

**A COMPARATIVE STUDY OF THE EFFICACY OF THE ALTERNATIVE DISPUTE
RESOLUTION MECHANISMS IN UGANDA**

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DECLARATION

Except the cited texts, I Kwagala Patience firmly attest that all of the research contained here is my own original work. Where other texts or authorities have been adopted verbatim, they have been rightfully acknowledged, and to the best of my knowledge, this proposal has never been submitted for any reason.

Researcher

Date.

DEDICATION

Special thanks to the Lord God Almighty with whom all things are possible, Glory to his name. Thank you very much, Mr. Sekabanja Isaac and my family for giving me such great support; I'm indebted to all of you.

Special thanks to the HAM MUKASA LIBRARY of Uganda Christian University, which supported me in every way and did not let me down. I'd like to thank Uganda Christian University for providing me with an online resource that I could use whenever I needed it.

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To, My Family: I want to express my gratitude for all of your support financially and emotionally and, above all, for your patience while I conducted my research.

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LIST OF ABBREVIATIONS

- ◇ ADR ; Alternative Dispute Resolution
- ◇ EAC: East African Community
- ◇ EACJ; East African Court of Justice
- ◇ EAIAC; The East Africa International Arbitration Conference
- ◇ UNCITRAL ; United Nations Commission On International Trade Law
- ◇ CADER; Center for Arbitration and Dispute Resolution

LIST OF LEGISLATION

- ◇ The 1995 Constitution of Uganda as amended
- ◇ The Civil Procedure Rules S.I 71-1 as amended
- ◇ The Judicature Act Cap 13
- ◇ Judicature (Mediation Rules) 2013
- ◇ Judicature Plea Bargaining Rules 2016
- ◇ The Arbitration and Conciliation Act (Cap. 4)
- ◇ Tax Procedures Code Act of 2014

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ABSTRACT

The study focuses on the ADR mechanisms and their efficacy in Uganda, taking into account the many techniques of conflict resolution, development, and evolution in Uganda, including traditional strategies of resolving disputes, that have led to the resuscitation of ADR, as well as its benefits and challenges. The study also examines the various types of ADR that can be used by parties and the government to resolve disputes.

Chapter One of my research will look at the proposal entailing the most significant writers that stood out for me during my research. The many forms of alternative dispute resolution, such as negotiation, mediation, conciliation, and arbitration, will be covered in Chapter Two of this study along with the benefits and drawbacks of ADR in Uganda. It will also cover the main points of my research, which is to demonstrate that arbitration is the most effective alternative dispute mechanism in Uganda for resolving conflicts. Additionally, I will compare arbitration to all other dispute resolution techniques, such as negotiation, mediation, and conciliation, and demonstrate its superiority over these approaches. The non-legal features of ADR, such as the ATS, will be covered in Chapter Three of this study along with their global, regional, and, finally, Ugandan contexts. The legal aspects of alternative dispute resolution in Uganda, as well as those worldwide and some relevant case law, will be examined in Chapter Four of this study.

Chapter Five will conclude with an examination of my conclusions and suggestions for enhancing Uganda's ADR processes.

CHAPTER ONE

1.2 Introduction

Alternative dispute resolution (ADR) known in some countries, such as Uganda, as external dispute resolution) includes dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement instead of opting for litigation.¹ It is a collective term for the ways that parties can settle disputes, with (or without) the help of a third party.

The rising popularity of ADR can be explained by the increasing caseload of traditional courts, the perception that ADR imposes fewer costs than litigation, a preference for confidentiality, and the desire of some parties to have greater control over the selection of the individual or individuals who will decide their dispute. Some of the senior judiciary in certain jurisdictions (of which England and Wales is one) are strongly in favour of Alternative dispute resolution use of mediation to settle disputes.

1.3 Background

ADR is a general term for all forms of conflict resolution or settlement other than the conventional methods of resolving disputes in legal proceedings.² ADR can take many different forms, the most popular being mediation and arbitration, but there are also fact-finding sessions, ombudsmen special masters, judicial settlement conferences, and many more. ADR is frequently required by the courts, who stipulate that parties must attempt mediation before bringing a lawsuit. However, the majority of ADR techniques that are supported for integration into African legal systems are comparable to pre-colonial African dispute resolution procedures that supported the reestablishment of societal harmony and ties within the legal system. In the course of their daily commercial dealings, Ugandans expressly or implicitly

¹ Barthelemy Cousin & Aude-Marie Catron, "OHADA: A common legal system providing a reliable legal and judicial environment in Africa for international investment", www.ohada.com, Ohadata D-07-27

² The main modes of ADR are Arbitration, Mediation and Conciliation and main reason for the American fraternity to push the need for ADR was to increase the efficiency of the courts and for better quality processes and outcomes of the judicial system.

enter into relationships that have legal duties. In certain instances, they specifically aim to sign legal agreements where the terms are conspicuously lowered in writing. In other cases, they do business by word of mouth, and the law interprets contracts as having been completed based on their actions and the circumstances surrounding the dealings. In the latter circumstances, the law infers a valid contract from the transaction, which generally surprises a number of businesspeople who often assume that there is no contract because there is no written instrument, commonly termed "bwiino" (or "ink" in English). A practicing lawyer frequently deals with cases in which one side has plainly engaged into a contract according to all standards and accessible evidence, but via cunning or outright deceit, the other party attempts to back out of their commitments under the pretense that there is no formal contract in place. Therefore, it is more typical in our jurisdiction for the more serious businessmen to write the "contracts"—or "Ndagaano," as it is widely called. The business community primarily looks to the Commercial Court to ensure the efficient and successful execution of commercial contracts, thus the court continues to carry out the extensive array of reforms and initiatives launched under the Commercial Justice Reform Programme. The public wants this court to be reachable by all companies and for all commercial cases to be processed quickly. Thus, the purpose of this study is to determine how ADR is used in Uganda.³but most importantly which method is most efficient.

1.4 Statement of the problem

The increase of case backlog in the courts of law has led to a nationwide concern on how this issue will be solved as it is leading to delay of justice which every person is entitled to as a Ugandan.⁴ Thus the introduction of ADR has become a more viable solution to curb to this growing concern as suggested by Justice Kiryabwire Geoffrey the leading promoter of Mediation in the courts of law.⁵

³Kakooza, Anthony Conrad, Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects (June 18, 2010). Uganda Living Law Journal, Vol. 7 No. 2 December 2009, pp. 268-294. ISSN 1729-4672.

Published by the Uganda Law Reform Commission., Available at SSRN: <https://ssrn.com/abstract=1715664> 24/02/ 2024

⁴ The 1995 Constitution of Uganda as amended, Article 28 & 42

⁵Kakooza, Anthony Conrad, Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects (June 18, 2010). Uganda Living Law Journal, Vol. 7 No. 2 December 2009, pp. 268-294. ISSN 1729-4672.

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1.5 General Objective

The General Objective of the study is to compare the different modes of Alternative dispute Resolution and how efficient they are in Uganda.

1.6 Specific Objective

The specific objectives of the study are as follows;

- i) To Analyze the existing legal framework and its enforcement mechanism.
- ii) To examine the challenges being faced in the implementation of ADR
- iii) To make recommendations on enforcement of ADR.

1.7 Research Questions

The research questions of the study will include the following;-

1. What are is the existing legal framework and its enforcement mechanism?
2. What challenges are being faced in the implementation of ADR?
3. What are the possible recommendations on enforceability of ADR in Uganda?
4. What is the most effective method of Alternative Dispute Resolution Method in Uganda?

1.8 Significance of the study

This study is significant since it evaluates the usage of mediation, arbitration, and conciliation as ADR methods. This assessment is expected to help the Commercial Court Division evaluate the use of mediation, arbitration, and conciliation, as well as the benefits gained thus far and the problems encountered, particularly in Implementing the ADR concept. The work will contribute to ADR research in Uganda. It will therefore act as a spring board to further studies on ADR and its efficacy in the Ugandan legal system.

1.9 Justification of the study

The study comes at a time when ADR has been made mandatory in all Ugandan courts prior to any legal trial.⁶ Order 12 of the CPR provides that when a case appears before court for scheduling conferencing it is at that time when the court will decide on whether the case shall go for mediation or proceed to court. ADR is now available in all High Court Divisions, including the Commercial , Civil, Family, Land, and Magistrate Courts. As a result, the use of ADR must be evaluated in terms of its efficacy in the Commercial Court, as this is why it was launched. Furthermore, optimal practices for ADR in commercial courts must be learned in order to better inform and support ADR in other courts of law.

1.10 Scope of the study

Time Scope

This Research will be carried for one month.

Geographical Scope

This Research will be carried out at the High Court of Uganda.

1.11 Literature Review

The term "ADR" or "Alternative Dispute Resolution" has several connotations in different settings. The literature research found no recognized definition of the phrase, but rather stated that it is often used as a synonym for procedures that extend beyond the resolution of individual conflicts between parties. ADR may not relate to a single process, but rather to a set of common methodologies, aims, assumptions, or ideals.⁷

According to the Law Reform Paper, it was recommended that the definition of ADR be broadened in order to allow for a clearer picture of current practice and the most practical recommendations. For the purpose of this report, the following are regarded as the definitions of ADR;⁸

- Board or delegate referrals to external mediators or conciliators.
- A board or delegate may perform mediation or conciliation tasks.

⁶The Civil Procedure Rules S.I 71-1 as amended, Order 12

⁷National Alternative Dispute Resolution Advisory Council, *ADR Terminology: A Discussion Paper* (2002), 9-11.

⁸ *Consultation Paper on Alternative Dispute Resolution* (LRC CP 50-2008), referred to as the Consultation Paper in the remainder of this Report.

- Boards or their delegates can execute functions similar to those caused by ADR that are not yet covered by their governing legislation.
- Boards or their delegates may execute case management procedures not covered by present legislation. Numerous works of literature either caution against the possible negative effects of using ADR methods or advocate for them over court adjudication.⁹

When deciding which ADR approach to employ in a conflict, be it business, family, or community, it's crucial to keep in mind that some conflicts cannot be resolved by certain ADR techniques; so, one must determine which will work best in which situation and in Linda Singer's book¹⁰, It was written for the general public, or ADR consumers. Begin with the simple notion that courts are not the ideal forum for settling all types of issues. Singer presents a basic, succinct description of the various forms of disagreements in which people become involved and how these disputes might be resolved. It provides a wide overview that allows readers to gain insight into some of the field's challenges, but it also acts as a useful guide to help them choose appropriate and effective approaches to handle their disagreements.

According to HON. MR. JUSTICE GEOFFREY KIRYABWIRE in his paper, he discussed various ADR procedures, conventional views, court-based ADR, shifting perceptions both internationally and in Uganda, as well as new difficulties and potential solutions. He continued by defining alternative dispute resolution (ADR) as an organized negotiating process in which the disputing parties work out a settlement on their own with the assistance of an impartial third party who has received training and expertise in ADR procedures.

Nevertheless, considering that the presentation was given in 2005, the case law to which the author referred in his presentation is not contemporary enough to represent the evolving attitudes and perspectives of ADR in Uganda.¹¹

⁹ *Green Paper on alternative dispute resolution in civil and commercial matters* COM/2002/0196 Final. Available at <http://eurlex.europa.eu/>

¹⁰ Linda Singer, *Conflict Resolution in Business, Families, and The Legal System* 2nd Edition , 1994

¹¹ An article by Justice Geoffrey Kiryabwire, *Mediation of Cooperative Governance*

He further mentions, among other problems, impediments to dispute resolution procedures, such as arbitrary parties or counsels who are unwilling to pursue ADR due to a lack of clear emphasizing methods. However, it has been predicted that settlement processes would result in reduced protection of parties not at the round table, frustration of laws intended to create social change, and loss of courts' audibility on public values through precedent. As such, those in the legal profession would not easily lead the move toward ADR. However, this research contributes to influencing or transforming people's attitudes about ADR by raising readers' awareness of applicable laws, benefits, and providing an example of decided cases that have used the ADR process through the Center for Arbitration and dispute Resolution.

In a report by Anthony Conrad¹², He examined a new trend in Uganda, involving several types of ADR, including arbitration, conciliation and mediation, as well as a brief overview of collaborative law practice. In order to arouse the reader's curiosity as to whether ADR is a more effective way of achieving justice in Uganda and its success there, the author has examined the benefits and drawbacks of each procedure. However, he does not discuss negotiating as other methods of ADR, which is detailed in his work.

Furthermore, Genn first notes that a group of writers known as "adjudication romantics" have produced a body of work supporting the idea of judicial judgment.¹³ The explanation is that these authors highlight adjudication as a crucial social activity that settles conflicts, clarifies and improves the law, upholds fundamental public ideals, and functions as a defining democratic ritual that keeps the law "pure." It has been said that one of adjudication's most important characteristics is that it is public in nature, functioning as a temporary democratic practice that balances the power between the people and the government. Furthermore, proponents of adjudication procedures do not view using the courts as inherently harmful.

