluwer Law International*.

administering body.⁶⁰ This institute also offers tailored services, such as selecting arbitrators and handling challenges to their appointments.

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

2.2.4 Advantages of arbitration

- i. One advantage of arbitration compared to litigation and other alternative dispute resolution modes is its international enforceability. Arbitration is more effective because arbitral awards are recognized and can be enforced globally under the New York Convention.
- ii. Arbitration offers quicker solutions and leads to quicker resolutions compared to the traditional forum of litigation, which is characterized with immense delays due to prolonged court schedules and procedural complexities.
- iii. Arbitration is less expensive as compared to court proceedings. In its making and build up, arbitrators are paid some fees but the overall costs are often lower due to reduced discovery processes and shorter timelines. This makes arbitration particularly beneficial for parties seeking quick redress.
- iv. Arbitration proceedings are associated with confidentiality. This privacy is crucial for businesses that wish to keep sensitive information and dispute details out of the public eye.
- v. Parties have the option to select arbitrators with specific expertise relevant to their dispute. This can be particularly advantageous in complex or technical matters, ensuring that decisions are informed by knowledgeable individuals.
- vi. Arbitration allows for greater flexibility in terms of procedures and timelines. Parties can agree on various aspects of the arbitration process, including the number of arbitrators and the location of hearings, which can lead to a more efficient resolution tailored to their needs.
- vii. One of the defining features of arbitration is that it offers limited grounds for appeal, making the arbitral award generally final and binding. This aspect provides certainty and closure for both parties, reducing the likelihood of prolonged disputes.⁶¹

⁶⁰ Lew, J. D. M. (1985). *Arbitration International*, 1(3), 232–250.

⁶¹ Peter Lovenheim: *How to resolve disputes Quickly, Privately and Inexpensively without going to court* (McGraw Hill Higher Education, 1989)

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

2.2.5 Disadvantages of Arbitration

- i. Limited Appeal Rights: Arbitral awards are usually final, with very narrow grounds for appeal, leaving little recourse for errors in fact or law.
- ii. Arbitration proceedings are relatively private and confidential, which can be a major concern for host governments, local communities and the public. This secrecy limits public scrutiny and debate over resource management and large-scale investment impacts.
- iii. Arbitrators are not strictly bound by legal precedents and can base decisions on their own sense of fairness rather than a strict application of the law. This can result in unpredictable and inconsistent outcomes, which is problematic for an industry requiring regulatory certainty.
- iv. It is important to acknowledge that most arbitration clauses lack flexibility with mandatory arbitration clauses which means that parties may not have the option to choose litigation or other forms of dispute resolution that might be more beneficial for their situation.

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

In Uganda as already stated, the Arbitration and Conciliation Act establishes the Centre for Arbitration and Dispute Resolution of Uganda (CADER) with responsibility of facilitating arbitration and conciliation in Uganda by providing a neutral, independent and impartial venue for resolution of commercial disputes. Also, to provide dispute resolution services to the Uganda parties and the international business community who wish to have their disputes resolved outside of the public courtroom by appointing arbitrators and conciliators.

The **Uganda Arbitration and Conciliation Act, Cap 5** governs arbitration as a mechanism of alternative dispute resolution (ADR) in Uganda.

It was enacted to align Uganda 's legal framework with international standards such as the UNCITRAL Model Law on International Commercial Arbitration and the New York Convention on the recognition and enforcement of foreign arbitral awards. The Act is modelled on the UNCITRAL Model Law, making it familiar to international parties and

promoting investor confidence. Uganda ratified the **New York Convention in 1992**, and the Act facilitates recognition and enforcement of foreign arbitral awards.

The Act has a comprehensive scope covering both domestic and international arbitration. It also provides for conciliation as a form of ADR, encouraging amicable dispute resolution. Emphasizes party autonomy in selecting arbitrators, procedures, and governing law that are key to modern arbitration practice.

The courts are empowered to support arbitration (e.g., by appointing arbitrators or enforcing interim measures), but are discouraged from interfering unnecessarily. Arbitration awards are generally final and binding, reducing the scope of protracted litigation.

2.3 Mediation

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

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

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

2.3.1 Advantages of mediation.

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

- ii. More so, my research established that mediation is more cost-effective than litigation and other ADR mechanisms due to lower service fees and reduced time spent resolving disputes. Prolonged trials in ordinary courts can lead to significant legal expenses for lawyers and parties. In some countries, certain mediation services are offered free of charge, such as those provided by the Malaysian Mediation Centre.
- iii. Mediation also facilitates more satisfactory settlements for both parties. With the mediator 's assistance, disputing parties can openly discuss their concerns and interests, leading to compromises that reduce the likelihood of non-compliance with the agreed terms.
- iv. Additionally, mediation can help repair relationships between disputing parties. Unlike litigation which often results in a win-lose outcome dictated by judges, mediation fosters a win- win situation through compromise. This is important for key stake holders in the extractive industry because they are optimistic of reaching an agreement other than litigation which creates lasting rifts

2.3.2 Disadvantages of mediation

- i. Mediation in the extractive industry of Uganda has several disadvantages that can impact its effectiveness as a dispute resolution mechanism such as:
- ii. The non-binding nature of mediation agreements unless the parties choose to formalize them in a subsequent contract. This can lead to situations where one party may not adhere to the agreement, resulting in unresolved disputes that may require further legal action or arbitration. Most scholars discuss that in reality most parties have encountered a situation where mediation settlement was reached but later breached by one of the parties hence had to resort to court litigation.
- iii. Potential for power imbalance because in cases where there is a significant disparity in bargaining power between parties, mediation may favour the more powerful entity, often leading to outcomes that do not adequately protect the interests of weaker parties.
- iv. The success of mediation heavily relies on the willingness of both parties to cooperate and engage constructively. If one party is uncooperative or lacks genuine interest in reaching a resolution, mediation may fail, prolonging disputes and potentially escalating tensions, for example according to petroleum authority Uganda there are still compensation cases pending as a result of failed mediation and now awaiting court processes.
- v. In international disputes, differences in language, legal culture, and geographical distance can hinder the chances of reaching an agreement and may increase time and

costs. Legal practitioners that are key in this process encounter challenges in mediation where the dispute involves different countries.

