AN EXAMINATION OF THE EFFECTIVENESS OF ALTERNATIVE DISPUTE RESOLUTION AS A METHOD OF DISPUTE RESOLUTION IN THE COMMERCIAL DIVISION OF THE UGANDA HIGH COURT

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DECLARATION

I **NAMAGGA ANGELLA** declare that this is my original work and to the best of my knowledge, it has never been submitted to any University or institution for a degree award.

Signed ..... Date 06th/09/2018

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APPROVAL

This research report has been submitted for examination with my approval as a university examination supervisor.

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(Supervisor)

DEDICATION

I have dedicated this work to my beloved mum Ms. Namuddu Regina and my sister Nabwami Berna and Mr. Kibazo Timothy.

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I acknowledge that my success is due to the Almighty God who has enabled me to produce this work and the entire course at large for His mercy and good will.

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LIST OF ACRONYMS

AAA	American Arbitration Association
ACA	Arbitration and Conciliation Act
ADR	Alternative Dispute Resolution
CADER	Centre for Arbitration and Dispute Resolution
CADER	Centre For Arbitration and Dispute Resolution
CPA	Civil Procedure Act
CPI	Corruption Perceptions Index
FMCS	Federal Mediation and Conciliation Service
GDP	Gross Domestic Product
GoU	Government of Uganda
IACP	International Academy of Collaborative Professionals
ICCPR	International Covenant on Civil and Political Rights
LC1	Lowest Level
LRA	Lord's Resistance Army
UK	United Kingdom
UNCITRAL	United Nations Commission on International Trade Law
UPDF	Uganda People's Defence Force
URA	Uganda Revenue Authority
USA	United States of America

LIST OF STATUTES

NATIONAL LAWS

The 1995 Constitution of the Republic of Uganda.

The Magistrates Courts Act Cap 16

The Trial on Indictment Act Cap 23

Civil Procedure Act, Cap 21, Laws of Kenya.

INTERNATIONAL TREATIES

African Charter on Human and Peoples' Rights (1981)

African Charter on the Rights and Welfare of the Child (1990)

African Youth Charter, 2006

Convention on the Rights of the Child (1989) and its two Optional Protocols (2000)

International Covenant on Civil and Political Rights (1966) and its two Optional Protocols (1966 and 1989)

International Covenant on Economic, Social and Cultural Rights (1966) and its Optional Protocol (2008)

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

INTERNATIONAL DECLARATIONS AND OTHER INSTRUMENTS

Abuja Declaration, 2002

Universal Declaration of Human Rights (1948)

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ABSTRACT

The study examined the effectiveness of alternative dispute resolution as a method of dispute resolution in the commercial division of the Uganda high court. It therefore expressed concern on analysis of the causes of disputes in Uganda, existing international best practices for other commercial divisions of high court of other regimes, explored the high court's contribution to dispute resolution in Uganda and also provided for conclusions and recommendations. The study used a qualitative methodology to collect both primary and secondary information. Primary sources are legal instruments on conflict resolution which include the Constitution of Uganda in regard to high court rulings on disputes, various conflict resolution statutes and other relevant legislation passed by Parliament, together with international and regional conventions ratified by the government. Secondary sources of information also used, the main sources being books, journal articles and electronic databases. The study highlighted on best ADR practices and their effectiveness in different countries besides Uganda. Hence findings were positioned on compliance with different ADR methods the Uganda high court has complied with resolving disputes in the country at large.

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CHAPTER ONE

1.0 Introduction

Alternative Dispute Resolution describes all those conflict resolution processes other than litigation including but not limited to negotiation, commission of enquiry, mediation, conciliation, expert determination, arbitration and others.[1] Commentators have widely faulted the expression 'alternative dispute resolution' proffering that it implies these mechanisms are second-best to litigation. ADR is a stand-alone enterprise whose functionality is not alternative to other dispute resolution mechanisms and whose existence predates litigation.[2] ADR is not a completely novel idea world over. It is generally a restatement of customary jurisprudence which largely constituted traditional dispute resolution mechanisms. Accordingly, the Charter of the United Nations affirms ADR by exalting pacifism and peaceful resolution of disputes.[3]

ADR is composed of different words; Alternative, dispute and resolution thus to clearly understand the phrase it is paramount important to understand each words separately thereof. The word 'Alternative as to the definition given in 6th edition of Oxford Advanced Learners Dictionary, refers to "a thing that you can choose to or have out of two or more possibilities." Therefore the word in the context is used as an adjective and refers to all permitted dispute resolution mechanisms other than litigation, be it in court or administrative tribunal.[4]

Whereas, the phrase dispute resolution, in the absence of alternative as prefix, is simply a collection of procedures intended to prevent, manage or resolve disputes and refers procedures ranges from self-help in the form of negotiation through to state sanctioned mechanisms called litigation. It is to mean that 'Alternative' connotes the existence of dispute settling mechanisms other than formal litigation. Though the word 'Alternative' in ADR seems to connote the normal or standard nature of dispute resolution by litigation and aberrant or deviant nature of other means of dispute resolution mechanisms, it is not really

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[1] Kariuki Muigua 'Alternative Dispute Resolution and Article 159 of the Constitution' 2012 available at www.krnco.co.ke accessed on 20 May 2013; Kariuki Muigua *Resolving Conflicts through Mediation in Kenya* 2013

[2] Fenn 'Introduction to Civil and Commercial Mediation' *Chartered Institute of Arbitrators Workbook on Mediation* (2002) 50-52; Muigua ibid.

[3] Ibid.

[4] Uganda Living Law Journal, (2009), Arbitration, Conciliation and Mediation in Uganda; a Focus on the Practical Aspects, Vol. 7 No. 2 pp. 268-294.

the case. ADR is not an alternative to the court system but only meant to supplement the same aiming on less lawyering.[5]

1.1 Background of the study

The world has transformed rapidly in the decade since the end of the Cold War because an old system is gone and, although it is easy to identify what has changed, it is not yet clear that a new system has taken its place, old patterns have come unstuck and if new patterns are emerging, it is still too soon to define them clearly and the list of potentially epoch-making changes is familiar by now; the end of an era of bipolarity, a new wave of democratization increasing globalization of information and economic power more frequent efforts at international coordination of security policy, a rash of sometimes-violent expressions of claims to rights based on cultural identity and a redefinition of sovereignty that imposes on states new responsibilities to their citizens and the world community.[6]

Thus ADR owes its origin to techniques employed by various communities beginning with puritans in the 1600s, the new Amsterdam, the Jews in Manhattan's East side, the Scandinavians in Minnesota and the Chinese in the west and business people in resolving their disputes. Although African communities in USA are not mentioned, those techniques are available in African traditional principles and mechanism of conflict resolution.[7]

In Africa in countries like Nigeria, during the colonial period, courts of law were introduced as and when the British administration required them. From the 1840s, merchants established "equity courts" to regulate trade on the Bight of Biafra and in the Upper Niger and Benue basins. Ten specialized courts were established in the Colony and Protectorate of Lagos between 1861 and 1874.[8] For example, in a dispute over fundamental legal rights, **Ariori v Elemo** was filed at the Lagos High Court in October 1960 with the first judgment in October 1975.[9] **Emeka Nwana v Federal Capital Development Authority** was filed following the claimant's dismissal from employment in April 1989 but was not resolved by the Supreme Court until April 2007.[10]

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[5] Held et al. (1998), Violence, Law and Justice in a Global Age, Polity Press.
[6] Kimble, Joseph(2002), "How to Mangle Court Rules and Jury Instructions," 8 SCRIBES J legal writing 39.
[7] Russett (1993).
[8] Ewelukwa, D.I.O., "Administration of Justice", in Okonkwo C.O. (ed.), *Introduction to Nigerian Law*, London: Sweet & Maxwell, 1980, p.59.
[9] Ibid.
[10] Emeka Nwana V. Federal Capital Development Authority & Ors Citation; (2004) Lpelr-Sc.169/1999.