¹²Kakooza, Anthony Conrad, Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects (June 18, 2010). Uganda Living Law Journal, Vol. 7 No. 2 December 2009, pp. 268-294. ISSN 1729-4672. Published by the Uganda Law Reform Commission., Available at SSRN: <https://ssrn.com/abstract=1715664>24/02/ 2024

¹³ Genn H. "ADR and Civil Justice: What justice got to do with it?" in Judging Civil Justice, (2009) Pg 13- 16

Genn summarizes the work of Baruch Bush and Folger, who break down a divided view on mediation in order to describe four main thoughts about mediation and its aims. She notes that, in order to understand the mediation philosophy and some of its concerns as a substitute for judicial decision, it is necessary to understand the divergent views in the literature. Even though they are centered on mediation, it is possible to argue that these four schools of thought—which the authors refer to as "stories"—can theoretically be applicable to all other non-adjudicative ADR techniques.¹⁴ 'Voluntary' and 'mandatory' are the kinds of ADR. ADR may be required by statute or court rule for all cases in a specific class; it may also be required by an order made at the court's discretion in circumstances where it is believed that the parties will benefit; it may be required by one party choosing to participate in ADR; or it may be required as a condition of receiving legal aid. ADR can alternatively be completely voluntary, with the court's involvement limited to providing facilities and information, or voluntary but supported by the court and sanctioned for irrational rejection. Quek rates the level of mandatory mediation in different jurisdictions on a scale of one to five, with one being the most liberal and five being the harshest.¹⁵

Mediation is usually requested when the parties to a dispute are prepared to discuss issues in an open and frank manner. In order to help the parties reach a final and mutually beneficial agreement, it is an alternative dispute resolution method in which a neutral and impartial third party mediator facilitates dialogue in a structured multistage process. The mediator may not impose a solution on the parties, but the conciliator or arbitrator may do so. The mediator shall work with the parties; it is important that they engage in discussions and representation of their interests, as well as to help them find an appropriate common solution which does not conflict with or be contrary to each other's interests."The parties shall play an active role in mediation, identifying the interests that they wish to address and proposing possible solutions or making decisions on proposals put forward by others." A good mediation will allow the two parties to come up with a creative solution

¹⁴ *ibid*

¹⁵ Quek, D., 'Mandatory mediation: An oxymoron? Examining the feasibility of implementing a court-mandated mediation program,' *Cardozo Journal of Conflict Resolution*, 2010, vol. 11, pp488-490.

which focuses more on the future and less on the past. They control the proceedings, select a mediator and avoid trial are important advantages.¹⁶

Mediation is usually looked at as a peaceful dispute resolution tool that is often used complementary to the existing court system and the arbitration.¹⁷In some circumstances, settlement and other benefits can be obtained. However, another writer argues that the benefits of mediation are exaggerated and have not been rigorously tested in practice. The nature of the programme as well as participants' predispositions are said to have an impact on mediation effectiveness.¹⁸

When the parties in dispute have the choice of patching things up or making amends and preserving their connection, conciliation is usually adopted. As an unbiased conciliator, a third-party conciliator is chosen to lead the parties through the bargaining process and then develop a resolution based on what they consider to be a just compromise. The conciliator looks for any rights that have been violated or issues that have been broken, and then looks for the best solution to fix the breach. This process is significantly less combative than arbitration. Essentially, the conciliator may be considered the solution's creator; this could be contrasted with mediation, in which the parties are assisted in creating the solution on their own."¹⁹

Jolm Magezi, a Ugandan advocate. Admitted "a document on ADR in Uganda" (1991) and makes an effort to discuss the topic at great length. He discusses the various mechanisms of ADR and further illustrates their advantages and disadvantages. More so an effort to highlight the problems hindering the introduction and use of ADR is made. Most of these problems have been resolved by the institutions of CADER.

Justice Patrick Tabaro, speaking at Makerere University on the issue of "backlog of cases in Uganda's judicial system and Alternative Dispute Resolution (ADR)" (9th February 2007), He said that Alternative Dispute Resolution can be an effective way of resolving conflicts. It is commonly known that many issues that may be resolved

¹⁶Chan, Y.-C., Chun, R.P.K., Lam, G.L.T., and Lam, S.K.S., 'The development of family mediation services in Hong Kong: Review of an evaluation study,' *Journal of Social Welfare & Family Law*, vol. 29 (1), 2007, pp3-16.

¹⁷ Kelly, J.B., 'Family mediation research: Is there empirical support for the field?' *Conflict Resolution Quarterly*, vol. 22, (1-2), p29.

¹⁸ Stipanowich, T.J., *op. cit.*, p911.

¹⁹ Stipanowich, T.J., 'ADR and the "vanishing trial": The growth and impact of "Alternative Dispute Resolution",' *Journal of Empirical Legal Studies*, 2004, vol. 1 (3)

amicably are brought in court because ADR is not valued. The concept of precedent has led to hundreds of cases being resolved in one court, thanks to the United Kingdom's example which is still applicable to all common wealth countries. This doctrine is not, however, stressed by ADR.

In conclusion, on assessment of the above Authors and their respective writings, most of their views are more bent towards Mediation as an ADR and tend to ignore the other modes of ADR which has led to redundancy as well as neglect of other modes of ADR which could also be of help in solving the case backlog in the courts of Uganda and providing justice to Ugandans.

1.12 Methodology

The research design will include both doctrinal and non-doctrinal research designs. Doctrinal research is focused with the analysis of legal prepositions, doctrines, and how they have been applied over time in the context of ADR. Data sources include legal and appellate court decisions. Doctrinal research is a comprehensive analysis of ADR enforcement in Uganda; it analyzes the relationship between laws, explains areas of difficulty, and may forecast future developments. This will be a desk review. The latter (non-doctrinal) will place a greater emphasis on society and the people, attempting to determine the impact of legal choices regarding the implementation of ADR in Uganda. I will be carrying out interviews from different people in field already like Registrars.

The Method of Data Collection

Interview Method

Oral questioning and face-to-face communication between the study and the respondents are key components of the interview approach. The interview method was chosen because it gave the researchers a chance to elicit additional data, clarification, and even the respondents' feelings and reactions throughout the conversation. To learn more about how the ADR mechanisms are used in Uganda, interviews with judges, advocates, experts in mediation, and a select group of litigants were conducted. However, given the actual roles of some of the

respondents, the material was confidential, as the study's interview guide explicitly stated.

Data Collection Instruments.

Some of the respondents will have data collected using an interview guide (a questionnaire). Due to their knowledge in ADR, a semi-structured interview guide will be created to assist in gathering data through in-person interviews with selected key informants. Similar questions will be asked in both instruments to determine whether ADR (mediation and arbitration) are being used in the commercial court, whether it has assisted in reducing the backlog of cases in the court, what difficulties have arisen from utilising that approach, and whether there are any suggestions to improve it.

The Data Quality.

Data quality control entails ensuring that the questionnaires and interview guides used for data collection are valid and reliable.

The validity of the Research instrument.

An instrument's validity is defined as the extent to which it measures what it claims to measure. The study will confirm the validity of research instruments by distributing questionnaires and an interview guide to lecturers and supervisors for changes and clarifications. This will help the study alter the research instruments by eliminating unclear questions and adding those that are related to the study objectives. The study will select two experts from outside the above categories and provide them with research equipment to evaluate.

The Reliability of the Research instruments.

The degree to which an instrument consistently measures the thing it is supposed to measure is referred to as its reliability as a research tool. The validity of the data and findings is one of the primary prerequisites for any research procedure. Dependability, consistency, and reproducibility of "the results obtained from a piece

of research”²⁰are the major concerns of reliability. The accuracy of the facts, responses, observations, and occurrences was recorded to assure the dependability of the qualitative data in the study. Before the instruments were sent to the real sample, pretesting helped to demonstrate the instrument's clarity by pointing out that questions with similar answers, erroneous numbering, and unclear instructions had been fixed.

Data collection procedure.

Prior to gathering information and conducting interviews at the Commercial Court (CADER), the researcher must obtain authorization from the Registrar overseeing the ADR related cases. Since the research required information from the Registrar and some Arbitrators, the researcher will schedule meetings with them at various times. After then, data must be gathered and ready for analysis.

Data Analysis

In ensuring there are no errors, the field's raw data must be constantly arranged, cleansed, and modified. To guarantee that data is presented and understood meaningfully, coding must be done. For the purposes of data entry and analysis, the answers from the interviews and the open-ended sections of the questionnaires must be categorised into significant, comprehensive, and representative groups.

Ethical Considerations

The research will adhere to a strict code of ethics to ensure that the study was conducted in an ethical manner. This will involve providing the respondents with full disclosure of all study results and allowing them to engage voluntarily in the study. The study's goal, estimated duration in terms of time, and methodology were all explained to the respondents, along with all pertinent information. Additionally, the survey will maintain the strictest anonymity by not sharing any personal data about the respondents. This was explained to the respondents so they

²⁰ Zohrabi, Mohammad. "Mixed Method Research: Instruments, Validity, Reliability and Reporting Findings." *Theory & practice in language studies* 3, no. 2 (2013).

would feel comfortable talking about the topics being looked at. Prior to the study's implementation, respondents' consent was requested.

CHAPTER TWO

2.0 Introduction

In this Chapter, I will be handling the gist of this dissertation which is comparing the Alternative Dispute Resolutions mechanisms and seeing which has been most effective in Uganda or that has been opted to be most effective by Ugandans and why it is so. As well as the types of Alternative Dispute Resolution and its pros and cons.

2.1 The Forms of Alternative Dispute Resolutions

The term "alternative dispute resolution" (ADR), also referred to as "appropriate dispute resolution," is a general term that covers a range of methods and techniques for resolving conflicts amicably. A non-adversarial method of settling disputes without going to court is alternative dispute resolution (ADR). The need for more effective and efficient alternatives to litigation led to the start of the ADR "movement" in the United States in the 1970s. ADR is currently experiencing a global growth due to its demonstrated superiority in resolving conflicts in a range of circumstances. The methods used to settle conflicts in the United States of America, where alternative dispute resolution (ADR) originated, include arbitration, negotiation, mediation, and rent-a-judge. Each of these methods promotes resolution.

2.1.1 Negotiation

This is a way that people resolve disagreements. The word "negotiate" comes from the Latin words "neg," which means "not," and "otium," which means "ease." Through this voluntary alternative dispute resolution procedure, compromises or agreements are established without conflict or controversy. People naturally want to attain the best possible outcome for their stance in any disagreement. Still, the keys to a good outcome are the values of fairness, reciprocal benefit seeking, and relationship maintenance. There isn't a third party to enforce a punishment or help in the resolution process. There is party autonomy between the parties in otherwards. Reaching an agreement between two or more parties with some shared interests and others that may clash or simply be different is an act of goodwill through back-and-

forth communication. Negotiation requires a lot of listening. It works when both parties are willing to listen to each other and reach an agreement or compromise. Negotiation also has a legal component. The settlement agreement must meet certain legal requirements, such as not evading taxes, and in some situations, judicial permission is required for the settlement.

Specialised kinds of negotiation are utilised in a variety of circumstances, including internal affairs, the legal system, governance, labour issues, and domestic interactions. However, general negotiation skills can be quite useful in settling any conflicts that emerge between you and others. The stages of negotiation involve preparation, discussion, goal clarification, bargaining for a win-win solution, agreement, and implementation of a course of action. Negotiation is the most adaptable of all the ADR mechanisms; parties who engage in negotiation meet in good faith to discuss their disagreement with the objective of reaching a mutually acceptable resolution, and negotiation can take place with or without the presence of an attorney.

Negotiation is described as a consensual bargaining process in which parties try to reach an agreement on a potentially contentious issue, the number of participants, and the method used. Given the prevalence of negotiation in daily life, it is unsurprising that it can be used in conjunction with other dispute resolution techniques such as mediation and litigation settlement conferences. Even though negotiation is a part of everyday life, conflict resolution is an art that can be learned, much like science, with predictions and experiments. Most ADR specialists are excellent negotiators. They can assist disputants in successfully negotiating by employing skills and knowledge.²¹ There are two kinds of negotiation namely, transactional and dispute or adversarial negotiations.

Transactional Negotiation. It is also referred to as collaborative, interest-based, integrative, value-creating, and win-win negotiations. It is founded on the positive sum negotiation theory, which indicates that negotiation is viewed as a communication to resolve disputes and maintain the connection rather than a war to win or lose. It is a problem-solving strategy that involves reciprocal dialogue. It

²¹ William Ury, Roger Fisher, Getting to Yes

aims to maintain a personal contact with the other party. Transactional negotiation is concerned with daily activities such as the purchase and sale of products and services such as houses, tickets, food, and the employment of workers, among others. It occurs in all basic institutions of human life, including marriage, family, life, education, industry, government, religion, and commerce. It is common to have face-to-face, phone, email, or chat room chats.²²

Dispute Negotiation. It is problem solving and the problem is resolving a conflict through communication.²³ Dispute negotiation process entails four general principles, namely ; planning and analysis, exchanging information, exchange concessions and compromise, reaching agreement.²⁴

According to Gerald Williams' research summarises the goals of attorneys who engage in this type of negotiation as maximising settlement for their clients, earning lucrative fees for themselves, and outwitting their rivals.²⁵ This is what makes this type of negotiation competitive and even adversarial. Nonetheless, the final decision to settle the dispute rests on the client and not necessarily on the lawyer.²⁶

The Key Components of Negotiation.