- vi. Additionally, when state parties are involved in oil and gas disputes, the negotiated nature of mediation may create credibility issues for government officials, who might face scrutiny over whether their agreements are adequate or inadequate.
- vii. Lastly, the extractive industry often involves complex technical and regulatory issues that may require expert input. Mediators without sufficient expertise in these areas might struggle to facilitate effective discussions or propose viable solutions, limiting the effectiveness of mediation as a resolution tool.

However even with the above disadvantages, it is evident that mediation as an ADR mechanism seems to be the most favorable mode due to the advantages stated above.

2.4 Conciliation.

Conciliation is a type of alternative dispute resolution in which a conciliator assists the parties in resolving their dispute. The conciliator facilitates this process by identifying the parties' objectives. Unlike arbitration, there is no formal award at the conclusion of conciliation. In Uganda conciliation is governed by **Arbitration and Conciliation Cap 5 Part V**.

Conciliation differs from court proceedings in that the conciliator does not render a judgment or decision as a court would. It also contrasts with mediation because the conciliator takes a more active role in the process. The conciliator engages directly with the parties, asking them to prioritize their objectives and identify which points they are unwilling to compromise on and which issues they can be flexible about.⁶² The conciliator then approaches the other party to discuss these objectives, starting with minimal concessions and gradually moving toward larger ones.

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

2.4.1 Advantages of conciliation

- i. Although Part V of the Arbitration and Conciliation Act provides the process to be undertaken during conciliation majorly conciliation is flexible and informal. It can be tailored to suit various disputes, whether they are large or small. This adaptability allows parties to engage in a process that best meets their needs.
- ii. Conciliation typically incurs lower costs compared to litigation and arbitration. By avoiding lengthy court processes, parties can save on legal fees and other related expenses. The process is designed to be faster, allowing parties to resolve disputes more quickly than through traditional litigation, which can be time-consuming.⁶³
- iii. Conciliation sessions are confidential, meaning that the details of the discussions and any agreements reached are not disclosed publicly. This confidentiality encourages open communication without fear of reputational damage.
- iv. Conciliation is particularly beneficial in the oil and gas sector where ongoing relationships are crucial. It facilitates dialogue that can help preserve or even improve relationships between disputing parties, which is essential for future collaborations.
- v. The parties involved retain control over the resolution process and can withdraw from conciliation at any time without prejudice. This empowerment allows them to negotiate terms that are mutually acceptable rather than being bound by a third-party decision.
- vi. A conciliator acts as a neutral facilitator who can help clarify issues, suggest solutions, and guide discussions without imposing decisions. This non-judgmental approach helps foster a collaborative atmosphere conducive to reaching an agreement.
- vii. Conciliation allows for creative problem-solving beyond legal remedies, enabling parties to explore various options that may not be available in court settings. This flexibility can lead to more satisfactory outcomes for all involved.

2.4.2 Disadvantages of Conciliation

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

- i. The success of conciliation hinges on both parties being willing to engage in the process and accept the authority of the conciliator.⁶⁴ If either party is uncooperative or

⁶³ <https://the-tipc.org/en/advantages-disadvantages-of-conciliation.html> accessed on 21st December at 10pm

⁶⁴ Margaret-L.-Moses, 2017 *The Principles and Practice of International Commercial Arbitration* (3rd edn, Cambridge University Press 2017)

lacks the right attitude, the process can become ineffective and may waste time and resources.

- ii. Unlike arbitration, conciliators do not have the authority to impose decisions. If parties fail to reach an agreement, they are free to pursue litigation or other avenues, which can lead to further disputes and uncertainty.
- iii. The conciliator's active role in identifying weaknesses in each party's case can lead to one party exploiting these vulnerabilities. This dynamic may exacerbate tensions rather than facilitate a collaborative resolution.⁶⁵
- iv. The conciliator acts as an intermediary, which can sometimes result in mixed messages or misinterpretations. This risk of miscommunication can hinder effective negotiations and lead to further misunderstandings between parties.

2.5 **Expert Determination**

Expert determination is another form of alternative dispute resolution in which parties present their dispute to an individual who has the expertise to make decisions based on their knowledge and judgment.⁶⁶ This practice has historical roots, originating in societies organized into tribes where tribal chiefs, religious leaders, or other influential figures were regarded as experts. Disputes were brought before these experts, who were expected to deliver a verdict.

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

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

In Uganda the PSA **Article 24.2** provides that, any matter in dispute between the Government and Licensee arising under paragraphs **14.1 and 12.2**, may, at the election of either of such

⁶⁵ *Ibid*

⁶⁶ *Susan-Blake, Julie-Browne-and-Stuart-Sime, The Jackson ADR Handbook (Oxford University Press 2013)*

parties by written notice to the other, be referred for determination by a sole expert to be appointed by agreement between the Government and the Licensee.

2.5.1 Advantages of expert determination.

- i. Expert determination allows parties to appoint an independent expert with specialized knowledge relevant to the dispute. This expertise can lead to more informed and accurate decisions, especially in complex technical or valuation matters where legal professionals may lack specific industry insight.
- ii. The process is generally faster than traditional litigation or arbitration. By avoiding lengthy court procedures and formalities, expert determination can resolve disputes more swiftly, minimizing delays in projects and operations.
- iii. Expert determination tends to be more economical than litigation or arbitration due to its streamlined nature. Parties can save on legal fees and other costs associated with formal dispute resolution processes, making it a financially attractive option.
- iv. The parties have the flexibility to define the procedure and select the expert, allowing them to create a dispute resolution process that is specifically suited to their needs. This adaptability can enhance the effectiveness of the resolution process.
- v. The process is confidential, protecting sensitive information and commercial relationships from public scrutiny. This confidentiality can be particularly valuable in industries like oil and gas, where proprietary information is often at stake.
- vi. Decisions made through expert determination are typically final and binding, providing parties with certainty and closure. This finality reduces the likelihood of prolonged disputes that can arise from appeals or further litigation.
- vii. Compared to court proceedings, expert determination is less formal, which can create a more conducive environment for open dialogue and negotiation between the parties involved.