In Uganda, with the amendment of Civil Procedure by The Civil Procedure (Amendment) Rules, 1998, mediation, arbitration and other forms of settlement are introduced. Later with the enactment of the Arbitration and Conciliation Act (Cap. 4 Laws of Uganda), conciliation was formalized. A centre for arbitration and dispute resolution (CADER) was introduced which is the nearest equivalent of America's Multi-Door Court House.[11] This discretion is rarely used except in the Commercial Court where it was recently decided that before parties litigate, they must first explore ADR avenues and the development of ADR in Uganda has interesting story.[12] Also, judicial power shall be exercised in conformity with values, norms and aspirations of the people (Article 126 (1) of the Constitution). Under the Civil Procedure Rules, Court has power to order ADR before a member of the Bar or the Bench named by the court.[13]

1.2 Statement of the problem

The discrepancy which exists between judicial endorsement of ADR and the failure of the courts to translate or reflect that endorsement through making robust costs orders in the form of paying orders has occurred as a consequence of the orthodox yet contradictory understanding among the senior judiciary that ADR, in particular mediation, is not mandatory within the English civil justice system.[14] Contemporary Alternative Dispute Resolution mechanisms are wholly Western perspectives transferred to African settings with little regard for the development gaps, consciousness, rationality and socio-cultural differences between the developed nations and the developing ones. This has become the subject of growing debate in the conflict resolution fraternity especially among African scholars who argue that traditional African societies practice these so-called Western 'alternative measures' for centuries before their recent adoption in Western developed societies. Besides, conceptually and in practice ADR has its fair share of problems and critics for example successful mediation is one thing, rate of compliance is another. Mediation is sometimes challenged as changing victims' 'rights' that needs to be enforced into 'needs' often in relational cases that are mediated. In such cases, other forms of morality that competes with the morality of mediation are erased and the effectiveness and efficiency of ADR depends on the level of consciousness of parties, education and the quality of mediators. In this regard the author will seek to provide an alternative perspective of the Court of Appeal's decision in regard to

[11] Cap. 4 Arbitration and Conciliation Act, Laws of Uganda.
[12] Ibid.
[13] The observer Justice Patrick Tabaro September 14th, 2012.
[14] ADR, judicial endorsement, mediation, civil justice, Halsey v Milton Keynes General NHS Trust 6.

various local and international disputes considering the effect they have had on the specific issue of the types of adverse costs orders which the courts make and the impact the decisions have had upon subsequent judicial reluctance in making paying orders. Therefore this research examined the effectiveness of alternative dispute resolution in the commercial division of the high court.

1.3 Objectives of the study

1.3.1 General objective

The broad objective of the study is to examine the effectiveness of alternative dispute resolution in commercial division of the high court of Uganda.

1.3.2 Specific objectives

The specific objectives were;

i) To investigate why disputes are steadily increasing in Uganda.
ii) To analyze international best practices for commercial divisions of the high court.
iii) To explore the effects of ADR on justice system in Uganda.
iv) To provide recommendations to effect change in the commercial division of the high court.

1.4 Research Questions

i) Why are disputes steadily increasing in Uganda?
ii) What are the international best practices for commercial divisions of the high court?
iii) What are the effects of ADR on justice system in Uganda?
iv) What are the recommendations to effect change in the commercial division of the high court.

1.5 Research Hypothesis

There is a strong relationship between the high court and alternative dispute resolutions.

1.6 Scope of the study

The study was based on the High court of Uganda with reference to various disputes it has always settled legally. The study investigated the meaning of the term dispute resolution with emphasis on the facet of the various disputes in the country. The causes of disputes,

challenges faced by the high court in resolving disputes and provide relevance of alternative dispute resolution.

1.7 Significance of the study

The study will enable the high court to evaluate itself with the aim of exploring the challenges affecting the execution of its core function and the interventions in resolving disputes.

The study will further highlight the issues leading to disputes which will enable government to make strategic interventions as an urgent remedy. Quick disposal of disputes especially of a commercial nature creates a friendly investment atmosphere which stimulates economic development.

The findings of the study will help in dispensing knowledge about international and domestic legal regimes on the subject, so that the public is empowered to solve disputes. Students especially those pursuing legal disciplines and other researchers will benefit from the research.

The research will help policy makers in government, the donor community and non government organizations know the challenges impeding the performance of the high court when it comes to conflict resolution for instance too much hunger, group influence and lack of love for reconciliation.

1.8 Limitations of the study

Time was not enough to revise all dispute resolution books in Uganda and the world at large. However, this was dealt with through citing the few books and articles which seemed to be more relevant to the study.

1.9 Research Methodology

This is predominantly a qualitative research which utilized mainly desktop methods to collect both primary and secondary information. Primary sources are legal instruments on conflict resolution which include the Constitution of Uganda in regard to high court rulings on disputes, various conflict resolution statutes and other relevant legislation passed by Parliament, together with international and regional conventions ratified by the government.

Secondary sources of information were also used, the main sources being books, journal articles and electronic databases. The nature of the research requires a historical element in disputes and ADR and thus, generally the methodological approaches to the study were not only legal and theoretical but also historical to some extent.

1.10 Chapter Synopsis

Chapter one of the study was the introduction; it highlights the background to the study, the objectives and research questions, scope of the study as well as the methodology and literature reviewed by different scholars. Chapter two investigated the literature review and reasons as to why disputes are steadily increasing in Uganda and relevance cases related to disputes in Uganda. Chapter three analyzed the existing international best practices for other commercial divisions of high court of other regimes. Chapter four explored the high court's contribution to dispute resolution in Uganda and chapter five provided for recommendations to effect change in the commercial division of the high court.

1.11 Conclusion

In conclusion, chapter one expressed the background of Alternative Dispute resolution in Uganda and the globe at large.

CHAPTER TWO

REASONS WHY DISPUTES ARE STEADILY INCREASING IN UGANDA

2.0 Introduction

Chapter two provides for the various reasons as to why disputes are steadily increasing in Uganda placing great focus on the causes of disputes, case laws related to disputes, law guiding alternative dispute resolution in Uganda and its impact on the commercial division of the high court. However, further researcher will be exposed to show the related literature that is to say what other authors have in accordance to alternative dispute resolution in their writings.

2.1 Review of the related literature

The literature review below shows how different scholars understood their interpretation of Alternative Dispute Resolution; consider the numerous conflicts in Africa as a natural consequence of Africa's colonial past. political instability is rooted in the very structure of society and for most new countries, in the colonial past'. [15]He also adds that 'Africa's post-colonial present can be said to have been fashioned for Africa by Africa's colonial past'.[16]

Marc writes that it is difficult to conceive a human community where there is no conflict among members or between persons in the community and outsiders. He further states that the degree to which conflict is overt varies.[17] In so far as conflict continues to be part of societies there is the need to seek amicable solutions quickly and in a manner acceptable to all. With Africa being no exception it behoves on all to ensure that conflicts are resolved not necessarily through formal court rulings or judgments but also through ADR.[18]

Mediation with a Traditional Flavour," wades into the debate on whether wholly Western conflict resolution mechanism imported to African settings without due consideration for differences in developmental gaps, consciousness, rationality and socio-cultural differences will promote efficiency in resolving conflicts in Africa. Therefore understanding the socio-cultural settings of conflict locales should form the basis of the analysis of conflicts and

[15] Claude Ake (1985) and Herman J. Cohen (1995).
[16] Ibid.
[17] Onyema, E. The New Ghana ADR Act 2010: A Critical Overview, Arbitration International, 28 (1). pp.101-124.
[18]Howard Onyema, E. The New Ghana ADR Act 2010: A Critical Overview, Arbitration International, 28 (1). pp.101-124.

sources for models in the management of conflicts. African communities have undergone change as 'modern' social formations and relations have emerged; a large part of the people's daily lives are still influenced by traditional norms, institutions and practices. As such, approaches to addressing community conflicts must equally embrace elements of both the modern and traditional societies.[19]