1. Voluntary . It refers to a side's willingness to take action, i.e., no party should be coerced into engaging in negotiations; instead, parties are free to accept or reject the outcome and can terminate the process at any time. The parties have two options for participating in the negotiation: they can represent themselves or designate another person to do so, such as a friend, family member, attorney, or other expert.
2. Confidentiality. This refers to privacy; that is, it is up to the parties to negotiate in secret or in public.
3. Flexible. The parties' decisions determine the extent of the negotiation. In addition to choosing the topic or issues that will be discussed during the

²²NAGLE LECHMAN, conflict and resolution, 39.

²³ ibid

²⁴ ibid

²⁵ ibid

²⁶ ibid

negotiations, the parties may also choose to use an interest-based or position-based strategy to bargaining.

2.1.2 Mediation

After Negotiation has failed the next appropriate ADR mechanism would be Mediation. Mediation is defined as the process by which a neutral third person facilitates communication between parties to a dispute and assists them in reaching a mutually agreed resolution of the dispute.²⁷ A mediator, unlike an arbitrator, has no ability to decide matters. Parties are not obliged to compromise during mediation, while compromise is an important component of the process. Each party's limits are respected. Some of the benefits of mediation include the fact that it promotes the maintenance of a strong working relationship between the disputants, the parties have greater control over their preparation phase and how the case will be resolved, it leads to a rapid resolution, and it is absolutely secret. Mediation has also been regarded as a cost-effective, speedier option with procedural flexibility. It is a non-threatening approach to dispute resolution.²⁸ Some of the principles or guidelines that are frequently implemented into mediation processes are as effective and possible as the following: (a) voluntariness. In mediation, the parties should accept only those resolutions that they feel are fair and reasonable, (b) confidentiality; proposals and concessions that one party may have made during the mediation process cannot later be raised if the mediation is unsuccessful, (c) privilege. The mediator should be provided a voluntary privilege, which means that the parties agree or there is a mediation rule that the parties will not summon the mediator to testify at a later adjudicator process if the problem proceeds to adjudication. This increases trust in the mediator and gives the mediator more flexibility in working with the parties.²⁹

Types of Mediation

Facilitative Mediation. This is also known as classic mediation; a professional mediator strives to encourage negotiation between the conflicting parties. Rather

²⁷ The Judicature (Mediation) Rules, 2013, Rule 3

²⁸ Mulolo, F.H. Alinaitwe and J.A. Mwakali. "Choice of Alternative Dispute Resolution Process in Uganda's Construction Industry." *International Journal of Technology Diffusion* 2, no.1 (2015): 28-39

²⁹ Goss, Joanne. "An introduction to alternative dispute resolution." *Alta. L. Rev.* 34 (1995): 1.

than providing recommendations or imposing a resolution, the mediator enables disputants to find their own consensual solution by examining their mutual interests. In facilitative mediation, mediators tend to keep their personal perspectives on the issue disguised.

Court-Mandated Mediation. Although mediation is often regarded as a wholly voluntary process, it might be ordered by a court that want to promote a quick and cost-effective settlement. When parties and their solicitors are unwilling to participate in mediation, their chances of settling through court-mandated mediation are slim, since they may be simply going through the motions. However, when both parties recognise the benefits of participating in the process, settlement rates increase significantly.

Evaluative Mediation. In contrast to facilitative mediation, evaluative mediation allows mediators to make recommendations, ideas, and voice opinions. Instead of focusing on the parties' underlying interests, evaluative mediators may be more likely to assist parties in assessing the legal merits of their arguments and determining fairness. Evaluative mediation is most commonly employed in court-ordered mediation, and evaluative mediators are frequently solicitors with legal competence in the area of dispute.

Transformative Mediation. In transformative mediation, mediators empower disputants to resolve their conflict and encourage them to recognise each other's needs and interests. Transformative mediation, which was first articulated by Robert A. Baruch Bush and Joseph P. Folger in their 1994 book *The Promise of Mediation*, is based on the facilitative mediation model. At its most ambitious, the process seeks to transform the parties and their relationship by teaching them the tools necessary to effect positive change.

Med-Arb. This type of Mediation begins with the parties agreeing on the rules of the process. Unlike most mediations, they usually agree in writing that the outcome of the procedure will be binding. They then attempt to resolve their argument through mediation.

If the mediation reaches an impasse or if issues remain unresolved, the procedure is not complete. At this point, the parties can proceed to arbitration. The mediator

can act as an arbitrator (if qualified) and give a binding decision immediately based on her findings, either on the case as a whole or on the outstanding issues. Alternatively, an arbitrator may take over the matter after consulting the mediator.

Arb-Med. According to Richard Fullerton in a Dispute Resolution Journal article, arb-med is another type of mediation where a trained, impartial third party hears the evidence and testimony of disputants in an arbitration; writes an award but withholds it from the parties; tries to mediate the parties' dispute; and, should the parties be unable to come to an agreement, unseals and issues her previously determined binding award.

According to Fullerton, the procedure allays worries at Med-arb on the improper use of private data while maintaining the pressure on all sides to come to a consensus. Notably, though, depending on fresh information learned during the mediation, the arbitrator/mediator is unable to modify her prior ruling.

E-mediation. According to Jennifer Parlamis, Noam Ebner, and Lorianne Mitchell in a chapter of the book *Advancing Workplace Mediation Through Integration of Theory and Practice*, a mediator provides mediation services to parties who are physically separated or whose conflict is so intense that they cannot stand being in the same room. E-mediation can be a completely automated online conflict resolution method with no involvement from a third party at all. However, the authors of the chapter believe that e-mediation will more closely resemble traditional facilitative mediation conducted remotely. Video conferencing systems such as Skype and Google Hangouts allow parties to communicate in real time while receiving visual and audible feedback. Early research findings indicate that technology-enhanced mediation can be equally successful as traditional meditation practices. Furthermore, parties frequently describe it as a low-stress practice that promotes trust and happy emotions.³⁰

³⁰Katie Shonk, Types of Mediation; Choose the Type Best suited for your conflict. <https://www.pon.harvard.edu/daily/mediation/types-meditation-choose-type-best-suited-conflict>, accessed on 30th April, 2023 at 11:15

The Characteristics that set Mediation apart.

Though mediation is primarily informal, some factors are required for the process to be amicable. These aspects include the conflicting parties, the mediator, the mediation procedure, and the mediation context. The mediation paradigm refers to the opposing parties, the mediator, and their relationship during the mediation process. A third-party mediator brings the parties together, handles the logistics of the mediation process, and removes impediments to negotiation via joint sessions, private plenary meetings, and/or sub-groups.³¹As a result, the mediator must and should remain neutral, with no bias against any party. In addition, mediation must be held in confidentiality, thus the parties must determine the outcome of the outcome of the mediation process.

While it is challenging to define general categories of cases that are suitable for mediation or conciliation, the following characteristics of appropriate cases may be mentioned: claims where one or both parties are seeking remedies that are not available through the traditional court system (such as an apology, an explanation, flexibility in relation to financial repayments, changes in administrative procedures), claims where the parties wish to resolve the dispute in a confidential and private manner, and claims where the parties wish to maintain or restore their relationship with the other party (parents, business partners, siblings).³²

Lastly, Mediators use a variety of methods and tactics to assist parties in resolving disputes through mediation. Because of the personal nature of the claims involved, the main characteristics All parties should avoid corruption; parties should understand that the mediator does not make decisions; rather, the parties decide, therefore they should not engage in acts of corruption. Parties should allow impartial third parties to aid conflicting parties in finding solutions without pushing them to settle, all parties should be trustworthy and honest in order to have peaceful

³¹ Craig Pollack, "The role of the mediation advocate: A user's guide to mediation" 73 (1) *Arbitration* 20 (2007), p 20-23.

³² John S Murray, Alan Scott Rau & Edward F. Sherman, (1996) *Processes of Dispute Resolution: The Role of Lawyers*. New York: Foundation Press.

mediations, justice and fairness in resolving the issue, and ultimately, respect for all parties.

2.1.3 Conciliation

This is the process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved especially a relatively unstructured method of dispute resolution in which a third-party facilitates communication between parties in an attempt to help them settle their differences.³³ A conciliator talks with the parties individually and collectively throughout the conciliation process as part of alternative dispute resolution (ADR) in an effort to mediate their disputes. A body devoid of political power intervening to settle an international disagreement is known as conciliation. that is trusted by the parties and accountable for looking into every facet of a disagreement before putting forth a non-binding solution. Thus, it is essential that the parties have faith in the conciliation agency. Conciliation is different from arbitration in that the conciliator typically lacks the authority to summon witnesses, gather evidence, or make a conclusion. Additionally, the conciliation procedure itself has no legal status and makes no award.

It also varies from mediation in that the primary objective is to reach a conciliation; in mediation, the mediator seeks to steer the conversation in a way that maximizes the needs of all parties, considers their feelings, and reframes representations. A strategy that is worth mentioning here has been shown to be effective in recent research on negotiation procedures. Every party receives impartial assistance from a conciliator in compiling a list of all their goals. Conciliation findings are not legally binding rulings; they are merely recommendations.

2.1.4 Arbitration

This is the process by which disputing parties, instead of taking their case to regular courts of law, submit the matter to a third party for resolution and consent to be bound by the outcome. The third party is an impartial, unbiased middleman who has received ADR training. For hundreds of years, arbitration has been the preferred means of resolving business disputes on a global scale. The judiciary acknowledges

³³ Bryan A. Garner, *The Black's Law Dictionary*, Pg 350

its worth, and statutes that give arbitrators authority and control the procedure govern it. Arbitration has been widely used in Uganda in recent times to settle disputes pertaining to business and other matters.³⁴ While adjudication is a common element of both litigation and arbitration, the parties have the option to choose the arbitrator and the mode of arbitration. For example, the parties may decide to forego a formal hearing in favour of giving the arbitrator only written submissions and supporting documentation if the disagreement is evident and does not include any factual issues. This method is called "documents-only arbitration."

In other circumstances, the parties may choose a complete hearing. Although arbitration has generally been connected with labor, economic, and international conflicts, it is increasingly being used in other contexts, such as family issues.³⁵ The Advantages of Arbitration include; Party Autonomy. This involves the parties having power to choose by themselves which procedure whether institutional or adhoc arbitration will work for the parties, the Arbitrators will be involved in the process. It is legally binding and its decisions and awards can be enforced in court.³⁶ Lastly flexibility and Confidentiality.

The Types of Arbitration.

Administered (institutional) Arbitration. Throughout the process, an administered approach necessitates the active participation of a distinct administering organisation. Under the supervision of a court or a separate ADR organisation, administered alternative dispute resolution (ADR) takes place. This organisation arranges and oversees the ADR proceedings, handling docketing, filing, and providing logistical, administrative, and secretarial support. In essence, it works similarly to a clerk. Since it is heavily involved, the administering body usually charges a substantial fee for its services. This is in addition to the fee charged by the neutrals(s).

³⁴Anthony Conrad K. Kakooza, ARBITRATION, CONCILIATION AND MEDIATION IN UGANDA: A focus on the practical aspects.

³⁵Lesa B Morrison "Justice Through Empowerment" A Transformative Difference" Alternative Dispute Resolution Vol 1, No.1, pgs 124-147.

³⁶ The Arbitration and Conciliation Act, Section 36

Self-Administered (Ad-Hoc) Arbitration. A process that is self-administered is intended to run without the assistance of a different administering body. Rather, the process is managed by the neutral party or parties themselves. If called upon by the parties' agreement or if the parties are unable to select a neutral for whatever reason, the process may also involve an ADR provider firm, which only aids with the neutral selection process. The chosen neutral oversees all areas of the procedures that are not under the parties' control as per their agreement, such as maintaining the required records, setting up the hearing place, and deciding on a neutral charge and procedure for collection. The processes may correspond to institutional rules and procedures, such as those provided in the CPR's Rule for Non-Administered Arbitration and the CPR Mediation Procedure, or to a procedure created and agreed upon by the parties. A significant advantage of this technique is that such actions often cost less than institutional processes because there is no need to pay an institution a portion of the claim as a filing fee, or any fees, if the parties can continue independently.

Assisted(Hybrid) Arbitration. When utilising a self-administered strategy, circumstances may come about when a certain kind of matter requires restricted administration. In certain situations, the parties may request supported dispute resolution services, such as fund holding, award review, serving non-respondents, and customised neutral selection services. Parties only pay for the services they really use while using this method. The aided resolution strategy provides parties with the best of both worlds by combining the adaptability of a self-administered settlement process with sporadic administrative intervention.