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

2.5.2 Disadvantages of expert determination.

- i. Expert determination is not governed by strict legal rules or procedures, which can lead to concerns about fairness and transparency. This informality may result in parties feeling their rights are inadequately protected compared to more structured processes like arbitration or litigation.
- ii. Decisions made by experts are usually binding, and the avenues for appealing these decisions are very limited. Parties can typically only challenge a decision on specific grounds such as fraud, collusion, or if the expert acted outside their authority. This lack of recourse can be problematic if an expert makes a significant error.
- iii. Although experts are expected to be impartial, there is always a risk of perceived bias or partiality. Factors such as personal relationships or professional affiliations may influence an expert's decision, undermining the integrity of the process.
- iv. Expert determination is generally less suitable for disputes involving extensive factual disagreements or complex legal issues. The process may not allow for thorough examination of evidence or witness testimony, which are often crucial in resolving such disputes.
- v. While expert determinations are binding, enforcing these decisions may require additional legal proceedings if one party fails to comply. This can lead to further costs and delays, negating some of the efficiency benefits of the expert determination process.
- vi. The legal framework surrounding expert determination is not developed in Uganda like that for arbitration or litigation. This can create uncertainty regarding procedural norms and the enforceability of decisions, potentially leading to additional disputes over how the process should be conducted.

Although expert determination has the above stated advantages it is not yet operational for domestic disputes in Uganda. This is different from other developed countries where it is more prominent. Hence a need to carefully incorporate it with in our laws because it can only be effective if it has a legal backing with in our laws such as arbitration and mediation.

2.6 Conclusion

The analysis above indicates that there are various Alternative Dispute Resolution (ADR) mechanisms each with its advantages and disadvantages. Some of these alternative dispute resolution mechanisms may be favourable for certain disputes and unfavourable for other disputes. More so ADR mechanisms are generally more affordable and quicker in resolving disputes, primarily due to the limited grounds for appealing decisions made. It is important to

note that some ADR methods are more cost-effective and time-efficient than others. For example, mediation typically costs less than 5% of arbitration expenses and requires less than 15% of the time needed for arbitration. Parties involved in a dispute must take a critical assessment of the facts before them such that they make a choice of which alternative dispute resolution mechanism to use to achieve the desired results.⁶⁷ It is therefore evident in conclusion that the role of ADR in the Ugandan extractive industry is dependent on the different mechanisms in consideration of their merits and demerits and how best they can be put use referring to the nature of the dispute that has arisen.

⁶⁷ Timothy A. Martin, *International mediation: an evolving market* 'in A Rovine (ed) *Contemporary Issues in International Arbitration and Mediation, The Fordham Papers*, 2010; Centre for Effective Dispute Resolution (CEDR), *The Fourth Mediation Audit: A Survey of Commercial Mediator Attitudes and Experience* (London, 2010) 8

CHAPTER THREE

THE ROLE OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN THE EX-TRACTIVE INDUSTRY OF OTHER JURISDICTIONS.

3.0 Introduction

The extractive industry occupies a central position in the economic development strategies of many states due to its contribution to revenue generation, foreign direct investment and industrial growth. The sector is however uniquely linked to disputes because of its capital-intensive nature, long-term contractual arrangements, technical complexity and profound social and environmental impacts. Disputes frequently arise between states and investors, joint venture partners, host communities and regulatory authorities, often involving issues of licensing, production sharing, environmental degradation, land access, revenue allocation and contractual performance.

Traditional court litigation has for a long time produced slow and frustrating results as far as the aggrieved parties are concerned. The quest of seeking remedies through the traditional court system has increasingly been viewed as ill-suited and now a slow method in resolving extractive sector disputes. National courts often lack the technical expertise required to adjudicate complex petroleum and mining disputes. The more the exercise becomes lengthy, the more likely it is that the parties to these disputes will arouse their perceptions of bias hence undermining the confidence in judicial outcomes. In response to these challenges, alternative dispute resolution (ADR) mechanisms particularly arbitration, mediation and negotiation have emerged as preferred tools for managing disputes in the extractive industry. ADR offers advantages such as procedural flexibility, confidentiality, technical expertise and enforceability, making it attractive to both states and investors.

This chapter examines the role of ADR in the extractive industry with a focus on Nigeria, Tanzania, Norway and Australia. These jurisdictions have been selected to reflect diverse legal traditions, regulatory approaches and levels of institutional development. The chapter analyses how ADR mechanisms operate within each of these countries, the extent of legislative and judicial support for ADR, and the practical challenges that limit its effectiveness. It further identifies gaps in existing ADR frameworks and explains how this research seeks to address those shortcomings by proposing more inclusive, transparent and context-sensitive approaches to dispute resolution in the extractive sector.

3.1 The Role of ADR in the extractive Industry of Nigeria

Nigeria's extractive industry, particularly the oil and gas sector, is one of the most dispute-intensive sectors in Africa. As Africa's largest oil producer, Nigeria's petroleum industry is characterised by complex contractual relationships involving the federal government, multinational oil companies, indigenous operators and host communities. Disputes commonly

arise from petroleum licensing, production-sharing contracts, joint operating agreements, gas supply arrangements, environmental pollution, land acquisition and revenue distribution. The persistence of oil-related conflicts in the Niger Delta further illustrates the depth of disputes associated with extractive activities.

The traditional court system through its universally acceptable vacuum of litigation has historically proved ineffective in resolving disputes in the Nigerian extractive industry. As a result, judicial delays, congested court dockets, limited technical expertise and jurisdictional challenges have been a consistent outcome hence risen often resulted tensions between parties. As such, ADR particularly arbitration has become a central feature of dispute resolution in Nigeria's extractive industry. Arbitration is widely perceived as offering neutrality, confidentiality and procedural flexibility, which are especially important in disputes involving foreign investors and the state.⁶⁸

Arbitration dominates dispute resolution in Nigeria's oil and gas sector, particularly in disputes arising from petroleum contracts. Production-sharing contracts, joint operating agreements and gas supply agreements routinely contain arbitration clauses, often providing for international arbitration under institutional rules. Nigerian courts have consistently adopted a pro-arbitration stance, enforcing arbitration agreements and limiting judicial interference in arbitral proceedings. This approach was clearly articulated in **Shell Petroleum Development Company of Nigeria Ltd v Crestar Integrated Natural Resources Ltd**⁶⁹, where the Supreme Court affirmed the binding nature of arbitration clauses in petroleum contracts and emphasised that courts should respect the parties' choice of ADR mechanisms.