The fact that from its inception, the legal framework disregarded local dispute resolution mechanisms is discernible as the main exposition for poor utilization of ADR locally. He agrees with Muigua that the lack of a decipherable policy and supportive legal framework are setbacks in entrenching ADR in the dispute management system. He further quips that the fact that ADR was introduced as an exotic concept without the necessary alterations to align it to the Kenyan setting forms a basis also for its poor performance. The sentiments of Muigua and Gakeri may be a strong basis for arguing that such is the reason for the overwhelming reference of disputes to the Industrial Court rather than ADR.[20]

Alternative Dispute Resolution (ADR) encompasses a series of mediation mechanisms for resolving conflicts that are linked to but function outside formal court litigation processes.[21] Whereas trials are formal affairs governed by strict rules, mediation involves third-party neutrals facilitating negotiations between disputing parties. The focus of mediation is usually on the interests of the parties themselves as opposed to their negotiating positions. It is designed to provide an opportunity for claimants to have their views heard and undertake a process that satisfies all sides in a way that a court proceeding cannot.[22]

According to Khan, arbitration is a private consensual process where parties in dispute agree to present their grievances to a third party for resolution. It is an adversarial process and in many ways resembles litigation. Its advantages are that parties can agree on an arbitrator to determine the matter; the arbitrator has expertise in the area of dispute; any person can represent a party in the dispute; flexibility; cost-effectiveness; confidentiality; speed and the result is binding. Proceedings in Court are open to the public whereas proceedings in commercial arbitration are private, accordingly the parties who wish to preserve their

[19] Interview with Mr Alex Nartey, op. cit.
[20] Jacob K Gakeri 'Placing Kenya on the Global Platform: An Evaluation of the Legal Framework on Arbitration and ADR' (2011) 1 *International Journal of Humanities and Social Science* 222.
[21] Kimberlee Kovach, *Mediation: Principles and Practice* (St. Paul, MN: West Publishing Co., 1994).
[22] David B. Lipsky and Ronald L. Seeber, "Appropriate Resolution of Corporate Disputes: The growing use of ADR by U.S. Companies," Cornell/PERC Institute on Conflict Resolution, 1998.

commercial secrets may prefer commercial arbitration. The other disadvantage of this mechanism is that similar cases cannot be consolidated without the consent of the parties. Precedents are also not set as happens in court. [23]

Mediation is simple enough to describe: it is a triadic mode of dispute settlement, entailing the intervention of a neutral third party at the invitation of the disputants, the outcome of which is a bilateral agreement between the disputant". The above definitions are not entirely correct as they connote that the mediator must be neutral and impartial. The fact that the mediator possesses certain resources valued by the parties, then the latter are less concerned with the impartiality of the mediator. Psychological factors are alternative reasons for a mediator's lack of impartiality.[24]

The theoretical background of this study uses the systems approach to labour relations to identify the internal and external dispute resolution mechanisms, institutions and processes. How the conflict is managed internally in the organisation has an influence on the external process and ultimately the outcome of the dispute. The current dispute resolution system in South Africa is based on the management of conflict on a case-by-case basis. A new approach to conflict management involves that managing conflict should move beyond the case-by-case settlement of individual disputes.[25]

The dispute resolution system established by the LRA, created a hugely increased respect for procedure. The fact that the CCMA is dealing with more or less 120 000 cases per annum is a victory for procedure. However, it exposes pathology of conflict in the South African society and specifically in the labour relationship. Management styles are forced to focus on people, but in a negative sense of making sure that the rules and procedures are followed and if not, penalties have to be enforced. The workplace relationship is characterized by distrust and uncertainty, and training that focuses on the mechanistic aspects of substantive and

[23] K.Farooq, (2007), Alternative Dispute Resolution, A paper presented at Chartered Institute of Arbitrators-Kenya Branch Advanced Arbitration Course held on 8-9th at Nairobi.
[24] G.J.Carol, (1985), "Mediation; a Comparative Approach", Man, New Series, Vol. 20, No. 1, Royal Anthropological Institute of Great Britain and Ireland, pp. 90-114, pg. 90.
[25] Lynch, J.F, 2001, Beyond ADR: A Systems Approach to Conflict Management, Negotiation Journal. pp. 207-215.

procedural fairness. This usually happens in private institutions for whose services the parties need to pay.[26]

People are offered a choice of all the available inter-connected options and functions to assist organizations to create a cultural transformation to 'conflict competency. This is done under the fourth phase which is referred to as the integrated conflict management approach.[27] This phase involves a comprehensive approach to conflict, requiring the organization to change the company philosophy and in many cases the terminology of organizational life.[28]

Common law had developed in a very negative way. It did not state what employees 'should' do to prevent disputes, but rather what will happen if they do not do it for instance, breach of contract. The traditional approach to rules is also based on the criminal law model and terms are used such as 'breach' of 'rules' that constitutes grounds for 'sanctions' such as 'discipline' and 'dismissal'.[29]

For a company to reduce the cost of unresolved conflict it must become 'dispute wise'. This means that there should be an understanding that resolving conflict early is not a cost but a saving not a luxury but an essential part of running a business. However, workplace conflicts are often ignored or attempts are made to resolve them in an ineffective manner.[30]

A heavy-handed approach such as the approach is characteristic of the first phase of dispute resolution. On the surface it then might appear that the conflict has been resolved, but the feelings still fester and the dispute goes underground only to erupt later and often more vigorously. Given a company's reluctance to acknowledge the conflict and manage it through more effective means, the employee may turn to the only option available, namely litigation.

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[26] Nupen, C. & Cheadle, H, 2001, Dispute Resolution: The uses of 'soft law'. Paper presented at the Thirteenth Annual Labour Law Conference, *Rethinking South African Labour Law*. Pretoria; Butterworths, p.117.
[27] Lynch, J.F, 2001, Beyond ADR: A Systems Approach to Conflict Management, Negotiation Journal. July 2001. p.208.
[28] Ibid.
[29] Nupen, C. & Cheadle, H, 2001, Dispute Resolution: The uses of 'soft law'. Paper presented at the Thirteenth Annual Labour Law Conference, *Rethinking South African Labour Law*. Pretoria; Butterworths.p.121.
[30] Sander, F.E.A. 2009, "Varieties of Dispute Processing", *The Pound Conference 1976: perspectives on justice in the future Minnesota*: West Publishing Co., pp.65–87

The company's reluctance to deal with conflict in the most appropriate manner forces the conflict into the legal system where it becomes a costly dispute.[31]

Feminist scholars and advocates for victims of domestic violence have long argued that mediation is inherently unfair and may be dangerous for such victims.[32] They argue that such cases ought to be adjudicated. Yet, Hunter adds, evidence from several studies shows that cases involving allegations of domestic violence are routinely sent to mediation rather than diverted to litigation. Other studies of mediation show that the issue of violence is often marginalized in the mediation process.[33] Australian researchers found that respondents in a study of family mediation were less satisfied with many aspects of mediation if their case involved violence. During mediation, victims of violence felt intimidated, manipulated or pressured into an agreement, and were more likely to receive less than a forty per cent share of basic assets.[34]

Bevan and Davis conducted a study of all cases handled by 15 family mediation services in the UK over an 18 month period. They conducted telephone interviews with 1055 individuals using mediation and lawyers, and in 646 cases also interviewed the person's solicitor. They also conducted second interviews with 477 individuals and 310 solicitors. In all cases, one or both parties was publicly funded. They found that 82 percent thought the mediator had been impartial; 70 percent found mediation very/fairly helpful; 71 percent said that they would recommend it to others in a similar situation; 59 percent expected to be able to negotiate further changes between themselves. The researchers concluded that mediation had distinctive and positive features and ought to be supported as a separate system running in parallel to the court system.[35]

Arbitration, perhaps the oldest form of dispute resolution, is used mostly for commercial, employment and construction disputes, but can be used in family cases. Arbitration functions

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[31] Lynch, J.F, 2001, Beyond ADR: A Systems Approach to Conflict Management, Negotiation Journal. July pp. 207-215.