2.2 The Advantages of ADR.

The positive aspects and downsides of various ADR solutions are still being discussed. It should be taken into consideration on who is who is making the claim and why when considering any claims made for a dispute resolution method. Certain statements are accurate, but only in certain situations.

ADR is cheap. A common claim made by mediators is that mediation is quicker and less expensive than going to court. In contrast to bringing legal action, mediation

could be significantly less costly. However, studies released by the government show that this isn't always the case. As one might expect, parties thought mediation was less costly and quicker than going to a formal court procedure when a settlement was reached through it. When there was no settlement, they thought that the mediation had just increased the length and cost of the procedures.

ADR is quicker than court. Certain methods of alternative dispute resolution may need less time than going to court. For instance, your case might be sent to mediation before a hearing is set if you are involved in a small claim in court. ADR processes can be drawn out for a while for other reasons, like ombudsman investigations. Thus, before making a choice if the issue needs to be resolved right away, speak with a counsellor. You might need to go to court to get an injunction to stop someone from doing anything if your safety or place of abode are in danger.

Not Adversarial. A situation that is currently bad could get worse if you go to court. The adversarial nature of the judicial system, which pitches parties against one another until a winner and a loser emerge, is the cause of this. By talking to each other and coming up with a solution you can both live with, you can keep an ongoing connection going. This could be useful if you are having problems with your landlord, your ex-partner, your neighbour, or the school where your child attends. This does not mean that you have to agree with someone when you disagree with them or keep quiet when you do. It is hearing what the other person has to say, sharing your viewpoint with them, and choosing a plan of action.

Flexibility.³⁷ ADR processes are usually more flexible than court cases. Most ombudsmen will investigate your complaint through letters and documentation, without holding a formal hearing. A face-to-face meeting between the parties is usually arranged by mediators. Acas will try to negotiate a settlement by calling several times. Thus, think about whether you would want to settle a dispute in person, over the phone, in writing, by email, or both.

³⁷Valbon Mulaj, The Advantages and Disadvantages of Arbitration in relation to the regular courts in Kosovo, <https://core.ac.uk/download/pdf/163102202.pdf>, accessed on 30th April, 2024 at 14:56

A lasting solution to the dispute at hand. A solution that is acceptable to both parties can be established through effective mediation. Mediators assist conflicting parties in engaging in creative dialogue about a range of options. They will strive for a resolution that serves the interests of all parties, as opposed to just trying to reach a feasible compromise. This could have an effect on what happens afterward. Research on family mediation indicates that agreements reached through mediation are more likely to be put into effect and endure longer than those that are imposed by a judge. The majority of mediated settlements in small claims court disputes do not call for the use of bailiffs to carry out their terms. However, court orders often require the winning party to take additional steps and pay fees in order to enforce them³⁸

Confidentiality. The litigation process is a public record that anyone can usually access. Alternative dispute resolution is usually confidential, meaning the dispute stays between the parties and the neutral party.

2.3 The Disadvantages of ADR.

Alternative dispute resolution (ADR) might not be appropriate or even dangerous for one of the parties in some situations. It's a good idea to get an unbiased legal opinion on this. The following are some things to think about, even though it is imperative that lawyers and other legal experts use professional judgement in every circumstance:

Binding decisions. Arbitration, and often adjudication, are processes that result in legally binding decisions. This means that you cannot reject the decision if you don't like it, and you can't take the claim to court instead.

No ruling on legal rights and entitlements. ADR procedures do not grant you a decision regarding your legal rights, particularly those related to discrimination and human rights. You won't receive a ruling on whether or not the law has been broken, but you can still settle a disagreement regarding these matters.

³⁸ <https://asauk.org.uk/wp-content/uploads/2013/08/Why-use-ADR.pdf>

No precedent. Agreements reached in mediation do not act as precedents in future cases. They are usually private and confidential. If you need to establish a legal point that other people can rely on, you may need to go to court.

Reluctant opponent. Mediation requires both parties to be willing to give it a try, so if the other side is not willing to mediate, you might need to go to court instead.

Power differences. The parties could not have equal power, which would render in-person mediation unjust. This could involve mediation between a person and a major organisation, such a municipal government or business, where the person may be at a disadvantage due to the organization's size and resources, or mediation between a family member or neighbour in situations where there has been violence or the threat of violence. This does not necessarily imply that mediation is improper, but it is something to think about.

Lower compensation amounts. Ombudsmen have the authority to award compensation, but their amounts are frequently less than what would likely be awarded in court. Studies reveal that settlement amounts in minor claims mediation are typically less than amounts demanded. Should you require a substantial amount of money as compensation, the court may grant you a larger award.

2.4 The Efficacy of the Alternative Dispute Resolutions in Uganda.

For hundreds of years, arbitration has been the preferred means of resolving business disputes on a global scale. The judiciary acknowledges its worth, and statutes that give arbitrators authority and control the procedure govern it. Arbitration has gained popularity in Uganda as a means of settling legal disputes, including those pertaining to business.³⁹ The topic of speed and cost arises to explain the preference for arbitration over court proceedings. However, it has been suggested that informal procedures are most effective when there is a significant degree of mutuality and interdependence, which is true in the majority of commercial partnerships.⁴⁰

³⁹Anthony Conrad K. Kakooza, Arbitration, Conciliation and Mediation in Uganda: A focus on the practical aspects.

⁴⁰ ibid

It's important to note that effective means the likelihood of achieving desired end by expending effort.⁴¹ This therefore means that will that something be successful in producing a desired or intended result. Therefore, Arbitration is recognized as an effective mechanism for dispute resolution, particularly in the commercial and construction sectors.⁴² Thus the effectiveness of Arbitration in Uganda can be attributed to several factors;

Arbitration has a legal framework. The Arbitration and Conciliation Act, Uganda's arbitration legislation, is derived from the Unicitral Model law. Uganda's adherence to the New York Convention guarantees the enforceability of foreign arbitration rulings within the country.⁴³ The enforcement of Adr awards is also provided for in the Arbitration and Conciliation Act that the courts have the power to do so.⁴⁴ Consequently, any nation that has accepted the Convention that was adopted by the United Nations Conference on International Commercial Arbitration on June 10, 1958, may use arbitral verdicts rendered in Uganda. On the other hand, only nations with a reciprocal agreement in place for the execution of judgements can apply court rulings outside of Uganda.

Practical Awards. Traditional litigation can be substituted by arbitration, which is quicker, easier to access, and frequently less expensive. It offers a confidential platform for the settlement of disputes, enabling parties to choose arbitrators with specialized knowledge.⁴⁵

Recent developments. A greater body of law governing arbitration in Uganda has been established as a result of an increase in post-arbitration rulings. Important decisions have mostly addressed grounds for contesting the implementation of foreign awards or for annulling domestic awards.⁴⁶ This basically means that

⁴¹ Bryan A. Garner, *The Black's Law Dictionary*,

⁴² Anthony Conrad K. Kakooza, *Arbitration, Conciliation and Mediation in Uganda: A focus on the practical aspects*.

⁴³ Moses J. Adriko, Gulam Hussein Dawood, *Key Arbitration Caselaw Developments in Uganda 2023-2024*

⁴⁴ Arbitration and Conciliation Act, Section 36

⁴⁵ Anthony Conrad K. Kakooza, *Arbitration, Conciliation and Mediation in Uganda: A focus on the practical aspects*.

⁴⁶ Moses J. Adriko, Gulam Hussein Dawood, *Key Arbitration Caselaw Developments in Uganda 2023-2024*

Arbitration will now have precedent or cases that upcoming can make references to in their submissions.

Sector-Specific Effectiveness. Although discussion and mediation are regarded better in terms of efficacy, arbitration is thought to be effective in the construction industry.⁴⁷

Judicial Attitude; Except under clearly defined instances, courts normally avoid interfering with arbitration proceedings and awards. The specialist Commercial Court/Division hears applications to enforce or set aside commercial arbitration verdicts, contributing to the growing body of arbitration case law.⁴⁸ After giving reasons as to why Arbitration is the most effective form of Alternative Dispute Resolution in Uganda, we shall compare the other types of dispute resolution (Mediation, Conciliation and Negotiation) with Arbitration and why they aren't as effective as Arbitration as seen below;

2.4.1 Arbitration & Mediation

The Similarities

- Arbitration and mediation both require collaborating with a third party to assist resolve a dispute.
- The dispute and the process of resolving it can be kept private rather than entering public record through a judicial procedure.
- The procedure of resolving the issue can be speedier and less costly than if the case goes through the courts.
- Both arbitration and mediation may be necessary in specific instances, such as when a contract has an arbitration clause or when state laws mandate mediation in certain situations, such as custody disputes.
- The parties involved in a dispute can normally select their arbitrator and mediator; however, some contracts specify in advance who will oversee arbitration.

⁴⁷Albert Bahumeka, Alternative Dispute Resolution in the Construction Industry: A Case Study of Uganda

⁴⁸Anthony Conrad K. Kakooza, Arbitration, Conciliation and Mediation in Uganda: A focus on the practical aspects.

The Differences in both but also in relation to Efficacy.

1. Process and Role of Third Parties

- **Mediation:** In mediation, a neutral third-party mediator facilitates communication between the disputing parties. The mediator helps them engage in guided discussions to reach a mutually beneficial solution. Mediation is typically non-binding, meaning that the parties are not required to resolve their differences through this process.
- **Arbitration:** In arbitration, a neutral third-party arbitrator acts more like a judge. The arbitrator evaluates evidence and arguments⁴⁹ presented by each party and makes a final, binding decision to resolve the dispute. Unlike mediation, arbitration results in a legally enforceable outcome.⁵⁰

2. Finality

- **Mediation:** A legally-binding settlement is not always the result of mediation. The agreement made during mediation is up to the parties to accept or reject.
- **Arbitration:** Awards made in arbitration are enforceable in court and have legal power behind them. The parties are required to follow the arbitrator's ruling once it is made.

3. Expertise

- **Mediation:** While mediators may not always be experts on the issue of the disagreement, they frequently have specific training in communication and conflict resolution.
- **Arbitration:** Specialist knowledge in the particular field of dispute is frequently possessed by arbitrators. Their proficiency enables them to render well-informed decisions grounded in the presented data.

4. Predictability:

- **Mediation:** its outcomes may be unpredictable according to the parties' willingness to communicate and reach an agreement.

⁴⁹ Arbitration and Conciliation Act, Section 24

⁵⁰ Ibid, Section 35

- **Arbitration:** it follows established norms and processes, giving parties a better knowledge of the process and potential results.⁵¹

2.4.2 Arbitration & Conciliation

The Similarities

- A **Neutral third party**⁵² who helps resolve disagreements. In arbitration, this third party is known as an arbiter. In conciliation, the third party is known as the conciliator.
- **Alternative Dispute Resolution (ADR):** Both procedures fall under the umbrella of alternative dispute resolution. ADR seeks to give an alternative to traditional court action for settling disputes.
- **Voluntary Process:** Both arbitration and conciliation include voluntary participation from the parties. They agree to submit their issue to a third party for settlement.
- **Confidentiality:** Both processes frequently retain secrecy. Information exchanged during arbitration or conciliation is usually kept private.⁵³
- **Flexible Procedures:** Both systems allow for more flexible procedures than traditional judicial proceedings. Parties can modify the process to their own requirements.⁵⁴

The Differences and how Arbitration is more Effective

1. Legally binding:

- **Arbitration:** In arbitration, the arbitrator's decision is legally binding. When the arbitrator reaches a decision, it becomes enforceable. **Conciliation** is not legally binding. Unlike Conciliation where the Conciliator just makes a report of what has been agreed upon by the

⁵¹ Christy Bieber, Adam Ramirez, Mediation v Arbitration, Pros and Cons , <https://www.forbes.com/advisor/legal/mediation-vs-arbitration/>, accessed on 2 May, 2024

⁵² Arbitration and Conciliation Act, Section 11, 51

⁵³ *ibid*, Section 60

⁵⁴ *Ibid*, Section 19

parties but it isn't legally binding unless court approves and adopts it as decision and enforces it as though it were an arbitral award.⁵⁵

2. **Efficiency:** Arbitration is Quick because of its binding nature. and Less expensive because the parties will have a binding decision and won't have to spend more money in court to again help solve the dispute at hand which in turn is more costly than conciliation for its non-binding nature.

2.4.3 Arbitration & Negotiation The Similarities

- **Voluntary Process:** Both arbitration and negotiation include voluntary participation from the parties. They agree to submit their issue to a third party for settlement.
- **Alternative Dispute Resolution (ADR):** Both procedures fall under the umbrella of alternative dispute resolution. ADR seeks to give an alternative to traditional court action for settling disputes.
- **Confidentiality:** Both processes frequently retain secrecy. Information exchanged during arbitration or conciliation is usually kept private.