Legislative developments have further entrenched ADR within Nigeria's extractive sector. **The Petroleum Industry Act 2021** represents a significant reform of Nigeria's petroleum governance framework and expressly promotes amicable settlement of disputes arising from petroleum operations. The Act permits recourse to arbitration where negotiations fail and introduces host community development trusts aimed at addressing grievances at the local level. These provisions reflect an effort to reduce conflict by institutionalising early stage dispute resolution and community engagement.⁷⁰

In addition, the **Arbitration and Mediation Act 2023** modernised Nigeria's ADR framework by aligning it with international best practices, including those reflected in the UNCITRAL Model Law. The Act strengthens the enforceability of arbitral awards, restricts excessive court intervention and formally recognises mediation as a distinct dispute resolution mechanism. While these reforms enhance Nigeria's attractiveness as an arbitration-friendly jurisdiction, their impact on extractive sector disputes involving host

⁶⁸ Peter D Cameroon, *International Energy Investment Law* (OUP 2010)

⁶⁹ (2015) 15 NWLR (Pt 1483) 128

⁷⁰ Ss 232-235

communities remains limited. Arbitration proceedings are costly, procedurally complex and largely inaccessible to non-commercial actors, reinforcing existing power imbalances.

The limitations of arbitration in Nigeria's extractive sector are starkly illustrated by **The Federal Republic of Nigeria v Process & Industrial Developments Ltd (P&ID)**⁷¹. The dispute arose from a gas supply and processing agreement connected to petroleum operations, which was referred to arbitration. Although arbitration initially appeared to offer a neutral forum, subsequent judicial proceedings revealed extensive fraud, lack of transparency and abuse of process, ultimately leading to the setting aside of the award. The case underscores the risks associated with secrecy and weak oversight in extractive sector arbitration, particularly where public resources and national interests are at stake.

Beyond the recognizable investor-state disputes, ADR mechanisms have had limited success in resolving conflicts between oil companies and host communities. Community grievances relating to environmental damage, land dispossession and livelihood loss are often addressed through informal negotiations or corporate grievance mechanisms that lack enforceability and accountability. The absence of structured, accessible and community-focused ADR frameworks has contributed to the persistence of extractive related conflicts in Nigeria.

The key gaps in Nigeria's ADR framework include limited community participation, lack of transparency in arbitral proceedings involving public interests and insufficient integration of mediation at the grassroots level. This research seeks to address these shortcomings by proposing ADR models that are inclusive, transparent and responsive to the socio-economic realities of Nigeria's extractive industry, while preserving the commercial advantages of arbitration.

3.2 The Role of ADR in the Extractive Industry of Tanzania

Tanzania's extractive industry, encompassing mining and emerging oil and gas activities, has undergone significant transformation since the early 2000s. The sector has attracted substantial foreign direct investment, particularly in gold mining and offshore gas exploration, making it an important contributor to national development. However, the expansion of extractive activities has been accompanied by an increase in disputes involving the state, foreign investors, local communities and regulatory authorities. Common sources of conflict include licence cancellation or suspension, contractual renegotiation, environmental degradation, land acquisition and compensation, taxation and revenue-sharing arrangements.

Historically, Tanzania recognised the importance of alternative dispute resolution in managing extractive-sector disputes, particularly those involving foreign investors.

⁷¹ [2023] UKSC 26

Arbitration was widely regarded as a neutral and effective mechanism for resolving disputes arising from mining and petroleum investments. **The Mining Act 2010 and the Petroleum Act 2015** both permitted disputes to be referred to arbitration where negotiations failed, reflecting an intention to provide predictability and investor confidence within the sector. Arbitration clauses were commonly included in mineral development agreements and petroleum contracts, often providing for international arbitration under recognised institutional rules.

Judicial engagement with extractive related disputes demonstrates Tanzania's early openness to arbitration in investment contexts. In **Standard Chartered Bank (Hong Kong) Ltd v United Republic of Tanzania**⁷², the dispute arose from a transaction linked to mining investments and illustrated the complexities of resolving extractive-sector disputes involving the state. The case underscored the intersection between commercial obligations and sovereign authority, as well as the challenges of enforcing financial and contractual rights in extractive-related transactions. Although not a pure arbitration enforcement case, it remains significant for understanding Tanzania's engagement with international dispute resolution mechanisms in the extractive sector.

A major shift in Tanzania's approach to ADR occurred in 2017 with the enactment of the **Natural Wealth and Resources (Permanent Sovereignty) Act. and the Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act**. These statutes assert permanent sovereignty over natural resources and restrict recourse to international arbitration for disputes relating to natural wealth. Instead, such disputes are required to be adjudicated by domestic judicial or quasi-judicial bodies. While these reforms were motivated by a desire to protect national interests and correct perceived imbalances in investor-state relations, they significantly altered the dispute resolution landscape in the extractive sector.

The restriction of international arbitration has raised concerns regarding neutrality, investor confidence and the effectiveness of dispute resolution in Tanzania's extractive industry. Domestic courts and institutions often lack specialised technical expertise in complex mining and petroleum disputes, and delays in judicial proceedings remain a challenge. As a result, the removal of international arbitration as an option has been criticised for increasing uncertainty and discouraging long term investment in the sector.

Mediation and negotiation play a limited but important role in resolving extractive-sector disputes in Tanzania, particularly those involving land access, compensation and community grievances. In practice, many disputes between extractive companies and host communities are addressed through informal negotiations facilitated by local authorities. However, these mechanisms lack procedural clarity, enforceability and transparency, often resulting in unresolved grievances and social unrest.

⁷² Case No.ARB/10/12

The principal gaps in Tanzania's ADR framework lie in the absence of structured, community-accessible mediation mechanisms and the over-centralisation of dispute resolution in state-controlled institutions. The 2017 reforms have further constrained the availability of neutral forums for resolving investor-state disputes, raising questions about balance between sovereignty and fairness. This research seeks to address these shortcomings by exploring how Tanzania can strengthen domestic ADR institutions, enhance procedural safeguards and integrate community-based mediation without undermining state control over natural resources.