[32] Salem, P.,*op. cit.*, p372.

[33] D.Greatbatch, and R. Dingwall, (1999) 'The marginalisation of domestic violence in divorce mediation,' *International Journal of Law, Policy & the Family*, vol. 13, pp174–190.

[34] Hunter, R.,*op. cit.*, p158.

[35] Bevan, G., and Davis, G., *Monitoring publicly funded family mediation: report to the legal services commission*, 2000, Legal Services Commission.

like a privatized court system an expert presides and at the end of a closed hearing makes a 'judgment' by which before the sitting both parties agree to abide. [36]

An alternative to litigation should be found to resolve disputes and people involved in any form of dispute must develop a new theory of resolving differences through the intervention of neutrals. The voluntary agencies and social workers are being motivated to public for alternatives. Opportunities should be provided to youths especially law students, to participate legal services to poor. The average fifty percent of the cases are civil miscellaneous petitions and family matters. Hence the registry of court is overburdened by the court.[37]

Hence the implementation of alternatives is needed as advised by J.S.B.Sinha who provided for a direction to implement ADR. Mediation Rules 2003 with or without amendment are to be given effect to and those who have seen these model rules. The institutional framework must be three stages first is awareness, second is acceptance and third is implementation, the awareness through seminar, workshop. Campaign must take for change in attitude or mindset of disputant, lawyer and judges. The acceptance through training is necessary to facilitators, mediators and conciliators.[38]

Mediation is the most commonly used and researched, form of ADR which is a voluntary process in which a neutral third party works to bring disputing parties to a consensual settlement. Mediators may meet with both parties together, separately or act as a go-between. The mediator will normally have no authority to impose a solution on the parties. Mediation is distinguished from litigation processes on the basis that it focuses on problem solving as opposed to strict legal rights. Mediation is generally said to be capable of producing 'win-win situations, rather than the 'win/lose' situations, as is characteristic of court adjudications.[39]

There have been a number of studies which state that mediation results in greater benefits compared to adversarial court processes, including faster settlement, lower costs, greater

[36]Family law arbitration was introduced in England and Wales in February, 2012. This scheme, which is run by the Institute of Family Law Arbitrators, enables couples to resolve out of court family disputes relating to finance or property (but not contact with or custody of children), by appointing an experienced family lawyer specially trained to arbitrate.

[37] Former Chief Justice of India Sabyasachi Mukharji (1990).

[38] J.S.B.Sinha, 2003.

[39] Genn H, 'ADR and Civil Justice: what's justice got to do with it?' in Judging Civil Justice, p78.

levels of satisfaction and improved compliance with settlement.4 Nevertheless, there are other writers who argue that the benefits are over-stated, on the basis that they have not been subject to rigorous empirical scrutiny. There are also commentators who argue that the effectiveness of mediation will depend on participants' attitudes towards mediation.[40]

However, Genn argues that the assumption that mediation and by inference other forms of ADR) is an alternative to litigation and adjudication is deceptive as although the benefits of mediation are generally set in opposition to adjudication, the most common form of conclusion to litigation is in fact an out-of-court settlement.[41] Genn notes that the literature available on mediation is characterized by divergence and perhaps polarization of opinions as to its effectiveness.[42]

The advantages and limitation of ADR in the book Alternative Dispute Resolution Arbitration, Conciliation and Alternative Dispute Resolution Systems, it can be used at any time before filing case, even pending case before court, better solution at less cost, its flexible hence not westing time for technical procedure, ADR can used with or without lawyer while permission to parties to choose neutral person who is specialist for solving disputes. The ADR is not favoured in cases like when any one party not agreed for amicable settlement, in criminal cases but in matrimonial cases most of matter of sentiments and emotions hence the method of ADR is perfect for these matters.[43]

Through Supreme Court report , it is not possible for courts to he perform the acts at preliminary hearing to decide whether a case should be referred to an ADR process and if so then which ADR process. And What is required to be done at final stage of conciliation by conciliator is borrowed lock, stock and barrel into Section 89 of C.P.C and the court is wrongly required to formulate terms of settlement and reformulate them at stage prior to reference to ADR process. If the reference is to conciliation or mediation or Lok Adalat, then drawing up the terms of settlement or reformulating them is the job of conciliator or mediator or Lok Adalat and after going through the entire process of conciliation or mediation. Thus,

[40] Stipan owich, T.J., ADR and the "vanishing trial": The growth and impact of "Alternative Dispute Resolution, Journal of Empirical Legal Studies (2004) vol 1 (3), p911, cited in Scottish Legal Aid Board, international literature review of Alternative Dispute Resolution, (2014).
[41] Genn H, 'ADR and Civil Justice: what's justice got to do with it?' in Judging Civil Justice, (2009) p78.
[42] Ibid.
[43] Mitchell Rogovin & Donald L. Korb (2008), "The Four R's Revisited; Regulations, Rulings, 323, 366-367.

the terms of settlement drawn up by court will be totally useless in any subsequent ADR process. Why then the courts should be burdened with the onerous and virtually impossible, but redundant and task of formulating the terms of settlement at the pre reference stage.[44]

2.2 Reasons why disputes are steadily increasing

Regional instability

Contestation over international borders between Uganda and its neighbours has a tangible impact on the security and safety of communities living in the border areas for example, between Uganda and South Sudan there are continued tensions over alleged encroachments between communities north of Adjumani and Moyo districts in West Nile and their South Sudanese counterparts.[45] In 2000 these resulted in a number of attacks by South Sudanese who claimed the land was theirs and this has since escalated. Similarly, there are tensions between the Dinka from South Sudan and the Madi in Uganda over Elegu border land.[46]
The armed conflict between the Government of Uganda (GoU) and the Lord's Resistance Army (LRA) in northern Uganda[47] once described as the worst forgotten humanitarian crisis in the world was one amongst many to affect post-independence Uganda but was exceptionally protracted and brutal in its impact on the civilian population.[48]

While Uganda currently enjoys relative stability, it is still in many respects a divided country, both politically and economically with a legacy of multiple and cyclical conflicts and grave human rights violations and a correspondingly weak sense of national identity that will lay the foundations for future conflicts if left unaddressed.[49]

These events created a division between the northern and southern regions with the latter becoming more developed while the former remained poorer with its violent conflict is undoubtedly a major cause of underdevelopment. Both country studies and cross-country regressions have demonstrated the heavy economic costs of civil wars. Indeed, twenty-two out of the thirty-one countries with the lowest human development have experienced civil

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[44] Justice P.V.Reddy (2011).
[45] RLP(2012) National Reconciliation and Transitional Justice Audit, focus group discussions in Adjumani, 25 September–1 October.
[46] RLP(2012), 'Ownership, Resettlement and Accountability: The Elegu Land Dispute', Situational Analysis Report, September 2012.
[47] Office of the Prime Minister, Peace, Recovery and Development Plan for Northern Uganda (PRDP), 2007).
[48] Jan England (2003), UN Special Representative for Humanitarian Affairs, during his visit to northern Uganda.
[49] Dolan, (2006), Uganda Strategic Conflict Analysis (Kampala: Swedish International Development Agency).

war since 1990.[50] It is also widely accepted that underdevelopment is a major cause of conflict, thus giving rise to a vicious cycle in which poverty begets conflict and conflict begets poverty, summarized as "the conflict trap" by Paul Collier and others.[51]

Economic disparities and unequal distribution of wealth

Uganda's GDP reportedly grew by 5.2 percent in 2010, and a further 6.7 percent in 2011.[52] However, this seemingly positive picture has not translated into an equitable distribution of resources across the country. While the proportion of Ugandans living in absolute poverty has generally declined, poverty levels in northern Uganda remain higher than the national average.[53] Although national income poverty fell from 56 percent in 1992 to 31.1 percent in 2006 and 24.5 percent in 2009-10, in the northern region 46.2 percent of citizens remain poor. While Uganda's national infant mortality rate stands at 76 per 1000 live births, the average rate for the North is 106 per 1000 live births.[54]