The Differences between negotiation between Arbitration and some of which are what make Arbitration more effective.

1. **The Possible Outcomes.** Negotiation has four possible expected outcomes which include; (win-win, win-lose, lose-lose, lose-win) unlike Arbitration has no expected outcome.
2. **The Binding Nature.** Negotiation has no binding decisions whereas Arbitration is binding in decision making and can be enforceable in court⁵⁶ therefore making it more effective among all the Alternative Dispute Resolution mechanisms.
3. **Third Party intervention.** Negotiation has no third party involved thus hindering the expertise of a third party to help in the revolving of the dispute. Whereas Arbitration has the involvement of a third party⁵⁷ who in most cases

⁵⁵ Ibid, Section 59

⁵⁶ Ibid, Section 35& 36

⁵⁷ Ibid, Section 11

is an expert (judge) who already has experience in the area of dispute thus can help easily solve the dispute at hand.

4. **Law framework.** Negotiation has no structured laws to help in the dispute resolution. However, Arbitration has structured laws that make it a reliable and effective due to its laws that are referred to whenever the parties are stuck on how to proceed.

2.5 Conclusion

Conclusively, due to its binding nature and the enforcement of its rulings, arbitration is determined to be the most successful method of resolving disputes in Uganda.⁵⁸ After reading Section 59⁵⁹ of the act, there may be a misconception that Conciliation is binding; however, that is not the case because the Conciliator simply provides a report on the outcome of the dispute resolution agreed upon by the parties, and it is up to the court to either adopt and enforce it or not, which is why Section 59 sheds more light on the issue that if the court adopts this report, it will be legally binding as though it were an arbitral award, unlike Arbitration, where the arbitrator has the power to make decisions and they are binding upon the parties. In other words, he or she makes a decision and not a report.

⁵⁸Ibid, Section 35

⁵⁹ Ibid, Section 59

CHAPTER THREE

3.1 Introduction

This Chapter will be handling the non-legal aspects of Arbitration. Like in Religion, the ATS, globally, other countries and regionally as well as its roots in Uganda

3.2 Non-Legal Aspects of Alternative Dispute Resolution.

As evident, alternative dispute resolution has long been a part of global culture, appearing in various religions, traditional cultures and the era of discovery. However, it's important to note that, Alternative Dispute Resolution(ADR) is the name given to methods of resolving disputes outside of the formal courtroom litigation process.⁶⁰ Below is a little expansion on each of the categories mentioned respectively.

ADR roots in religion. The main religions that have a history of ADR are Christianity, Islam & Judaism. In this text emphasis is on the history in Christianity. *The Story of King Solomon.*⁶¹ Solomon was king of Israel around 960 B.C. Although he was essentially the law of the land, his improvisational form of jurisprudence in many ways makes him more akin to an arbitrator than a judge. One famous case holds lessons for all who seek to understand the true nature of justice. Two prostitutes came before the king, according to the story. The first woman said that the second woman had rolled over in the night and crushed her infant, who was only a few days old. This second woman then took the living baby of the first woman and replaced it with her dead child. When it was her turn to speak, the second woman accused the first of having carried out much the same scheme. Both babies were about the same age, and no one else could tell them apart. Solomon dramatically called for his sword, saying he would cut the living child in two so that each woman could have her half. One woman agreed. The other said that she should award the baby to her accuser so that the child's life would be spared. Solomon awarded the child to the woman who was willing to give it away. The case has been endlessly parsed by lawyers and child welfare advocates. Why couldn't Solomon have worked out joint custody? How would he know which mother would be a better one in the long run?

⁶⁰ O'Brain Dennison/ Pamela Tibihikirra Kalyegira, Legal Ethics and Professionalism A Handbook for Uganda

⁶¹ King James Bible 1769/2008 , 1Kings 3:16-28

In reality, the king's wisdom shone through, and arbitrators got an excellent early role model.

ADR in traditional Cultures. Anthropological and sociological research on traditional communities might provide insight into how early humans would have settled conflicts without resorting to the use of clubs, fists, or poisoned arrows, and can help us trace the origins of ADR. Many of these conflict resolution techniques are glaringly inconsistent with our Western worldview. However, they have a lot to teach us about the value of conflict in bringing up the issues that arise in daily life and how to take advantage of it to strengthen bonds and create enduring harmony.⁶² One excellent example of traditional ADR conflict settlement is provided by the *Bushmen of the Kalahari*. The Bushmen are hunter-gatherers who inhabit Namibia and Botswana's vast, dry plain. The Bushmen have mostly maintained their ancient methods of living, including a method of resolving conflicts outside of courtrooms and warfare, despite the influx of agrarian people. The Bushmen are not a submissive tribe at all. Land, food, and mate rivalry are commonplace. However, when a disagreement emerges, they are fast to find someone else to mediate and slow to engage in combat. When two people are at odds, they invite others to hear all sides of the story. If arguments turn hostile, certain tribal members are given the responsibility of securing the hunters' poison arrows, a precursor to contemporary gun control. If small-scale efforts prove unsuccessful, the entire community is engaged in the resolution process. Ury notes⁶³, "When a serious problem arises, everyone gathers—all men and women—and they discuss it at length. Each person has the opportunity to voice their opinion. It can take two or three days. This transparent and inclusive approach is sustained until the dispute is effectively resolved through dialogue." This approach involves mediation and consensus-building.

Lastly, After the fall of the **Roman Empire** around 476 AD, fighting between nobles to resolve disputes in medieval Europe was the rule rather than the exception.

⁶² A History of Alternative Dispute Resolution the Story of a Political, Social and Cultural Movement by Jerome.T.Barret, Joseph Barret

⁶³ APA. Fischer,R.,Ury ,W.,& Patton, B. (2006). Getting to yes (2nd ed). Penguin Putnam

Nevertheless, forms of ADR did exist, though some aspects of them were truly medieval. By the seventeenth century, Western Europe's coastal states were engaged in extensive commercial commerce and maritime operations. Commercial activity and the expansion of diplomacy, fueled by a stronger sense of nationhood and competitiveness, increased the demand for the usage of ADR. Although war remained the dispute resolution technique of last resort, a developing middle class, with an interest in peaceful resolution of commercial disputes, and a developing diplomatic class, with an interest in resolving international disputes, promoted negotiation, mediation, and arbitration as alternatives to battle.

Uganda was a protectorate of the British. Uganda follows common law in England. This indicates that once the British colonized Uganda, we as a nation embraced their style of governance through the ratification of the 1902 Ordinance,⁶⁴ which established new guidelines for Ugandan governance. This law is based on the arguments made by English practitioners who helped to shape the English legal system in court. Following the *Vynior's Case*⁶⁵, the Commercial Court in England experienced a major change in the law of arbitration, notably the judgment, which focused on Lord Coke's statement on the doctrine of revocability (contract clauses controlling the resolution of future conflicts between the parties).

In brief, Mr Vynior (the plaintiff) filed a court case against Mr Wilde based on the one-hundred-pound bond he imposed. He requested an additional twenty pounds as damages plus the bond's punitive value. The plaintiff claimed that the respondent gave the bond to ensure compliance with the arbitration clause, which addressed current and future issues under the agreement. He further claimed that the respondent removed the plaintiff's power to bring their matter to arbitration, in violation of their promise to "stand to and abide by the award." Despite objections from the respondent, the court found that Vynior could collect the cash for his bond and alleged damages. Three reasons were provided by Lord Coke for his decision: first, the respondent was obligated by the bond to uphold any arbitration award, even in the event that he withdrew his submission to arbitration; second, he was

⁶⁴ The 1902 Ordinance, Article 15

⁶⁵ *Vimar v Wilde (Vynior's Case)*, 77 Eng. Rep. 595 (KB) (1609).]

obliged by any award made by the arbitrator. Lord Coke's revocability concept was not explained in detail in this instance because common law judges seldom offered the explanations required to make sense of their rulings.

The Commercial Court in England grew out of a notice issued to Judges of the Queen's Bench division in February 1895, creating commercial list to handle cases of a commercial business nature. In this case, a particular judge would specifically be dedicated to handling commercial business in order to bring a speedy determination to such cases.⁶⁶It was not till 1908 that the Commercial Court, which was part of the High Court, came to be known as the Commercial Court.⁶⁷ In 1993, in the UK, a Practice Statement issued by the Commercial Court in London encouraged judges to adopt ADR techniques like mediation and conciliation in order to address the challenge of mounting case backlogs.⁶⁸ Globally, the change towards adopting ADR as a credible method of dispute resolution started as early as 1976. According to Kiryabwire, this change came about as a result of many factors like change in international trade that aimed at creating a dispute resolution mechanism that is universal yet at the same time insulated from national court and which would solve foreign business concerns.⁶⁹ Frank EA Sander, a law professor, developed "Multidoor Court House" in 1976 as an alternate strategy to decreasing court backlog in the United States. The strategy would allow lawsuits to be settled quickly. Following this, the "settlement week" was introduced in the judiciary, during which civil proceedings were suspended for one week between 1987 and 1989, resulting in 700-900 cases being mediated with a 53% success rate.

In Africa, As a Continent, we are not unfamiliar with ADR. We are not rendered foreign by the advent of certain phrases, laws, regulations, and/or terminologies. This is the rationale behind the claim by some that ADR is synonymous with African Dispute Resolution. The aforementioned demonstrates how ADR is likewise changing

⁶⁶ Commercial Court (England and Wales), http://en.org/wiki/commercial_court , (England_and_Wales) (accessed on 14/02/2023).

⁶⁷ ibid

⁶⁸ ibid

⁶⁹Geoffrey Kiryabwire, *Mediation of Corporate Governance Disputes through Court annexed mediation: A case study from Uganda*. A paper given to The Global Corporate Governance Forum on Mediating Corporate governance disputes, World Bank office, Paris – February 12, 2007, pg. 4.

quickly to keep up with the times. African conflict resolution systems have always placed a strong emphasis on social cohesiveness and reconciliation over punitive justice. The goal of any penalty administered to an offender has always been to promote healing for the community, the victim, and the victim's family. Therefore, the validity of the ideas found in most ADR systems today may be traced back to our "original African Concept." A fact I believe we should be proud of.⁷⁰

As a 'African Concept', one would expect Africa to embrace it wholeheartedly. This is not the case. The message across Africa is mixed. ADR appears to be a natural procedure for resolving disputes across the continent. With its emphasis on flexibility and informality over precise legal rights and obligations, one would anticipate ADR to be more common in our region. However, it remains largely underdeveloped throughout Africa. African disputes are widely represented in international arbitration, according to a 2018 SOAS Arbitration in Africa survey. That being so, African arbitrators, counsel, and tribunal secretaries cannot all claim the same thing. Concerns have been raised by this discrepancy, especially among African arbitrators. A few of the explanations mentioned in papers that have been published and at conferences can be broadly divided into two categories: knowledge of competent African arbitrators; and confidence in the competence of African arbitrators.

That said, a number of jurisdictions (including Algeria, Chad, Equatorial Guinea, Gabon, Ghana, Malawi, Namibia, Nigeria, Republic of Congo, Rwanda, Senegal, Sierra Leone, Tanzania, and Uganda)⁷¹ have included mandatory mediation or conciliation procedures of some kind into specific civil litigation processes. Generally speaking, unless the parties have expressly agreed to it in writing, ADR is not required. Nonetheless, it is thought to be a beneficial procedure that should be used more widely. Numerous local attorneys have mentioned that their nations are about to undergo ADR reform. It will be appropriate to discuss a few prominent nations at various points in the ADR process and how they have affected African lawyers.

⁷⁰ Lawyers and Alternative Dispute Resolution, Dr. Agaba John Elachi, <https://lawyersofafrica.org/wp-content/uploads/2019/08/African-Lawyers-and-Alternative-Dispute-Resolution.pdf>

⁷¹ A Multi-Jurisdictional Review Dispute Resolution in Africa

ADR in South Africa. The Arbitration Act No. 42 of 1965 governs the arbitration framework in South Africa. The Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 was enacted after South Africa signed the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1976. This indicates that South Africa recognizes and upholds judgments from international arbitration.