3.3 The Role of ADR in the Extractive Industry of Norway

Norway's extractive industry, particularly its petroleum sector, is widely recognized as one of the most effectively regulated in the world. Petroleum resources have played a very vital role in Norway's economic development, and the legal framework governing the sector reflects a strong commitment to transparency, state participation and long-term sustainability. Despite this robust success of ADR in Norway's extractive industry to a larger extent, disputes are still bound to happen in the extractive sector, particularly in relation to offshore licensing, joint operating agreements, cost recovery mechanisms, production sharing, decommissioning obligations and environmental compliance. The manner in which Norway manages such disputes demonstrates a mature and preventive approach to alternative dispute resolution in comparison to other jurisdictions.

Unlike many extractive jurisdictions where litigation is frequently the alternative, Norway places significant emphasis on arbitration and negotiated settlement as the primary means of resolving extractive-sector disputes. Petroleum contracts, including joint operating agreements and production licences, routinely contain arbitration clauses. These clauses are designed to ensure technical expertise, procedural efficiency and neutrality, particularly given the complex and highly specialised nature of offshore petroleum operations. Arbitration is therefore not viewed as an alternative to litigation, but rather as the default mechanism for resolving commercial extractive disputes.

Norway's arbitration framework is governed by the **Arbitration Act 2004**, which is based largely on the UNCITRAL Model Law. The Act provides a clear and modern legal basis for arbitration, limits judicial interference and ensures the enforceability of arbitral awards. Norwegian courts have consistently adopted a pro-arbitration approach by respecting party autonomy and enforcing arbitration agreements. Although extractive-sector arbitral awards are rarely published due to confidentiality, judicial practice confirms strong institutional support for arbitration as an effective dispute resolution mechanism.⁷³

The effectiveness of ADR in Norway's extractive sector is closely linked to the strength of regulatory institutions and the clarity of contractual frameworks. The Norwegian state's

⁷³ *Arbitration Act 2004 (Norway)*

active participation in petroleum operations, particularly through state-owned entities such as **Equinor**, has fostered a culture of cooperation and dispute avoidance. Disputes are often addressed through negotiation or mediation at an early stage, preventing escalation into formal arbitration. This collaborative approach reflects a broader policy objective of maintaining stable long-term relationships between the state and private operators. It is worth benchmarking Norway's approach towards fostering the use of ADR in the extractive industry globally. Norway remains progressive steadily in terms of balancing the use of ADR in the extractive Industry while empowering an independent ADR- judicial oriented system that specifically deals with extractive industry related matters.

Norway's arbitration practice in the extractive sector is further illustrated by a number of high-profile international petroleum arbitrations involving Norwegian state-owned and private operators. One of the most prominent examples is the ICC arbitration between **Statoil ASA and Petróleo Brasileiro SA (Petrobras)**, arising from corruption-related issues connected to offshore petroleum projects. The tribunal's findings and the subsequent enforcement proceedings demonstrated Norway's commitment to contractual accountability and reinforced arbitration as the preferred mechanism for resolving complex petroleum disputes involving transnational actors.⁷⁴

Similarly, Norwegian petroleum companies have been involved in several international arbitrations concerning upstream investment agreements, reinforcing Norway's integration into global extractive dispute resolution practice. Disputes involving Norwegian operators such as **Statoil v Sonatrach** further demonstrate reliance on arbitration to resolve disagreements arising from long-term petroleum contracts, particularly where state-owned entities are involved.⁷⁵ These cases highlight how arbitration functions as a neutral and technically competent forum for resolving extractive disputes connected to Norwegian petroleum interests, even when proceedings are conducted outside Norwegian courts.

At the domestic level, Norwegian courts have consistently upheld the autonomy of arbitration agreements and limited judicial intervention in arbitral proceedings. Although most extractive-sector arbitrations remain confidential, Supreme Court jurisprudence on arbitration enforcement confirms a strong pro-arbitration approach that indirectly supports extractive-sector dispute resolution. Judicial deference to arbitral tribunals has reinforced confidence among petroleum operators that arbitration outcomes will be respected and enforced.⁷⁶

Academicly, commentary on Norway's petroleum governance consistently emphasises that the effectiveness of ADR in the extractive sector is inseparable from the broader institutional framework and is akin to strong regulatory oversight and state participation through entities such as Equinor and transparent licensing regimes that reduce the likelihood of disputes

⁷⁴ (ICC Arbitration 2018)

⁷⁵ (ICC Arbitration 2010)

⁷⁶ Arbitration Act 2004 (Norway 2004)

escalating into adversarial proceedings. Where disputes do arise, arbitration operates within a system characterised by legal certainty, regulatory trust and procedural integrity.

Nevertheless, it is a settled debate that the confidential nature of arbitration proceedings and awards limits public access to information on disputes involving environmental harm and decommissioning obligations in the North Sea parts of Norway. This concern has become increasingly relevant as Norway transitions towards decommissioning the offshore infrastructure. The challenge lies in balancing the efficiency of arbitration with the public interest in transparency and environmental accountability. This research contributes to the debate by examining how limited transparency measures could be incorporated into extractive-sector ADR without undermining investor confidence. It is crucial that the public be let in on this very vital concern for their attention to such matter's is backed up by the fact that ownership of minerals is divided between the state and private land owners. The state controls all metallic minerals and ores while private land owners own all the other minerals. It is equally important to acknowledge that the state of Norway holds absolute ownership of all mineral resources on the Norwegian continental regardless of whether they are metallic and ore minerals or other minerals.⁷⁷

Mediation, while less formalised than arbitration, plays an important complementary role in Norway's extractive industry. Parties frequently engage in structured negotiations to resolve disagreements relating to operational costs, production timelines and regulatory compliance. The high level of trust in public institutions and regulatory agencies further facilitates consensual dispute resolution, reducing the need for adversarial proceedings.

Despite its strengths, Norway's ADR framework is victim to some challenges and therefore without limitations. The confidentiality of arbitration proceedings limits public scrutiny of disputes involving environmental harm, decommissioning responsibilities and public resources. This raises concerns regarding transparency and accountability, particularly where extractive activities have broader societal and environmental implications. Additionally, ADR mechanisms in Norway's extractive sector are primarily designed for disputes between commercial actors, offering limited avenues for community participation.

The principal gap in Norway's approach to ADR lies in balancing efficiency and confidentiality with public interest considerations. While arbitration has proven effective in resolving commercial disputes, it may not adequately address environmental accountability or community concerns. This research seeks to address these shortcomings by examining how transparency measures and participatory mechanisms can be integrated into extractive-sector ADR without undermining its efficiency or attractiveness to investors.