The lack of a clear national legislative framework to guide the first steps of the nascent oil industry and the secrecy surrounding dealings between the government and international oil companies, are fuelling mistrust and frustration amongst Ugandans.[55]At national level a dispute between the president and MPs over powers allocated to ministries led to scuffles in parliament,[56] while allegations of corruption and lack of transparency at central, regional and local levels abound.[57] Forest resource mismanagement by the authorities[58] is also driving conflict in Uganda, as communities have accused the National Forestry Authority (NFA) of corruption.[59]

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[50] Human development data taken from the United Nations Development Programme (UNDP) dataset at http://hdr.undp.org/.Conflict data taken from the Uppsala/PRIO Armed Conflict Dataset (note 14).
[51] Paul Collier, (2003), Breaking the Conflict Trap: Civil War and Development Policy (Washington DC: World Bank and Oxford University Press).
[52] Index Mundi (2012), www.indexmundi.com/g/g.aspx?v= 66&c=ug&l=en, accessed 20 October.
[53] IMF (2012), Poverty Reduction Strategy Paper: Uganda Poverty Eradication Action Plan, March 2000, www.imf.org/external/np/prsp/2000/uga/01/, accessed 23 June.
[54] Ministry of Education and Sports, 'Education Needs Assessment for Northern Uganda', 2008.
[55] Ibid.
[56] 'Speaker Kadaga demands disciplinary action over oil bill fracas', Oil in Uganda, 30 November 2012. www.oilinuganda.org/features/law/speaker-kadaga-demands-disciplinary-action-over-oil-bill-fracas.html - more-2153.
[57] Regional and local manifestations of this crucial conflict driver will be explored in chapter 2.
[58] Uganda (2012); Angry Museveni to Swing Axe on thieving national forestry bosses', The Independent, 22 April 2011, allafrica.com/stories/201104260992.html, accessed 5 October 2012.
[59] Nabwowe, Angella, Gaps in the Management of Forest Reserves: A Potential Time Bomb(Accord Publications, forthcoming)

The horizontal inequalities explanation of conflict is based on the view that cultural differences that coincide with economic and political differences between groups can cause deep resentments that may lead to violent struggles. These inequalities may involve regional differentiation, in which case they often lead to separatist movements (as in Aceh, Indonesia and the Tamil regions of Sri Lanka) or different identities may occur within the same geographic space such as in Rwanda, Northern Ireland and Uganda, where political participation and economic and political rights are at stake.[60]

Horizontal inequalities are multidimensional, involving access to a variety of resources along economic, social and political vectors or dimensions. Along the economic vector, not only income is important but access to employment and to a variety of assets for example land, credit, education comes into play. Along the social vector, access to services like health care, water and to assets for example housing) can form relevant.[61] The political vector includes power at the top for example the presidency, the cabinet at lower levels for example parliamentary assemblies, local government), in the bureaucracy at all levels and in the army and the police. The relevant are those that matter to people and it varies across societies.[62]

Tensions between cultural institutions and government

The tension between the Government of Uganda and cultural leaders is another key national-level conflict driver in the country. Tensions are manifest at central and local levels over who legitimately represents the interests of Ugandan communities.[63] Relations between the government and traditional institutions have deteriorated as the government increasingly perceives some cultural leaders as challenging its authority.

In December 2010, the government promulgated the Institution of Traditional or Cultural Leaders Act to regulate cultural leaders' involvement in politics. The act defines the role of a cultural or traditional leader, stating that they "shall not have or exercise any administrative, legislative or executive powers of government or local government".[64] The conflict between

[60]Joanna (2004), "Greed and Grievance in Civil War," Oxford Economic Papers 56 (2004): 563–95.
[61]Homer-Dixon (1994), "Environmental Scarcities and Violent Conflict: Evidence from Cases," International Security 19, no. 1:5–40 and Val Percival and Thomas Homer-Dixon, "Environmental Scarcity and Violent Conflict: The Case of South Africa," Journal of Peace Research 35, no. 3 (1998); 279–98.
[62] David (1994) The Benefits of Famine: A Political Economy of Famine Relief in Southwestern Sudan,1883–1989 (Princeton, NJ; Princeton University Press).
[63] Quinn, (2004) 'Ethnic Conflict in Uganda', paper presented at 'Why Neighbours Kill: Explaining the Breakdown of Ethnic Relations', conference held at The University of Western Ontario, 4-5 June.
[64] Institution of Traditional or Cultural Leaders Bill, No. 24, 7 December 2010.

the Buganda kingdom and the government,[65] which exemplifies these tensions, culminated in the Buganda riot of 2009 after the central government moved to prevent Ronald Muwenda Mutebi, king of Uganda's largest ethnic group, from visiting a part of his territory.[66]

Human rights abuses and erosion of civil liberties

The inability of state institutions to peacefully arbitrate socio-political contestations has seen growing intolerance by the government towards dissenting views, the violent suppression of opposition groups by the police and a clampdown on civil liberties including the right to protest. This is compounded by the militarisation of public spaces, a fact cited by communities consulted as contributing to an atmosphere of fear. Community representatives expressed concerns at the prominent role of the army in politics at central and local levels of governance while lamenting the "narrowing of the political space" as state repression increases through the projection of power by the police and UPDF.[67]

This concern has been deepened by repressive responses by police and army to popular demonstrations and political opposition.[68] Civil society and media freedom are also heavily curtailed, as evidenced in numerous crackdowns on critical civil society voices and the media.[69] The introduction of laws to restrict freedom of association is seen as a threat to personal liberties, freedom of association and media freedom.[70]

Corruption and personal greed

In the 2010 Corruption Perceptions Index (CPI), 10 of the 11 countries with a CPI score lower than 2 ('highly corrupt') were classified by the Uppsala Conflict Database as experiencing conflict.[71] Corruption undermines key pillars of sustainable peace including the rule of law and the civic contract. According to Transparency International East Africa's

[65] Government cautioned over granting federal selectively', New Vision, November 2012.
[66] '10 reported dead in Kampala riots', Guardian, 11 September 2009.
[67] ACCS consultative workshops in northern Uganda, 10-29 September 2012.
[68] Police to use military tactics, says Kayihura', Daily Monitor, 18 June 2012. in2eastafrica.net/uganda-police-to-use-military-tactics-says-kayihura/.
[69] This section examines the 2000 Amnesty Act and the broader process of justice at the national level. Chapter 2 looks at the impact of the lack of a comprehensive transitional justice process on prospects of reconciliation between communities in the North.
[70] Greenawalt,(2009), 'Complementarity in Crisis: Uganda, Alternative Justice and the International Criminal Court ', Virginia Journal of International Law, vol 50, no. 107.
[71] The exception was Turkmenistan. Zaum, D. and Cheng, C., 'Corruption and Peace building', Anti-Corruption Research Network, corruptionresearchnetwork.org/resources/frontpage-articles/the-role-of-corruption-in-peacebuilding, accessed 8 February 2013.

Bribery Index 2012[72] Uganda is the most corrupt country in the East African region.[73] Corrupt practices have become institutionalized in most public bodies and sectors of the economy, undermining vital service delivery programmes and confidence in the government.[74] Several commissions of inquiry and parliamentary audits have revealed widespread and systemic corruption in the army, police, judiciary, revenue authority, national social security fund, OPM and the Ministry of Finance.[75]

The politicization of ethnic identity

The complex relationship between identity, ownership and belonging (citizenship) continues to undermine the nation-building process in Uganda. The country remains deeply divided along ethnic lines, reflecting the perpetuation of colonial 'divide and rule' strategies by successive Ugandan governments. Ethnic loyalty remains a predominant basis for political alliances in Uganda, as well as access to, retention and distribution of political power. This polarises society and feeds into growing secessionist tendencies by groups which perceive their communities to be excluded from the political process. [76]

Pursuing this idea,[77] state that soldiering was a source of prestige, employment and identity for young males from the Acholi region and they were significantly represented in the military under British rule. The military became a replacement for economic opportunity. on becoming the first president of independent Uganda, Obote capitalized on these differences and consolidated his government on the strength of an army whose personnel mainly came from the northern ethnic groups. [78]

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[72] Transparency International, East African Bribery Index 2012, www.tiuganda.org/, accessed 5 November 2012.