Even after the democratic government took over the apartheid administration, ADR was successful in resolving labor conflicts, family concerns, and land claims. As a result, the South African government established several dispute resolution centers, such as family mediation boards, local community courts, the Commission for Conciliation, Mediation, and Arbitration (CCMA) for labor disputes, and the National Land Reform Mediation Panel for land disputes. In South Africa, there are numerous methods for resolving conflicts, including conciliation, mediation, arbitration, fact-finding, and con-arb, which combines conciliation and arbitration. The most common formats are conciliation and arbitration.⁷² Their tasks include, among other things, conciliating/mediating and arbitrating workplace conflicts under the Labour Relations Act No. 66 of 1995. The Act mandates disputing parties in employment disputes to undertake conciliation/mediation and refers unresolved problems to arbitration. This system minimizes the use of legal representation, allowing parties to get justice without incurring the significant expenditures that are frequently associated with it. South Africa is making progress in ADR and is proud to have one of Africa's fastest emerging alternative dispute resolution (ADR) systems. It has been proposed that the scope of the application of ADR in South Africa should be increased further, specifically to include the developments in UNCITRAL particularly as it relates to arbitration. This would widen the scope of application of the South Africa Act, including foreign issues. The lack of this scope has resulted in international firms seeking to resolve their issues looking to other jurisdictions such as Mauritius.⁷³

ADR throughout Egypt. In Egypt, arbitration is becoming a more and more significant tool for resolving business and investment conflicts. An important step

⁷² Petrina Ampeire, ADR in South Africa, 9th December 2017, <https://imimmediation.org/2017/12/09/adr-south-africa-brief-overview/>

⁷³ *ibid*

toward creating a thorough framework for the nation's arbitration procedures was the adoption of Arbitration Law No. 27 of 1994. Regulations pertaining to the creation and legality of arbitration agreements, the arbitrability of disputes, the make-up of the arbitral tribunal, arbitral processes, and the enforcement of arbitral awards are outlined in the law. The Court of Cassation's and the Supreme Constitutional Court's judicial precedents have been crucial in enhancing the provisions of the Arbitration Law.⁷⁴ Although the Arbitration Law is the primary source for regulating the extrajudicial dispute resolution mechanism, the country's unrest over the past While the country's instability in recent years has prompted the establishment of additional, faster, and more flexible processes for the settlement of investment disputes, the Arbitration Law remains the major source for controlling the extrajudicial dispute resolution mechanism. Additionally, Egypt has ratified a number of international agreements that regulate arbitration, the terms of which have been integrated into the national legal framework of the nation.⁷⁵ Although Egypt's judiciary has historically been seen as the principal, and occasionally the only, forum for the resolution of legal disputes, the system has grown increasingly overburdened in recent years, making it unable to keep up with the rapid speed of contemporary business transactions. Moreover, the intricacies inherent in several contemporary investment conflicts have hindered state courts from rendering well-informed and prompt rulings in matters of this nature.⁷⁶ With the adoption of Law No. 27 of 1994 on Arbitration in civil and Commercial Matters (Arbitration Law), the Egyptian legislature took a significant step toward promoting arbitration as a parallel pathway for settling disputes, especially those pertaining to investment and commerce. These shortcomings of the traditional judicial system were exacerbated by investors' desire to maintain confidentiality regarding their disputes and to have a say in the composition of settlement tribunals. The Law creates a broad framework that permits and governs arbitration, which is Egypt's primary alternative dispute settlement method.⁷⁷

⁷⁴Legal Framework for Arbitration by Mohamed Oweis Taha

⁷⁵Lawyers and Alternative Dispute Resolution, Dr. Agaba John Elachi , <https://lawyersofafrica.org/wp-content/uploads/2019/08/African-Lawyers-and-Alternative-Dispute-Resolution.pdf>

⁷⁶ Ibid

⁷⁷ ibid

Regionally, The East African Community (EAC) was created by the EAC Treaty in 2000. As of 2024, it has seven members: the Democratic Republic of Congo, the republics of Burundi, Kenya, Rwanda, South Sudan, Uganda, and Tanzania. The EAC Treaty established the East African Court of Justice (EACJ) under Article 9.⁷⁸ Under Article 32 of the EAC Treaty,⁷⁹ When a contractual dispute resolution clause designates the EACJ as having arbitral jurisdiction, or by agreement after a dispute has arisen, parties may refer arbitration to the EACJ. The East Africa International Arbitration Conference (EAIAC), which was established in 2012 to support the growth of arbitration practice in East Africa and bring together the private sector, investment community, regional and international arbitrators, and legal practitioners to exchange best practices and network, is a testament to the commitment of arbitration in the region.⁸⁰

Although Uganda's growth and progress in mediation and arbitration is a success story in the making, this was not always the case. In 1930, the country passed its first Arbitration Act, which was met with strong opposition but remained enforceable. Justice Kiryabwire claims that this strongly alluded to the conventional wisdom of the period, which held that alternative conflict resolution procedures were subpar to litigation and could only be approved following a thorough investigation into the state of mind of the parties. It was also generally perceived that for justice to be seen to be done, ADR procedures had to be closely supervised by the High Court.⁸¹

Article 126(2e) of the 1995 Ugandan Constitution⁸², which amended the general policy framework for the establishment and promotion of alternative dispute resolution, states that the courts should promote reconciliation when adjudicating cases of a civil and criminal nature. This led to the enactment of excellent modern legislation on arbitration and conciliation in 2000. For those who can afford it, formal litigation continues to be the most common alternative dispute resolution

⁷⁸ The Treaty of the Establishment of the East African Community as amended in 2007

⁷⁹ *ibid*

⁸⁰ <https://www.eastafricaarbitration.com/about-eaiac/#:~:text=EAIAC%27s%20primary%20focus%20was%20to,network%20and%20forge%20business%20relations>

⁸¹ *R v Amkeyo EAPLR [1917-1918]4*

⁸² The 1995 Constitution of Uganda as amended, Article 126(2e)

method in Uganda. On the other hand, ADR is becoming more and more prominent in a variety of settings. In accordance with Uganda's Civil Procedure Rules, courts must schedule a meeting to discuss potential settlements. After that, the parties may be ordered to engage in any kind of alternative dispute resolution (ADR) at the court's direction.⁸³ By mandating parties to engage in a good faith mediation process as a matter of course before moving forward with the trial phase, the Commercial Court goes one step further with this requirement. Under Section 67 of the legislation, ADR has been formally established in Uganda by the Centre for Arbitration and Dispute Resolution (CADER). It is a statutory organisation tasked with delivering ADR services that was founded under the Arbitration and Conciliation Act.⁸⁴ Despite these enormous achievements, barriers and political instability have made it difficult for ADR to spread throughout Uganda. One of the main figures in the growth of ADR in Uganda has been Lord Justice Geoffrey Kiryabwire of the High Court of Uganda. He currently serves as the judge of the High Court's Commercial Division, where he is in charge of the court's newly established court-annexed mediation programme. He pushed for the new Arbitration and Conciliation Act to be drafted by a private attorney because he believed that Justice Kiryabwire's insights on the lessons acquired in Uganda would be beneficial to anyone following the rise of African regimes.⁸⁵

Two primary processes in alternative dispute resolution are arbitration and mediation. The establishment of alternative dispute resolution mechanisms—also known as alternative dispute resolution, or ADR—in the administration of justice has resulted from the advancement and appreciation of global commercial developments by Ugandan court systems. These mechanisms are efficient, accessible, faster, and less expensive. ADR is a systematic negotiating procedure where disputing parties work with a neutral third party that has received ADR training to negotiate their own resolution. ADR tactics include arbitration, mini-trial/early neutral evaluation, conciliation, mediation, bargaining, and court-annexed ADR.

⁸³ Civil Procedure Rules of Uganda , Order 12

⁸⁴ Arbitration and Conciliation Act Cap 4

⁸⁵ An article by Justice Kiryabwire , Mediation of Cooperative Governance

These ADR approaches are continuously being relied upon as an alternate or complement to conventional law suits. This article focuses on the practices of Arbitration, Conciliation and Mediation, and how they are appreciated through legislation and the Courts of law in the administration of Justice in Uganda. The article introduces the concept of Collaborative Legal These alternative dispute resolution (ADR) methods are consistently used in instead of or in addition to traditional litigation. This article focuses on the procedures of arbitration, conciliation, and mediation and how Ugandan courts and legislation value them in the delivery of justice. The essay presents the idea of collaborative law practice as a method of resolving disputes and explores whether it would be practical and successful in Uganda.

The Austrian Development Cooperation (ADC) is a sponsor of the Justice Law and Order Sector (JLOS) Alternative Dispute Resolution (ADR) Project. Through the ADR Project, the Sector can put the 2013 Judicature (Mediation) Rules into effect, which mandate mediation in all civil cases, including those involving families, land, and main civil law. Through mediation, the Project provides access to justice for vulnerable and marginalised people whose cases take long to be concluded in the formal justice system.

ADR is anticipated to be implemented from the Commercial Court of the High Court to other Divisions of the Court, Magistrates Courts, and other sector dispute resolution bodies within the JLOS, such as the Judicial Service Commission, Uganda Human Rights Commission, Law Council, Directorate of Civil Litigation, and the Office of the Administrator General, following the development of the Judicature (Mediation) Rules in 2013. The ADR Project's activities include: providing staff with the training they need to deliver ADR services effectively; fortifying the Judiciary's Registries for mediation; promoting ADR through radio talk shows and television programmes; testing out structured ADR services in Magistrates Courts in accordance with the Civil Procedure Rules; and creating a Division for mediation in the Judiciary. The following laws govern alternative dispute resolution in Uganda: the Judicature

Act, Cap. 13, the Arbitration and Conciliation Act, Cap. 4, the Civil Procedure Act, Cap. 71, and the Civil Procedure Rules, S.I. 71-1. ⁸⁶

In conclusion, this Chapter has been able to tackle the non- Legal aspect of Adr and how it was brought about in Uganda.

⁸⁶Kakooza, Anthony Conrad, Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects (June 18, 2010). Uganda Living Law Journal, Vol. 7 No. 2 December 2009, pp. 268-294. ISSN 1729-4672. Published by the Uganda Law Reform Commission., Available at SSRN: <https://ssrn.com/abstract=1715664> 24/02/ 2024

CHAPTER FOUR

4.1 Introduction

Lately, arbitration has been the preferred means of settling conflicts, especially those involving businesses. Nevertheless, adversarial methods focused on litigation still account for a sizable percentage of the legal education provided by Ugandan law schools. However, arbitration is governed by a variety of statutory regulations some which are international laws as well as the domestic laws:

4.1.2 International Laws

The International Trade Law Commission of the United Nations (UNCITRAL).

Law of UNCITRAL Arbitration As per Nations Commission International Trade Law (n.d.), there is widespread recognition of the importance of improved legal frameworks for promoting global trade and investment in an increasingly interconnected economy. As a result, on December 17, 1966, during the UN General Assembly, the United Nations Commission on International Trade Law (UNCITRAL) was established by declaration 2205. Since then, UNCITRAL has become the principal legal body within the UN system for matters pertaining to intercontinental trade law. The objective was to provide a uniform legal framework that would promote the practical drafting and modification of international trade law and promote the application of the law in commercial law domains such as dispute settlement. As a result, the UNCITRAL Model Law on Commercial Arbitration was created.

According to the Commonwealth Secretariat (1991), a set of rules for conciliation and arbitration had been issued by UNCITRAL in 1976. The model law on intercontinental commercial arbitration was adopted on June 21, 1985, in accordance with these regulations. The Model Law provides guidance to nations on how to amend their current arbitration laws in order to match the unique features and requirements of international commercial arbitration. It covers the terms of the arbitration agreement, the composition and authority of the arbitral tribunal, the degree of judicial involvement, and the acceptance and enforcement of the arbitral decision. Being accepted by states from all over the world with valid and functional legal frameworks, it further underlines the consensus across the globe on the

fundamental elements of international arbitration procedure. According to Alikor and Mafabi (2020), Uganda has recognised itself as an intending beneficiary.

The New York Convention

The United Nations Convention on the Acknowledgment and Execution of Foreign Arbitral Awards, or the "New York Convention," is by far the most important piece of intercontinental arbitration law in history, according to Cutler et al. (2018). It currently has 172 signatories and 3 ratifications⁸⁷, including the US, and functions as a globally recognised framework for international arbitration. The remarkable growth and advancement of intercontinental arbitration over the past 50 years has been facilitated by the Convention, which gives national courts and arbitral tribunals the authority to create long-lasting, efficient processes for upholding international arbitration agreements and decisions.

Jillani (1988) asserts that the arbitration community strives to effectively utilise this convention and takes great satisfaction in it on a global scale. The recognition and enforceability of non-domestic arbitral awards are highlighted by the convention. In addition, the disputants must ensure that, like domestic awards, foreign awards are recognised and largely enforceable in all relevant jurisdictions. Moreover, if parties have agreed to take their dispute to an arbitral tribunal, the treaty compels the courts of the parties to give full effect to all arbitration articles by forbidding parties' access to the courts.

4.1.2 Domestic Laws

The 1995 Constitution of Uganda as amended.

This is the supreme law of the land(Uganda) and thus gives power to other statutes of the law in the nation as some are listed below. This is ensured through the power given to the parliament to make laws⁸⁸ for the nation. As a country we have national objectives and directive principles of state policy by which the country is governed and its main objective is that the principles are to guide all organs and agencies of the State, all citizens, organisations and other bodies and persons in applying or

⁸⁷ United Nations Treaty Collection, <https://www.newyorkconvention.org/contracting-states>

⁸⁸ The 1995 Constitution of Uganda as amended, Section 79

interpreting the Constitution or any other law and in taking and implementing any policy decisions for the establishment and promotion of a just, free and democratic society.⁸⁹ This being the case, Arbitration is seen to be one of these objectives and the Constitution provides that there shall be established and nurtured institutions and procedures for the resolution of conflicts fairly and peacefully. Furthermore, Article 126(e) of the Constitution asserts that while deciding issues of a civil and criminal nature, the courts need to encourage reconciliation. As a result, in 2000, outstanding new legislation on arbitration and conciliation was passed.