⁷⁷ USGS 2019 Minerals Yearbook Norway [Advance Release]

3.4 The Role of Alternative Dispute Resolution in the Extractive Industry of Australia

Australia's extractive industry encompasses a large-scale mining, offshore petroleum and gas development forum which arguably is one of the most significant contributors to the national economy. The sector is identified by long-term capital investment, complex regulatory oversight and frequent interaction with Indigenous land rights regimes. These characteristics make disputes inevitable, particularly in relation to resource licensing, joint venture arrangements, environmental compliance, land access, royalty payments and community consent. In response to these challenges, alternative dispute resolution has become a key part of the puzzle as far as dispute management in Australia's extractive sector is concerned

Arbitration occupies a major role in resolving commercial disputes within Australia's extractive industry, particularly those arising from mining development agreements, petroleum joint ventures and long-term supply contracts. Arbitration is favoured for its confidentiality, technical expertise and finality, qualities that are particularly important in disputes involving commercially sensitive resourced projects. Australian courts have consistently adopted a pro-arbitration stance, reinforcing confidence in arbitration as a reliable mechanism for extractive-sector dispute resolution. This empowerment has enabled ADR and its related mechanisms play a significant role in the bid of solving challenges within the Australian Extractive sector.

Judicial support for arbitration was announced in **TCL Air Conditioner (Zhongshan) Co Ltd v Judges of the Federal Court of Australia**, where the High Court upheld the constitutional validity of arbitration and confirmed that the High courts must enforce international arbitration awards even when the tribunal made an error of law. Consequently, the High court meant that arbitral awards should be given the deserved respect and they should not be trampled on based on opinions of supposedly errors of law. Although the dispute was not extractive in nature, the decision has had profound implications for commercial arbitration across all sectors, including mining and petroleum, by reinforcing the enforceability and finality of arbitral awards.⁷⁸

Australia's experience with investor–state arbitration has also shaped the role of ADR in the extractive sector. In **Philip Morris Asia Ltd v Commonwealth of Australia**⁷⁹, an investor–state arbitration initiated under a bilateral investment treaty challenged domestic regulatory measures. While the dispute did not directly concern extractive resources, it significantly influenced Australia's approach to international arbitration and investment treaty drafting, particularly in sectors involving public regulation and natural resource governance. The case highlighted tensions between state sovereignty and investor protection that are equally relevant to extractive industries.

⁷⁸ (2013) 251 CLR 533

⁷⁹ UNCITRAL PCA Case No 2012-12

Besides the significant role played by arbitration, mediation plays a particularly prominent role in resolving disputes involving land rights of the locals, which are closely connected to extractive activities. Under the **Native Title Act 1993**, mediation is the primary mechanism for resolving native title claims, many of which arise in the context of mining and petroleum development. The National Native Title Tribunal facilitates mediation between mining companies, Indigenous groups and government authorities, enabling negotiated outcomes that balance economic development with the protection of Indigenous rights. These mediated agreements are central to the operation of Australia's extractive sector, particularly in remote and resource-rich regions.

Judicial consideration of native title disputes underscores the importance of ADR in this context. In **Western Australia v Ward**⁸⁰, the High Court recognised the complexity of native title claims and the necessity of negotiated settlements in resolving competing interests over land and resources. Although litigation clarified legal principles, mediation remains the dominant method for resolving extractive-related native title disputes in practice hence a significant and key role of ADR in the Australian extractive industry.

Similar to other jurisdictions as considered throughout this research, despite the strengths of ADR, Australia's ADR framework in the extractive sector is still facing shortcomings. The power imbalances between multinational resource companies and Indigenous communities have continuously undermined the fairness of mediated outcomes which is disastrous to the functionality and operability of the concept of ADR. Additionally, arbitration remains costly and procedurally complex, limiting access for smaller stakeholders and local communities affected by extractive operations. Environmental disputes, in particular, are often poorly suited to confidential arbitration, as they involve broader public interests.

The gap in Australia's approach to ADR lies in ensuring that dispute resolution mechanisms adequately protect community and environmental interests while maintaining procedural efficiency. This research seeks to address these gaps by examining how extractive-sector ADR in Australia can be made more inclusive, transparent and responsive to public interest concerns, particularly in disputes involving land access, environmental protection and Indigenous rights.

3.5 The Contribution of this Research to the Role of ADR in the Extractive sector.

Considering the operation of alternative dispute resolution in the extractive industries of Nigeria, Tanzania, Norway and Australia, it is evident that ADR plays a major but consistent uneven role across jurisdictions covered by this research. While arbitration, mediation and negotiation are widely recognised as suitable mechanisms for managing extractive-sector disputes, their effectiveness is shaped by institutional strength, legislative design, power relations while undermining the degree of public interest involved in extractive activities.

⁸⁰ (2002) 213 CLR 1

This research contributes to the existing literature by demonstrating that the role of ADR in the extractive industry cannot be assessed solely on the basis of formal legal frameworks or the availability of arbitration clauses. Instead, the effectiveness of ADR must be evaluated in light of sector-specific realities such as community impacts, environmental risks, long-term contractual relationships and state sovereignty over natural resources. The analysis shows that arbitration functions most effectively in jurisdictions with strong regulatory institutions and clear governance structures, as illustrated by Norway and Australia. In contrast, Nigeria and Tanzania reveal how weaknesses in institutional capacity, transparency and inclusiveness can undermine the potential benefits of ADR in the extractive sector.

A key contribution of this research lies in identifying gaps that cut across jurisdictions but manifest differently within each extractive context. In Nigeria, the principal shortcomings relate to the exclusion of host communities from formal ADR mechanisms and the obscurity of arbitration involving public resources, as exposed by the **P&ID** dispute.

In Tanzania, restrictive resource-sovereignty legislation has narrowed access to neutral arbitral forums, raising concerns about fairness and investor confidence in extractive disputes.

In Norway, although ADR is highly effective in resolving commercial petroleum disputes, confidentiality limits public scrutiny of disputes involving environmental harm and decommissioning obligations.

In Australia, power imbalances in mediation processes, particularly in native title negotiations linked to mining and petroleum projects, continue to challenge the inclusiveness of ADR outcomes.