[73] Kasoma, Aloysious, 'Uganda leads corruption indices in East Africa', Independent Magazine ,30 August 2012, www.independent.co.ug/news/news/6352-uganda-leads-corruption-indices-in-east-africa.

[74] Cheme, Marie(2009), 'Overview of Corruption in Uganda', Anti Corruption Resource Centre Brief, 4 March, available at www.u4.no/publications/overview-of-corruption-in-uganda/.

[75]Hossein, 'Corruption Irks First Lady', The Observer, 14 February 2012, www.observer.ug/index.php?option=com_content&view=article&id=7244:corruption-rks-first-lady&catid=34:news&Itemid=114.

[76] The Acholi Parliamentary Group, the Buganda Parliamentary Group and the Karamoja Parliamentary Association all formed to voice ethnic and geographical grievances born out of a sense of collective deprivation and to gain political recognition.

[77] Veale and Stavrou (2003).

[78] Jack (1994), "The Dark Side of the Force," Economic Inquiry 32, no. 1 (1994): 1–10.

There is stronger econometric evidence that oil resources are associated with conflict but this, too, depends on the model specification and exclusions of outliers.[79] Case studies suggest that even where natural resources are abundant, private motives are rarely the full explanation. As a study of seven countries in conflict concluded "Very few contemporary conflicts can be adequately captured as pure instance of 'resource wars. Economic incentives have not been the only or even the primary causes of these conflicts."[80]

Recent attention has focused on the process of democratization as a time of particular vulnerability to the emergence of conflict. Jack Snyder argues that the process of democratization can be hijacked by ethno nationalist mobilization.[81] With Edward Mansfield, Snyder also argues that early democracies may be more belligerent internationally as well, because ethnic and nationalist rhetoric is invoked where institutions are weak.[82] Marta Reynal Querol suggests that it is the particular type of democracy whether it has a presidential system, and whether the outcomes of votes are majoritarian, winner takes it all or involve proportional representation that affects the propensity for conflict, rather than the level of "democracy" per se.[83]

Violent conflict, associated with the work of Thomas Homer Dixon, is the "green war," or "environmental scarcity," argument.[84]The essence of this perspective is that the contest for control over declining natural resources, often intensified by population pressures, is a major cause of violent conflict around the world. Poorer societies are more at risk because they are "less able to buffer themselves" from environmental pressures.[85]

2.3 Conclusion

Uganda is gradually moving away from the traditional concept that litigation is more effective than ADR but there is still more to be done. Much as the lawyer's stock in trade is his time, for which he lavishes in his bills subsequent to court litigation, ADR can also be cost effective as well as financially and intellectually rewarding.

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[79] James (2003), "Ethnicity, Insurgency and Civil War," American Political Science Review 97 "Violence Conflict and the Millennium Development Goals: Diagnosis and Recommendations" (CSGD Working Paper Series, Columbia University, New York) no. 1: 75–90.
[80] Karen (2003), the Political Economy of Armed Conflict: Beyond Greed and Grievance, 259–60.
[81] Jack (2000), From Voting to Violence (New York: W. W. Norton).
[82] Edward (2007). Mansfield and Jack Snyder, Electing to Fight: Why Emerging Democracies Go To War (Cambridge M A: MIT Press).
[83] Marta (2002), "Political Systems, Stability and Civil Wars," Defence and Peace Economics 13, no. 6: 465–83.
[84] Thomas (1991), "On the Threshold: Environmental Changes as Causes of Acute Conflict," International Security 16, no. 2: 76–116.
[85] Homer-Dixon, "Environmental Scarcities and Violent Conflict," 6.

CHAPTER THREE
INTERNATIONAL BEST PRACTICES OF ADR IN COMMERCIAL DIVISIONS OF THE HIGH COURT

3.0 Introduction

This chapter will include the international best practices for commercial divisions of the high court. Although many countries have not developed formal ADR processes as part of their legal systems, dispute resolution practices have been in place practically since the beginning of time. These practices have taken on many forms in different societies and they continue to evolve and mature. Systems like conciliation, negotiation and adjudication are already built into many community structures. In more developed nations there has been a lot of progress over the past several years aimed at increasing the use of mediation and arbitration in legal disputes. This is often driven by inefficient court systems or perhaps just to reduce the cost of disputes. In some countries the time it takes to get to court and achieve a litigated resolution can stretch over many years and when settlements are reached outside of court, the courts are not always willing or able to enforce them.

3.1 International best practices of Alternative Dispute Resolution in Kenya

The main alternative dispute resolution (ADR) methods available in Kenya are negotiation, conciliation, mediation and arbitration. There is no mandatory requirement for parties to commercial litigation to submit to ADR proceedings.[86]

However, in terms of the Civil Procedure Act, the courts may, either on the application of the parties or on its own motion, refer a commercial dispute to ADR mechanisms. In ADR proceedings parties generally agree that each party will bear their own costs and expenses and the parties will share the costs of any third party involved in facilitating the resolution of the dispute (example, conciliator or mediator).[87]

Mediation

Mediation is one of the alternative dispute resolution mechanisms which has been practised since antiquity and is thus a restatement of customary jurisprudence. It existed even before

[86] J. Bercovitch, "Mediation Success or Failure: A Search for the Elusive Criteria", Cardozo Journal of Conflict Resolution, Vol.7.289, p.290.
[87] Ibid.

the other alternative dispute resolution mechanisms were invented. Both mediation and the other alternative dispute resolution mechanisms focus on the interests and needs of the parties to the conflict as opposed to positions which is emphasized by common law and statutory measures.[88]

Mediation is also recognized as one of the mechanisms for managing conflicts in Kenya. Article 159 of the Constitution provides that in exercising judicial authority, the courts and tribunals shall be guided by certain principles. One of these principles is that alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted provided that they do not contravene the Bill of Rights, they are not repugnant to justice and morality or results to outcomes that are repugnant to justice or morality and if they are not inconsistent with the constitution or any written law.[89]

In arbitration, the costs of arbitration may be agreed upon by the parties, fixed by the arbitrator as part of the arbitral award in the absence of an agreement; or shared, with each party bearing its own legal and other expenses and the parties equally sharing the fees and expenses of the arbitral tribunal and any other expenses relating to the arbitration. ADR proceedings are confidential. The Kenyan Chartered Institute of Arbitrators and the Dispute Resolution Centre and Mediation Training Institute are currently the main bodies that offer ADR in Kenya.[90]Parties are not obliged to use these bodies. They are free to state in their agreements how the ADR proceedings will be carried out and which body will oversee the proceedings and the parties are also free to choose individual qualified arbitrators.[91]

Arbitration

The duration of arbitration proceedings in Kenya varies depending on the complexity of the subject matter, the efficiency and enthusiasm of the parties, the respective schedules of the parties and the arbitrator and his/ her efficiency. Arbitration proceedings in Kenya generally

[88] Pau J. Bercovitch, "Mediation Success or Failure: A Search for the Elusive Criteria", Cardozo Journal of Conflict Resolution, Vol.7.289, p.2901 Obo Idornigie, "Overview of ADR in Nigeria", 73 (1) Arbitration 73, (2007), p.73.
[89] Article 159 (2) (c) of the Constitution of Kenya 2010, Government Printer, Nairobi.
[90] Makumi Mwagiru, Conflict in Africa; Theory, Processes and Institutions of Management, op.cit, pp. 115-116.
[91] K. O. Hwedie and M. J. Rankopo, Chapter 3: Indigenous Conflict Resolution in Africa: The Case of Ghana and Botswana, op cit p.33.

take between six months and three years and a court can intervene in arbitration proceedings but the level and instances of intervention are limited.[92]