The Judicature Act, Cap. 13

Under the direction of the Court of Justice, this Act provides for alternative dispute resolution. The scenarios under which matters may be referred to a special judge or arbitrator who is empowered by the High Court to investigate and report on any cause or matter other than criminal proceedings are dealt with in sections 26 to 32 of the Act. These provisions, combined with Section 41 of the Act, which specifies the powers of the Rules Committee, give rise to the Judicature (Commercial Court Division)(Mediation) Rules, No. 55 of 2007, which will be explored later in this article. The court annexed arbitration is in that category because it takes place under an order issued by the Court and does not involve consensual arbitrations, which are governed by current agreements to this end. As a matter of fact, the following arbitration is still referred to as 'consensual'.

The Civil Procedure Act (Cap. 71) and the Civil Procedure Rules S.I 71-1 Order XII (12) of the Civil Procedure Rules provides for “Scheduling Conference and Alternative Dispute Resolution”. Rule 1 (1) thereof provides -

In order to resolve issues of agreement and dispute, as well as discuss the possibilities for mediation, arbitration or another form of resolution, a scheduling conference shall be held by the Court. The purpose of this provision is to assist the parties in considering the possibility of settling the dispute before the hearing takes place in the Court. If it is agreed that potentially controversial topics such as the

⁸⁹ *ibid*

issue of documents and witnesses to be relied upon will be discussed, this shall also speed up the proceedings.

Order 12 rule 2 further highlights Court's emphasis on Alternative Dispute Resolution provides;

“(1) Where the parties do not reach an agreement under rule 1, . . . the Court may, if it is of the view that the case has a good potential for settlement, order alternative dispute resolution before a member of the bar or the bench, named by the Court.

(2) Alternative dispute resolution shall be completed within twenty one (21) days after the date of the order . . .the time may be extended for a period not exceeding 15 days on application to the Court, showing sufficient reasons for the extension.

(3) The Chief Justice may issue directions for the better carrying into affect alternative dispute resolution . . .”

This rule has therefore established the system of holding a scheduling conference before the hearing of any suit begins. This is currently strictly followed, though it is clear that litigants follow this procedure with the intention of viewing it as a mandatory process before hearing cases in court, rather than focusing on the use of a scheduling conference as a means of potentially settling the case outside of court. The primary rationale for including this clause was that of the latter opinion.

Further on, Order XLVII (47) also provides for Arbitration under Order of Court, also referred to as Court-annexed Arbitration. The beauty The beauty of this rule, again as in the spirit of ADR, lies in agreement between the parties.

Rule 1 (sub rule 1) of this Order, for instance, provides that -
“Where in any suit all the parties interested who are not under disability agree that any matter in difference between them in the suit shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the court for an order of reference.”

Rule 2 of the same Order goes on to provide that the “Arbitrator shall be appointed in such manner as may be agreed upon between the parties”. The statutory provisions themselves focus on the principal basis of arbitration being the

maintenance of mutual respect for each other's interests between the parties or in other words, creating consensus on key matters. Of course, where the parties have opted for arbitration but fail to agree on the arbitrator, the Court shall appoint one as is provided for in rule 5 thereto.

The Arbitration and Conciliation Act (Cap. 4)

This shall govern the functioning of arbitration and conciliation procedures, as well as the conduct of arbitrators or conciliators during such proceedings. It is important because it combines the provisions of the 1985 UN Commission on International Trade Law UNCITRAL Model Law on International Commercial Arbitration, as well as the UNCITRAL Arbitration Rules of 1976 and the UNCITRAL Conciliation Rules of 1976, into one Act. However, it is worth noting that the Act does not give for the immunity of an arbitrator which is covered under the UNCITRAL Model law.

It also governs the way in which arbitration and conciliation procedures work, as well as how arbitrators and conciliators act when they perform them. The United Nations Commission on International Trade (UNCITRAL) Model Law on International Commercial Arbitration from 1985, the UNCITRAL Arbitration Rules from 1976, and the UNCITRAL Conciliation Rules from 1976 are all incorporated into this Act, making it significant. However, it should be noted that the Act does not provide for the immunity of an arbitrator which is covered under the UNCITRAL Model law.

The stated purpose of the Act is to empower the parties and to increase their autonomy. It has always been the case that if an arbitration agreement existed, the courts would not hear the case until the arbitration procedure had taken place³. Disputing parties are thus obliged to submit to the provisions under the Act on the basis of an existence of an agreement to arbitrate in the event that a dispute arises. Section 2(1)(c) provides for the meaning of "Arbitration Agreement". It states - "an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not"

The Centre for Arbitration and Dispute Resolution (CADER) is designated by the Act as a Statutory Institutional provider of alternative dispute resolution.⁴ The use

of arbitration, which has been around since the 1930s, was somewhat restricted prior to the Arbitration and Conciliation Act's implementation since there was no suitable control mechanism in place and no general supervision over arbitrators, particularly with regard to the fees that were charged.⁹⁰

ICAMEK Arbitration Rules 2018. The International Centre for Arbitration and Mediation in Kampala (ICAMEK) established the Arbitration Rules 2018 in 2018. The rules identify ICAMEK as the body responsible for administering these rules in the event of a dispute resolution request from parties who have engaged into a contract to resolve their disputes in accordance with the ICAMEK Arbitration rules. On July 26, 2018, the Uganda Bankers Association, the Uganda Law Society, and a few additional collaborators established ICAMEK. It is a legally recognised non-profit organisation dedicated to the advancement of ADR in Uganda and Eastern Africa.

To resolve business disputes faster than through traditional court processes, ICAMEK's work is complementary to that of the Centre for Arbitration and Dispute Resolution (CADER) Uganda. According to the bankers, the centre will help them avoid having their capital stuck in the judicial system, which is now plagued by a number of problems that are unlikely to be rectified anytime soon, according to Ocen (2019). They will therefore assist CADER in resolving more conflicts through the Centre.

Judicature (Mediation Rules) 2013: Mediation as an alternative dispute resolution tool in Uganda's legal system is explicitly referred to in those rules. By using a neutral mediator to assist in negotiations and to reach an agreement, mediation aims at facilitating settlement between parties. Rule 4⁹¹ of the rules provides that before moving to trial in any civil action, the court must recommend it for mediation. This means every matter that appears to court is first referred for Mediation by court and if it fails then they can return to court to help them get a solution. It also provides that where a civil action contains a matter of law that may dispose of the civil

⁹⁰ S. Sempasa: Centre for Arbitration and Dispute Resolution & the new legislative formulation on A.D.R; Uganda Living Law Journal, Vol. 1, No. 1, June 2003 p. 81 at p. 86

⁹¹ The Judicature (Mediation Rules) 2013, Rule 4

action, the registrar or authorised court officer shall submit the civil action to a Judge or Magistrate, as applicable, for determination.

Judicature (Plea Bargaining Rules) 2016: The plea bargaining, which is another type of alternative dispute resolution, is covered by these guidelines. Rule 3⁹² of the act provides that one of the objectives of this method is to reduce cause backlog in our circumstances. Note forgetting to define Plea bargaining as per Rule 4 as an agreement by the accused person and the prosecution to plead guilty in exchange of an agreement by the prosecution to drop one or more charges and should be recommended by court. Therefore, Plea bargaining allowing the accused person to negotiate with the prosecution in order to reach a plea bargain, which is likely to reduce charges or sentences.

Tax Procedures Code Act of 2014: Section 24 (11) of this Act introduced ADR for settling tax disputes between taxpayers and the Uganda Revenue Authority (URA). ADR is an alternative to judicial proceedings before the tax appeals court and higher courts. Specific ADR procedures are provided for in the Tax Procedure Code, Alternative Dispute Resolution Procedure Regulations, which were adopted in 2023.⁹³

4.1.3 Case law Provisions.

When a case is filed in court and it is determined that the matter was intended for arbitration, the Court follows the Act's required provision to this effect and will always order that the matter be submitted to arbitration as specified in Section 5.⁹⁴ This was also held in the case of *East African Development Bank vs Ziwa Horticultural Exporters Ltd*⁹⁵, to the effect that: "Sec. 6 (present sec. 5) of the Arbitration and Conciliation Act, provides for mandatory reference to arbitration of matters before court which are subject to an arbitration agreement; where the court

⁹² The Judicature (Plea Bargaining Rules) 2016, Rule 3

⁹³ Enock Turatsinze, Alternative Dispute Resolution; A Pipe Dream to tax payers in Uganda, <https://thelegalreports.com/alternative-dispute-resolution-a-pipe-dream-to-taxpayers-in-uganda/> accessed on the 2/05/24

⁹⁴ Arbitration and Conciliation Act, Chapter 4, Section 5

⁹⁵ High Court Misc. Appn. No. 1048 of 2000 arising from Companies Cause No. 11 of 2000.

is satisfied that the arbitration agreement is valid, operative, and capable of being performed, it may exercise its discretion and refer the matter to arbit.

The most important thing to note is that Courts follow the intention of the parties. In **Farmland Industries Ltd v. Global Exports Ltd**⁹⁶ it was held that “it was the duty of Courts in arbitration proceedings to carry out the intention of the parties . . . the intention of the parties was that before going for expensive and long procedures of arbitration, the parties had to first negotiate a settlement failing which they could resort to arbitration.”

However, in order to satisfy court that the case before it should be referred to arbitration, certain conditions must be present as was spelt out by Tsekooko S.C.J in *Shell (U) Ltd vs Agip (U) Ltd*⁹⁷. These are:

1. There is a valid agreement to have the dispute concerned settled by arbitration.
2. Proceedings in Court have been commenced.
3. The proceedings have been commenced by a party to the agreement against another party to the agreement.
4. The proceedings are in respect of a dispute so agreed to be referred.
5. The application to stay is made by a party to the proceedings.
6. The application is made after appearance by that party, and before he has delivered any pleadings or taken any other step in the proceedings.
7. The party applying for stay was and is ready and willing to do all the things necessary for the proper conduct of the arbitration.

4.1.4 Jurisdiction of Court in Arbitration matters.

The issue of Court jurisdiction or relevance in arbitration matters has been addressed through various concerns, one of them being the principle of Res Judicata.⁹⁸

⁹⁶ [1991] H.C.B 72

⁹⁷Supreme Court Civil Appeal No. 49 of 1995(Unreported)

⁹⁸A court shall not try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a previous suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in

The existence of an ongoing court case in which a similar topic is brought before an arbitrator does not constitute *res judicata*. The arbitration case of *Bayeti Farm Enterprises Ltd & Anor v. Transition Grant Services*⁹⁹ involved a claim for the compulsory appointment of a single arbitrator. In response to the application, the respondent contended that the matter was resulting in a multiplicity of claims based on an existing litigation before the Court, citing Section 6 of the Civil Procedure Act, Cap. 71, which provides for the stay of proceedings based on *res judicata*. This argument was rejected by CADER on the basis that the Civil Procedure Act (C.P.A) has no application to section 11 of the Arbitration and Conciliation Act (A.C.A)(which provides for appointment of Arbitrators) because the C.P.A applies, as per its section 1, to proceedings in the High Court and Magistrates Court.

In the case of *Oil Seeds (Uganda) Limited vs Uganda Development Bank*¹⁰⁰, Karokora JSC., stated that, "... the Court has jurisdiction to interfere with the arbitrator's award if it is determined to be essential for the sake of justice. He also cited the compelling case of *Rashid Moledina & Co. (Mombasa) Ltd & Others v. Hoima Ginneries Ltd*,¹⁰¹ Where, in the light of the arbitration judgment, the question arose as to whether the High Court had jurisdiction to set aside or restore the arbitration award to the appeal panel. The Court of Appeal for East Africa said, "The courts will be slow to intervene in arbitration proceedings, but if it is necessary in the interests of justice and if it is established that the arbitrators have been prejudiced against the award, they will act."The legislation on arbitration and conciliation therefore precisely sets out the special situations and constraints which require a court's participation and support. This is accomplished by the following means: putting an end to court proceedings (section 5); implementing temporary measures (section 6); gathering testimony (section 27); overturning the arbitration verdict (section 34); and enforcing an arbitral award (section 36).

which the issue has been raised later and has been heard and decided by that court. This principle is well laid out in section 7 of the Civil Procedure Act, Cap. 71 (Laws of Uganda, 2000 Ed.).

⁹⁹ CAD/ARB/No. 4 of 2009

¹⁰⁰ Supreme Court Civil Appeal No. 203 of 1995

¹⁰¹ (1967) E.A 645

CHAPTER FIVE

5.0 Introduction

In this Chapter, I will present my findings, conclusions and recommendations for the study in relation to my study objectives.