This research therefore advances the argument that the role of ADR in the extractive industry must extend beyond efficiency and enforceability to incorporate transparency, accountability and community participation. It proposes that extractive-sector ADR frameworks should be tailored to reflect the public interest dimensions of natural resource exploitation. Such an approach does not seek to replace arbitration or mediation but rather to fine-tune their operation in a manner that balances investor protection, state sovereignty and the rights of affected communities.

3.6 Conclusion

This chapter has examined the role of alternative dispute resolution in the extractive industry through analyzing the applicability of ADR in jurisdictions of Nigeria, Tanzania, Norway and Australia. It has demonstrated that ADR, particularly arbitration and mediation, occupy a central position in the resolution of extractive-sector disputes due to the limitations of conventional litigation in addressing the technical, financial and transnational nature of such

disputes. From all the four jurisdictions, ADR is deeply embedded in extractive contracts, regulatory frameworks and dispute management practices.

The research reveals that while arbitration remains the dominant mechanism for resolving commercial extractive disputes, its effectiveness varies significantly depending on institutional strength and governance culture. Norway and Australia exemplify jurisdictions where ADR operates within robust regulatory systems that promote predictability, cooperation and dispute avoidance. Nigeria and Tanzania, by contrast, illustrate how structural weaknesses, legislative constraints and limited inclusiveness can undermine the potential of ADR in managing extractive-sector conflicts.

Importantly, the chapter highlights that extractive disputes are not purely commercial in nature. They often implicate environmental protection, community livelihoods and national economic interests. As such, ADR mechanisms designed solely for private commercial disputes may be insufficient when applied to the extractive sector. The persistence of conflicts involving host communities, environmental harm and public resources underscores the need for ADR frameworks that are responsive to the unique characteristics of extractive activities.

In conclusion, ADR plays an indispensable role in the extractive industry, but its future effectiveness depends on deliberate reform and contextual adaptation. By strengthening transparency, enhancing community participation and aligning ADR mechanisms with the public interest dimensions of extractive activities, states can harness ADR not only as a tool for dispute resolution but also as a means of promoting sustainable and equitable natural resource governance. This research contributes to that objective by offering a nuanced, sector-specific understanding of the role of ADR in the extractive industry across diverse legal and regulatory environments.

CHAPTER FOUR

RECOMENDATONS ON THE ROLE OF ALTERNATTIVE DISPUTE RESOLUTION IN THE EXTRACTIVE INDUSTRY

4.0 Introduction

This chapter presents the recommendations arising from the study on the role of alternative dispute resolution (ADR) in the extractive industry, with particular emphasis on the oil and gas sector in Uganda and comparative insights drawn from Nigeria, Tanzania, Norway and Australia. The preceding chapters demonstrated that while ADR mechanisms such as arbitration, mediation and negotiation are widely recognised and formally embedded in extractive-sector legal frameworks, their practical effectiveness remains uneven across jurisdictions. In many resource-rich states, disputes in the oil and gas sector continue to be characterised by prolonged litigation, community unrest, regulatory uncertainty and governance failures, despite the availability of ADR mechanisms.

This chapter therefore focuses on how the findings of this research can help address the identified gaps in the role of ADR within the extractive industry. The recommendations offered are based on the realities of oil and gas governance aided by existent research and are aimed at strengthening legal frameworks as far as the extractive industry is concerned, improving institutional practice, enhancing community participation, promoting transparency and building capacity for effective dispute resolution. By doing so, the chapter seeks to demonstrate how ADR can move beyond a purely contractual tool and become an effective mechanism for promoting stability, accountability and sustainable development in the extractive sector.

4.1 Embedding ADR as a Constitutional Safeguard in Uganda's Extractive Sector

The concept of Alternative Dispute Resolution (ADR) has earned formal recognition as far as the Ugandan legal framework is concerned through the **Arbitration and Conciliation Act**. It is imperative to note that the Arbitration and Conciliation Act generally provides for how the two mechanisms operate, it does not specifically provide sections for the use of ADR in the extractive industry of Uganda. As such the role of ADR in Uganda's extractive sector remains structurally weak because it is not embedded within sector specific regulatory design. **The Petroleum (Exploration, Development and Production) Act 2013**, the **Mining and Minerals Act 2022**, and the **Land Act Cap 236** regulate licensing, compensation, and land acquisition, yet they do not establish a compulsory, rights-sensitive ADR pathway for disputes arising from extractive activities. It is in our own interest as a country to see to it that the role of ADR in the extractive industry is taken serious by creating ADR-Extractive Industry related laws so as to boost and maximize the advantages, solutions that the concept of ADR is associated with. Consequently, ADR operates either as a contractual tool negotiated by investors or as an optional alternative to litigation, rather than as a regulatory mechanism

that protects affected communities hence its contribution to the resource curse from the resources directly under the extractive industry since its existence benefits a few selected individuals at the expense of all the stakeholders in the industry. This gap is particularly problematic because extractive disputes in Uganda directly implicate the constitutional right to property under **Article 26** and the right of access to justice under **Article 28** of the **Constitution of the Republic of Uganda**. When compensation disputes or compulsory acquisition conflicts are left to lengthy court processes or investor-drafted arbitration clauses, affected persons may experience delayed justice, unequal bargaining power, and limited procedural protection hence continuous trends of challenges within the sector that ADR seeks to solve.

In the bid to remedy this structural weakness, ADR must be repositioned not merely as a dispute settlement option but as a constitutional safeguard within extractive governance. This can be achieved by legislatively mandating pre-litigation mediation in all disputes concerning compulsory land acquisition and compensation under extractive projects. Such mediation should be conducted by accredited neutral mediators and must comply with procedural fairness standards including transparency, equality of participation, and written reasoned settlements. Additionally, petroleum and mining regulations should require the establishment of statutory grievance redress mechanisms accessible to project-affected persons, with clear timelines and enforceable outcomes. By doing so, ADR would directly operationalise constitutional guarantees, it would provide timely, participatory, and less adversarial avenues for resolving property-related disputes, thereby strengthening access to justice while reducing litigation delays.

In this way, ADR would move from being a complex dispute solving forum to becoming a structured regulatory instrument that protects constitutional rights, manages power imbalances, and promotes sustainable extractive development. Embedding ADR within the legal framework of the extractive sector would therefore not only close the identified regulatory gap but also align sector governance with Uganda's constitutional commitments to property protection and fair hearing.