Under the Arbitration Act the instances in which a court may intervene in arbitration proceedings include determination of the enforceability of arbitration agreements; granting interim measures of protection; setting aside the appointment of an arbitrator; appointing an arbitrator where none has been appointed; assisting in taking of evidence; removing an arbitrator; setting aside of arbitral awards; enforcement of arbitral awards and hearing and determining appeals, where a right of appeal from the decision of an arbitral tribunal lies to the court.[93]

Therefore, an arbitrator has power to grant interim relief and measures of protection as he may consider necessary. There is no mandatory requirement to disclose any documents. Parties disclose documents that are relevant to their cases. The disclosure and exchange of documents and other information is agreed upon by the parties and the arbitrator during the preliminary arbitration scheduling meetings.[94]

The Constitution, 2010

The Constitution seeks to promote the cultural practices and traditional knowledge of the Kenyan communities including the use of ADR in conflict management. In this regard, Article 159 (1) provides that judicial authority is derived from the people and vests in and it is to be exercised by courts and tribunals established by or under the Constitution with regard to the principles of inter alia promoting the use of ADR mechanisms in conflicts management.[95] The rationale of the constitutional recognition of TDR is to validate alternative forums and processes that provide justice to Kenyans.[96] However, Article 159 (3) provides that traditional dispute resolution mechanisms are not to be used in a way that contravenes the Bill of Rights; is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality or is inconsistent with the Constitution or any written law.

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[92] M. Mwagiru, The Water's Edge: Mediation of Violent Electoral Conflict in Kenya, (Institute of Diplomacy and International Studies, July 2008),pp. 36-38.
[93] K. Cloke, "The Culture of Mediation: Settlement vs. Resolution", The Conflict Resolution Information Source, Version IV, December 2015, Available at http://www.beyondintractability.org/bi-essay/culture-of-mediation.
[94] Ibid.
[95] Article 159 (2) (c) and (3).
[96] Article 159 (1).

Civil Procedure Act and Rules

The Civil Procedure Act and rules, Cap 21 embodies the procedural law and practice in civil courts in Kenya. These include the High Court and Subordinate Courts. The Act and Rules envisage enabling provisions within which ADR mechanisms are to be supported.[97] Within this framework, the court has inherent power to explore dispute resolution options that further the overriding objectives.[98]

Section 1B provides that the aims of ensuring a just, expeditious, proportionate and affordable resolution of civil disputes include the just determination of proceedings, efficient disposal of Court business, efficient use of judicial and administrative resources, timely disposal of proceedings, affordable costs and use of appropriate technology.[99]

Other Alternative Dispute Resolution mechanisms in Kenya

However, different from other East African countries, there are other mechanisms or processes that exist in regard to ADR in Kenya. Although parties do not have a say in the process itself, they are bound by rules of procedure which they have to follow so compared to other processes like arbitration the element of party participation in arbitration is higher because the parties are at liberty to decide which rules of procedure to apply or the venue.[100] The process is increasingly formal from the dress that the parties wear that is wigs an gowns in litigation or judicial process, manner of address, references to magistrates and Judges as my lord and your honour, the requirement as to pleadings and the format that they have to meet.[101]

Dispute Prevention

One mechanism for preventing disputes is by providing dispute resolution training, training that provides people with skills to prevent unnecessary disputes and training maybe in better communication skills. Method of dispute resolution is partnering which requires disputants

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[97] Section 1A (1)of the Civil Procedure Act encapsulates the overriding objective of the Act which is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes governed by the Act.
[98] Ibid.
[99] Fenn, "Introduction to Civil and Commercial Mediation", in Chartered Institute of Arbitrators, Workbook on Mediation, op. cit, p.10.
[100] Fenn, "Introduction to Civil and Commercial Mediation", in Chartered Institute of Arbitrators, Workbook on Mediation, op. cit, p.10.
[101] Christopher Moore, the Mediation Process; practical Strategies for Resolving Conflict, (Jossey-Bass Publishers, Nairobi, 1996), p. 14.

involved in a project to meet to discuss how to resolve any conflict which may arise.[102] If for instance there is a building contract that involves, employer, engineer building contractor etc. these people can meet at their own set of this project and decide that should conflict arise with it in this fashion that is partnering. They can agree for instance that the decision of the architect will be the final decision. The other form of dispute prevention is systems design which involves determining in advance what process would be used for handling conflicts which arise.[103]

Negotiation

Negotiation is any form of communication between two or more people for the purpose of arriving at a mutually agreeable solution. In a negotiation the disputants may represent themselves or they may be represented by agents and whatever the case, whether they are represented or not represented, they have control over the negotiation process, when attempts are made to settle matters out of court involves negotiations. There are two extreme styles of negotiating; there is what is referred to as the competitive bargaining style and co-operative bargaining style or hard bargaining and soft negotiating.[104]

The competitive negotiators are so concerned with the substantive results that they advocate extreme positions. They create false issues, they mislead the other negotiator, they even bluff to gain advantage. It is rare that they make concessions and if they do, they do so arguably, they may even intimidate the other negotiator.[105] Cooperative negotiators are more interested in developing a relationship based on trust and cooperation they are therefore more prepared to make concessions on substantive issues in order to preserve that relationship.[106]

The solution that comes out of such hard negotiations is likely to be a fragile one and therefore not long lasting so the other party is likely to come out of the negotiations feeling like maybe they gave too much and this may create ill feelings; the competitive or hard negotiator may by reason of his approach fail to take an opportunity to reach a good deal

[102] Makumi Mwagiru, Conflict in Africa; Theory, Processes and Institutions of Management, op.cit, pp. 115-116
[103] Ibid.
[104] Michael Barkun, "Conflict Resolution through Implicit Mediation," Journal of Conflict Resolution, VIII (June, 1964), p. 126.
[105] Michael Barkun, "Conflict Resolution through Implicit Mediation," Journal of Conflict Resolution, VIII (1964), p. 126.
[106] Marvin C. Ott, "Mediation as a Method of Conflict Resolution: Two Cases", International Organization, Vol. 26, No. 4, the University of Wisconsin Press, Autumn, 1972, pp. 595-618, at p. 597.

because of the attitude that he must have his way and a good deal may be put on the table which he does not look at as he does not want to compromise.[107]

Story telling; the disputants communicate with the mediator to tell their story, the mediator then assures them that he has heard the story by re stating what each party has told you and letting them state whether those are the facts as they have stated them. The mediator should not descend to the arena but should let the disputants decide how to conduct the negotiations.[108]

Arbitration and Mediation

Arbitration is a process in which a third party neutral or an odd number panel of neutrals render a decision based on the merits of the case. The Hybrid of mediation or the hybrid between mediation and arbitration which is a very rare sort of scenario is that the third party neutral commences the process in the role of a mediator and if that does not yield or result in a resolutions the mediation ceases and the mediator assumes or becomes an arbitrator who then makes a binding decision.[109]

3. 2 International best practices of Alternative Dispute Resolution in Nigeria

As a form of dispute resolution, Nigeria encompasses traditional commercial dispute resolution modes in the form of arbitration, mediation, negotiation, conciliation often considered a part of arbitration and collaborative law or hybrid legal processes.[110]

Thus ADR generally involves informal tribunals using informal mediative processes. Classic informal methods include social processes, referrals to non-formal authorities such as a respected member of a community, religious, trade or social group and intercession or formal tribunals using formal mediative processes. The classic formal tribunal forms of ADR are arbitration both binding and advisory or non-binding) and private judges either sitting alone, on panels or over summary jury trials. The classic formal mediative process is referral for mediation before a court appointed mediator or mediation panel. The major differences

[107] Makumi Mwagiru, Conflict in Africa; Theory, Processes and Institutions of Management, op.cit, pp. 115-116.
[108] Ibid at p117.
[109] M. Mwagiru, the Water's Edge; Mediation of Violent Electoral Conflict in Kenya, (Institute of Diplomacy and International Studies, July 2008), pp. 36-38.
[110] N.Okereafoezeke, (2002), *Law and Justice in Post-British Nigeria; Conflicts and Interactions between Native and Foreign Systems of Social Control in Igbo*, Greenwood Press, p.14.