5.1 Discussion on my Findings.

The Research Objectives of this study included; determining the existing legal framework and its enforcement mechanism, determining the challenges being faced in the implementation of ADR in Uganda, determining the most effective method of Alternative Dispute Resolution in Uganda and lastly, the possible recommendations on enforceability of ADR in Uganda. The Summary of my findings following the research objectives are detailed in the following discussions respectively.

5.1.2 The Existing Legal Framework

These were well discussed in Chapter four of this Research paper. However, in summary they include; **The International Legal Framework**; The International Trade Law Commission of the United Nations (UNCITRAL). The New York Convention.

The Domestic Framework; The 1995 Constitution of Uganda as amended, The Judicature Act, Cap. 13, The Civil Procedure Act (Cap. 71) and the Civil Procedure Rules S.I 71-1, The Arbitration and Conciliation Act (Cap. 4), Judicature (Mediation Rules) 2013, Judicature (Plea Bargaining Rules) 2016, Tax Procedures Code Act of 2014.

The Domestic Bodies; The Centre for Arbitration and Dispute Resolution (CADER), ICAMEK Arbitration Rules 2018.

5.1.3 Challenges

Some of these include;

- Resistance amongst basic actors (judges, lawyers, and litigants)
- Dedication to resolving dispute
- Ignorance
- Neutrality

- Power imbalance
- Inadequate funds
- Lack of trained personnel
- Lack of Qualified Trainers

Resistance amongst basic actors (judges, lawyers, and litigants): -

a) Judges: - Judges may perceive mediation as weakening their authority to issue public judgements and normative statements. Furthermore, professional incentives may hinder judicial support for mediation, resulting in courts recommending it in fewer cases than they should.

b) Lawyers: - Lawyers may be justifiably concerned that ADR mechanisms may reduce the number of cases they handle. If more disputes are to be mediated, lawyers may see ADR as nothing more than a "alarming drop in revenues". When determining how much to charge for their mediation services, they could run into pricing issues. They might also question the purpose of their own involvement in a process that is controlled by one party and how they will behave as fervent supporters in the event that their parties refuse to compromise and participate in a cooperative process.

d) Litigants: It is also observed that litigants may be uneasy with ADR mechanisms as a substitute for going to court. This is due to their mistrust of private proceedings, fear of exploitation, comfort found in the familiarity of the legal system, insecurity regarding making decisions on their own behalf, interest in vexatious litigation, or desire to delay the case for financial gain. They may also prefer the public, formal, evaluative judicial process, lawyer-dominated system.

Dedication to resolving dispute. The parties to the disagreement must be committed to finding a solution for the mediation to be successful. The ADR mechanisms which is chosen immediately is in peril if a disputant or advocate tells the mediator that they have no intention of settling the dispute. Disputants and Advocates are frequently dissatisfied with their earlier attempts to achieve a settlement, or the disputants may have overestimated their chances of winning in court if a settlement is not reached.

Ignorance. Lack of knowledge about mediation among rural residents, who misunderstand it as merely another quick justice mechanism without understanding that mediation entails greater involvement from the parties and gives them the power to come to their own conclusions. Additionally, there is a deficiency of knowledge among judges, advocates, and litigants concerning the process's efficacy and utility.

Neutrality. Although the phrases impartiality and neutrality are frequently used interchangeably in mediation agreements, they are crucial components of the mediation process. The widely held belief in mediation is that, despite the judgmental aspect of human nature, the Mediators must be entirely impartial. A breach of neutrality can occasionally result from unconscious bias or ignorance, which can lead to "The Flat Earth" syndrome. This can be recognised when the mediator veers into the area of offering opinions or advice coupled with a lack of expertise, an inability to reframe, communication problems, unequal opportunities, a temperamental attitude, a focus on one party, a complacent factor, and a preconceived stand; when the mediator uses judgmental language and overtones; when the mediator cooperates and advances the position of one party, thereby taking control of the mediation process; or when the mediator has a tunnel vision and has their own settlement idea, commonly referred to as the "Mediator's Agenda," putting more effort into reaching a settlement than safeguarding the parties' interests, etc. Additionally, it is frequently noted that mediators fall short in upholding their objectivity or even in fostering the impression of objectivity, which can cause the parties to lose trust in one another or, worse, cause the mediation process to collapse.

Power imbalance. The ADR mechanisms is open conversation and discussion of the pertinent topics. Free negotiations at an equal footing would be disrupted and result in an eventful dispute resolution if one party seems to be in a dominant intellectual, physical, economic, or emotional standpoint. We might consider evaluation at the intake point, reasoning out the referral, and gathering information to decide on the appointment of the suitable mediator in order to persuade disputants that ADR is a valuable chance that shouldn't be ignored. Strict adherence to the procedure will be

the only thing that encourages the parties to have a conversation after the mediator or arbitrator or conciliator has met with them.

Inadequate funds. There is a need for appropriate space for ADR centres, as well as a sufficient number of dedicated staff members, proper infrastructure, and administration. Furthermore, fees or honorariums must be paid to mediators or arbitrators or conciliators who participate in the ADR processes. Every ADR centre needs funding to cover all of these expenses. In this context, it is worth noting that the Chief Justice and the judiciary as a whole have expressed concern about proper funding for ADR centres. like CADER

Lack of trained personnel. (mediators or arbitrators or conciliators) The essence of ADR is that the personnel's function is a facilitator. The personnel's role is to foster an environment in which the parties before him can resolve the conflict in a purely voluntary settlement of agreement. As a facilitator, the personnel must comprehend the underlying concerns between the parties. To accomplish this, the personnel must facilitate communication among the parties as well as between the parties and himself. Given the techniques of ADR, providing formal training for personnel is essential. Now, it is accepted and put into practice by the various legal systems in the world that training is supplied to the people in order for them to become mediators or arbitrators or conciliators. In Uganda, the training initiative is being conducted by the High Court. However, Uganda has reported a general shortage of trained personnel. The personnel must be able to handle emotional outbursts, such as rage and grief. This does not mean he or she may ignore the man who is upset or crying. He or she must be trained to deal with such parties with complete empathy, respecting their feelings while also assisting them in regaining control of themselves.

In fact, emotions like anger and grief are sometimes key aspects in establishing the grievance. The best personnel have real-life experience. He or she should be familiar with the cultures and lifestyles of people from 233 different socioeconomic classes. Values and customs in one group may differ from those in another. Even in trade and business, practices differ by market. There are unwritten norms that are firmly followed, as opposed to written laws. These personnel will do well to apprise

himself/herself of such cultural backgrounds that influence the behaviour and expectations of people in various cultural grounds.

Lack of Qualified Trainers. This issue and the one about the dearth of qualified personnel are related. The individuals providing the mediation training are qualified individuals with Training for Trainers (TOT) certification. There are not enough people with the necessary expertise to offer trainings. The training schedule and handbook have been created by the Kampala High Court. The mediation training programme is hampered by the insufficient number of trainers, which eventually causes problems with the mediation's implementation.

The responsibilities of a judge or attorney are very different from those of trained personnel. Due to these variations, the personnel must get specialised training in the techniques and procedures utilised in mediation. Not every judge who spends hours listening is an effective mediator/arbitrator/ conciliator. Not all skilled solicitors who can talk for hours on end can also listen well. While the trained personnel is not meant to provide a solution, they must make sure that the parties work together to find one. The trained personnel must listen to the parties. Most of the time, judges and advocates apply what they have learned about the law and are fast to recognise solutions especially legal ones. They are able to swiftly detect the arguments and counterarguments that support and undermine each side. However, the trained personnel also needs to be able to work towards a position where both parties win.

In my findings, the most prominent challenges were found to be Resistance amongst basic actors (judges, lawyers, and litigants) and the lack of awareness of the general public towards the Alternative Dispute Mechanism for reasons well explained above.

5.1.4 The Most Effective Method of Alternative Dispute Resolution

This was found to be Arbitration and this is so because of most importantly its binding nature and enforceability of the Arbitral award but after further reading Section 59 of the act, there may be a misconception that Conciliation is binding; however, that is not the case because the Conciliator simply provides a report on

the outcome of the dispute resolution agreed upon by the parties, and it is up to the court to either adopt and enforce it or not, which is why Section 59 sheds more light on the issue that if the court adopts this report, it will be legally binding, unlike Arbitration, where the arbitrator has the power to make decisions and they are binding upon the parties. To make it clearer. In contrast to an arbitrator, who makes binding rulings, a conciliator only reports and has no decision-making authority.

5.1.5 Recommendations

Mindset Change of our Judicial Officers (Judges, Lawyers, Litigants). It is imperative to remember that for any system to be successful, the leaders of the family, project, nation, or institution must set an example for the policies they are attempting to impose on their offspring, employees, subordinates, and subjects. This is significant because the core of the success of these adjudication processes rests on our judicial officers educating the public and their own legal professionals about how adjudication can help reduce the backlog of cases and expedite the resolution of less serious disputes that don't require the intervention of the courts. Thus, a crucial element for improving the ADR implementation.

Public Awareness and Education. Increase public, professional, and corporate knowledge of alternative dispute resolution (ADR). It's likely that a large number of people are not aware of the benefits of ADR choices. As a result, this lessens or prevents the effectiveness and application of ADR. Organise workshops, seminars, and training sessions to educate stakeholders about Alternative Dispute Resolution (ADR) procedures, benefits, and how to access them. This will address the issue of insufficient trainers and personnel, which will enhance the prospects for ADR's success in Uganda. Furthermore, despite the establishment of the Chartered Institute of Arbitration in Uganda as a solution to reduce the difficulty of qualified professionals, it appears that few people are aware of its presence, thus my point of public awareness on such critical advances.

Incentives for ADR Use: An incentive is typically defined as an outside factor (such as an anticipated reward) that prompts behaviour. There is a greater chance that the

general public will choose alternative dispute resolution (ADR) over litigation if parties are offered incentives to do so in exchange for benefits like expedited dispute settlement. ADR adoption may benefit from lower court expenses, speedier resolution, and confidentiality, for example. ADR clauses in contracts ought to be promoted to business and public entities as well.

Establish specialised ADR institutions or centres to ensure unbiased administration of proceedings. These entities can keep a list of competent mediators and arbitrators, coordinate ADR sessions, and oversee the quality of ADR services. The legal organisation in Uganda that deals with these matters is called CADER, and some of the areas that need improvement are;

- The necessity for CADER to become increasingly regionalized in order to handle the growing volume of commercial disputes and to improve accessibility and dispute resolution capabilities. The commercial court annexes of Crusader House house the only CADER offices. Likewise, CADER ought to function as a separate legal entity.
- In order to prevent parties from resolving their conflicts through CADER, it is imperative that CADER be adaptable, economical, and less technical.
- CADER ought to designate a department to disseminate her research findings. This can be accomplished by holding frequent workshops in pre-selected locations across the nation, involving educators, local authorities, decision-makers, and parastatals from around the world. The goal of these workshops ought to be to promote alternative dispute resolution (ADR) in business disputes.

Promoting community-based alternative dispute resolution (ADR) mechanisms is advised, particularly in rural areas where access to formal legal services is limited.

Promote the informal settlement of conflicts through the use of community mediators, religious leaders, and elders in the area by so doing their will access to justice for the less advantaged but also the relationship of the parties and most important solve the dispute at hand.

5.2 Conclusion

The suggestions made above are to enhance ADR's implementation in Uganda in order to increase its likelihood of success in the country, but the most notable would be the shift in the judiciary's mindset and raising public awareness of ADR, which could serve as the cornerstone for resolving the remaining issues because change begins with the implementors and further quoted by Ron Ashkenas and Rizwan Khan;

“The announcement of a change is easy, but implementation is challenging due to resistance, debates, and distractions. To get through this managers have to get their hands dirty and engage their teams, confront recalcitrant colleagues, and engage in decision-making processes to successfully implement the change.”

There have been some rumours that Court is an alternative to Alternative Dispute Resolution Mechanisms, but this is false because these two entities cooperate to help with dispute resolution. For instance, when one goes to court and the contract in dispute has a clause directing the parties to first opt for ADR, and it is ignored, either of the parties can raise a preliminary objection, and the Court stays court proceedings until the ADR process is completed.¹⁰² Thus this rumor being false.

Conclusively, as stated by Abraham Lincoln ; *“discourage litigation. Persuade your neighbors to compromise whenever you can. As a peace maker the lawyer has superior opportunity of being a goodman. There will be enough business.”* From contract formulation to dispute resolution, I urge all parties involved right from contract makers and judicial officers to support ADR's continued relationship-building and commitment to service over profit.

¹⁰²Arbitration and Conciliation Act, Chapter 4 , Section 5 & 9. In relation to these sections, the court referred this case back for Arbitration and dismissed the case from court till the ADR process was completed. Vantage Mezzanine Fund II Partnership -v- Simba Properties Investments Co. Ltd & Anor, MA No. 201 of 2022

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