4.2 Enhancing Community Access and Participation in Extractive Alternative Dispute Resolution

This research recommends that ADR should not only be available to only governments and the international companies. It should also stretch to community concerns such as compensation of the locals, locals benefiting from the local content standard procedures, environmental conservation concerns among others. According to existent research, the natives and locals that stay in these places where minerals are discovered suffer immense challenges that can only be solved through community outreach programs championed by the government through its Ministry of Energy and an international companies' team. Neutral personnel can be provided by institutions such as CADER to mediate and assess the extent of the challenges hence providing recommendations on how such problems mostly within and around the areas

where minerals are being extracted can be solved. Such mechanisms should be legally recognised and supported by regulatory agencies to ensure fairness and consistency. Lessons can be drawn from Australia's experience with mediation in mining and land access disputes, particularly in the context of indigenous and native title claims. While challenges of power imbalance remain, mediation has provided a platform for dialogue and negotiated outcomes that are often more sustainable than litigation.

Norway's regulatory approach further demonstrates the value of early dispute prevention and administrative engagement in reducing community conflict, although formal community participation in ADR remains limited. By foregrounding the role of community participation, this research fills an important gap in existing literature, which has traditionally focused on investor state or commercial arbitration while overlooking the social dimensions of extractive disputes.

4.3 Transparency and Accountability in Extractive Dispute Resolution

The research also identifies a critical gap relating to transparency and accountability in ADR processes within the extractive industry. Arbitration is often favoured for its confidentiality, yet disputes in the oil and gas sector frequently involve public resources, environmental protection and state revenue. In Uganda and Nigeria, confidential arbitration proceedings have at times generated public concern, particularly where outcomes affect national finances or environmental obligations. In the sense that the government holds resources for the people of Uganda on their behalf as per **Article 244 of the Constitution of the Republic of Uganda**, accountability from such proceedings should be publicized as constitutionally mandated.

This research recommends a balanced approach that preserves the efficiency and confidentiality of ADR while introducing up tight transparency measures in cases involving public interest considerations. Such measures may include the publication of redacted arbitral awards, statutory reporting obligations for disputes involving state entities, and enhanced parliamentary or regulatory oversight of extractive disputes. Comparative insights from Norway and Australia show that transparency in regulatory governance can coexist with private dispute resolution mechanisms.

By addressing the mismatch between confidentiality and accountability, this research contributes to a more nuanced understanding of ADR in the extractive industry and challenges the assumption that secrecy is always desirable in oil and gas disputes.

4.4 Building Institutional Capacity and Expertise in Extractive ADR

The effectiveness of ADR in the extractive industry is also constrained by limited institutional capacity and specialised expertise, particularly in developing oil and gas jurisdictions like Uganda. Extractive disputes are often technically complex, involving controversial assessments, environmental impact evaluations and long-term financial

arrangements. In Uganda and Tanzania, ADR institutions and regulatory agencies often lack sufficient expertise to manage such disputes effectively.

This research recommends targeted capacity-building initiatives aimed at strengthening ADR institutions, regulatory agencies and the judiciary. These initiatives should include specialised training in oil and gas law, environmental regulation and extractive-sector dispute management. Nigeria's experience demonstrates the importance of sector-specific expertise in managing complex oil and gas disputes, while Norway and Australia illustrate the benefits of experienced practitioners and strong institutional support.

By emphasising capacity building, this research fills a practical gap in extractive governance and highlights the importance of human and institutional resources in ensuring the effectiveness of ADR mechanisms.

4.5 Proposed Reforms to Strengthen ADR in the Extractive Industry

To address the identified gaps, this research recommends reforms aimed at enhancing the effectiveness and legitimacy of ADR in the extractive industry. Firstly, governments should promote inclusive ADR mechanisms that enable host communities to participate meaningfully in dispute resolution. This can be achieved through legally recognised community mediation frameworks, supported by regulatory oversight, legal aid programs and capacity-building initiatives.

Secondly, transparency in extractive dispute resolution should be improved through carefully calibrated measures that balance confidentiality with public accountability. The publication of redacted arbitral awards in disputes involving public resources, alongside enhanced legislative and regulatory oversight, would promote legitimacy without undermining commercial interests.

Thirdly, institutional capacity must be strengthened through specialised training for arbitrators, mediators, regulators and judges handling extractive disputes. Developing sector-specific expertise will improve the quality of ADR outcomes and reduce reliance on prolonged litigation.

Finally, greater coherence should be achieved between extractive legislation and general ADR laws. Aligning these frameworks will ensure that ADR mechanisms are responsive to the unique characteristics of extractive disputes and capable of supporting sustainable resource governance.

4.6 Contribution of the Research to Policy and Practice

This research contributes more broadly to policy and academic discourse on ADR in the extractive industry. It advances a manner sensitive in approach that recognises the unique characteristics of oil and gas disputes, including their public interest dimensions, social

impacts and long-term implications. By integrating Uganda into a comparative analysis with more established extractive jurisdictions, the research addresses a notable gap in the literature and provides insights relevant to policymakers, practitioners and scholars.

The research demonstrates that ADR should not be treated as a uniform solution but must be adapted to local legal, institutional and socio-economic contexts in contemplation. This contribution is particularly significant for emerging oil and gas producers seeking to avoid the governance challenges experienced by older extractive economies.

4.7 Conclusion

This chapter has presented recommendations aimed at strengthening the role of alternative dispute resolution in the extractive industry, with a particular focus on the oil and gas sector in Uganda and comparative jurisdictions. The analysis has shown that while ADR mechanisms are widely recognised, their effectiveness is undermined by legal ambiguity, limited community participation, insufficient transparency and weak institutional capacity. By proposing targeted reforms and highlighting how this research fills existing gaps, the chapter demonstrates that ADR can play a more meaningful role in promoting stability, accountability and sustainable development within the extractive sector.

In conclusion, strengthening ADR in the extractive industry requires more than formal legal recognition. It demands coherent legal frameworks, inclusive processes, transparent governance and sustained investment in institutional capacity. If these recommendations are implemented, ADR has the potential to contribute significantly to the effective governance of extractive resources and to the peaceful resolution of disputes in resource rich states such as Uganda.

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