between formal and informal processes are pendency to a court procedure and the possession or lack of a formal structure for the application of the procedure.[111]

In recent times, formal ADR processes would be best typified by the multido or court systems already adopted by some States in Nigeria which usually require that parties to a pending litigation acquiesce to a third-party or non-third party mediated settlement outside of the arena of the court and its functionaries, within a stipulated period. They may then come back to the Court to either seal their agreement or discontinue the suit or where they are unable to come to any agreement, to request for the continuation of litigation.[112]

There are in addition free-standing and or independent methods such as mediation programs and ombuds offices within organizations. Some organizations usually headed by lawyers and non-lawyers now exist for the primary function of providing ADR services and training. Nonetheless, a large swathe of Nigeria's ADR services especially arbitration, is provided by law firms and lawyers. Whatever their form, the methods are similar so is their tool or skill sets which are basically sub-sets of the skills of negotiation.[113]ADR's mark in Nigeria is especially notable in commercial transactions, negotiations and agreements. Instructively, it is now taken for granted that any proper commercial agreement or memorandum incorporates a dispute resolution clause via ADR. Even in criminal cases, plea bargaining and other processes that draw from ADR principles are being called into play more regularly.[114]

In Nigeria, the practice of ADR is on the rise as a result of so many factors. These include the increasing or in some cases over-flowing caseload of traditional courts leading to protracted delays in the resolution of conflicts; the perception that ADR is relatively affordable compared to the often prohibitive cost of obtaining quality litigation services in Nigerian;

[111] Sander, (1979), "Varieties of Dispute Processing", *The Pound Conference; perspectives on justice in the future Minnesota*; West Publishing Co, pp.65–87.
[112] Ibid.
[113] O.Monalisa (2016), "Access to Justice through Court Annexed Alternative Dispute Resolution Programmes: A Critical Assessment of the Multi-Door Courthouse System in Nigeria", Paper presented to the Society of Legal Scholars, Oxford, 8 September 2016, p.3.
[114] Monalisa (2016), "Access to Justice through Court Annexed Alternative Dispute Resolution Programmes: A Critical Assessment of the Multi-Door Courthouse System in Nigeria", Paper presented to the Society of Legal Scholars, Oxford, 8 September 2016, p.3.

Crisis of confidence in the ability of the rank and file of Nigeria's judiciary to deliver justice on the merits of particular cases on time.[115]

The result is a greater desire of more parties to have greater control over the selection of the individual or individuals who will decide their dispute; a preference for confidentiality especially among large corporations intent on maintaining long standing relationships and goodwill with their disputants; an urgent need to provide another pathway to justice resolution that can act as a counterpoint to violent self-help methods in the guise of militancy, insurgency and extremism, especially among the younger elements of the country. In Nigeria, ADR provision is still practised majorly as one of the services provided by law firms but there are core-providers of ADR services that have begun to emerge.[116]

In settling disputes in rural communities of Uganda, if communities are well empowered, they are in position to resolve simple cases through mediation and sometimes through arbitration using the empowered traditional courts or established structures hence relieving the formal courts of the many case backlogs. Ugandans should therefore be learning from Nigerian ADR Approaches which if implemented can effectively complement the formal justice systems to handle some of the minor cases.

Focus should also be put on language that is familiar to all the parties involved, accessibility of the structures, affordability, utilization of local resources, decisions are based on consensus and that the decisions made seek to heal and unite disputing parties. In addition communities have mentioned that the ADR courts enhance incorruptible, proceedings because case resolvers live in the community and hence they understand circumstances around a particular case.

According to the Law Reform Commission, the term "alternative dispute resolution or ADR is often used to describe a wide variety of ways to resolve disputes that are close or alternative to, full-scale court processes. The term can refer to everything from negotiations that are facilitated in order to reach an agreement, in which the parties disputing are

[115] Logan, Carolyn (2017), "Ambitious SDG goal confronts challenging realities: Access to justice is still elusive for many Africans", Afro barometer, March, pp.21–22.
[116] Sam (2016) is the Founder/Editor, LawNigeria.com. He has also served as the Managing Editor of the Business Eye magazine, The Big Issue Lagos (funded by the UN Democracy Fund/INSP and The Africa Social Space).

encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini-trials that look and feel very much like a courtroom process. ADR systems may be generally categorized as negotiation, conciliation or arbitration systems.

Negotiation systems should be based on creation of a structure to encourage and facilitate direct negotiation between parties to a dispute, without the intervention of a third party. Mediation and reconciliation systems are similar in that they bring in a third party between the two groups that are in disagreement, either to mediate a specific dispute or to reconcile their relationship. Arbitration systems authorize a third party to decide how a dispute should be resolved. It is Arbitration programs may be either binding or non-binding. Binding arbitration produces a third party decision that the two parties disagreeing, must follow even if they disagree with the result, much like a judicial decision. Non-binding arbitration produces a third party decision that the parties may reject.

As the local saying goes that "the stick that is far cannot kill a snake and the justice system in Uganda still faces a myriad of challenges including high cost of litigation, delay in conclusion of matters, complicated court procedures which all contribute towards hindering access to justice especially for the indigent groups.

Anthropologists of the structuralist-functionalist school generally affirm that patterns of social ordering determine the forms of dispute resolution in any given society. According to this school, in simple, pre-industrial societies where relations are multiplex involving various interests which are continuing, parties will rely on negotiation or mediation in settlement attempts which generally lead to consensus and compromise. After application of those, mediation practices, the Ugandan courts should only be used in finding out what happened during the mediation and as well prove whether the parties in conflict reconciled to avoid further harm.

3.3 International best practices of Alternative Dispute Resolution in United States of America

Alternative Dispute Resolution (ADR) in the common law tradition has its origins rooted in English legal development. As early as the Norman Conquest, legal charters and documents indicate that English citizenry instituted actions concerning private wrongs, officiated by highly respected male members of a community, in informal, quasi-adjudicatory settings. In

some instances, the king utilized these local forums as an extension of his own legal authority; rather than adjudicate a suit via the more formal king's court, the king would simply adopt the decision of a local but highly respected, layperson without ever "reaching the merits" of the suit, creating one of the first forms of arbitration. In some sense, then, common law ADR has been around for centuries.[117]

In the United States, commercial arbitration existed in the early Dutch and British colonial periods in New York City. "Pilgrim colonists, convinced that lawyers threatened Christian harmony, scrupulously avoided lawyers and courts, preferring to use their own mediation process to deal with community conflicts." When disagreements occurred, a body of male members of the community would hear claims, determine fault, assess damages and ensure that the parties reconciled with one another. For much of the colonial period, these informal arbitrations were the norm.[118]

Shortly after independence and the creation of a new government, ADR found its place in a number of applications, albeit sporadically. For instance, in the Patent Act of 1790, Congress provided for an arbitration system of competing patent claims. In such a dispute, the Act authorized the creation of an adjudicative board, consisting of one member appointed by each patent applicant and another by the secretary of state. Decisions by the board were binding and, should an applicant opt out of this arbitration, the other applicant's patent would be summarily approved.[119]

While these early attempts at ADR were essential to its development in the United States, ADR did not receive formal institutionalization until the late-19th Century. For instance, in 1898 Congress followed initiatives begun a few years earlier in Massachusetts and New York and authorized mediation for collective bargaining disputes." Special mediation agencies, like the Board of Mediation and Conciliation for railway labor and the Federal Mediation and Conciliation Service ("FMCS") which are still operative today, were formed to carry out negotiations regarding employment. At this stage of ADR's development, it was perceived of

[117] Kimberlee K. Kovach (2000), Mediation: Principles and Practice 6 (2d ed.).
[118] A. V. Sanchez (1996), Towards a History of ADR: The Dispute Processing Continuum in Anglo-Saxon England and Today, 11 Ohio St. J. on Disp, Resol 1, 16.
[119] A. V. Sanchez (1996), Towards a History of ADR: The Dispute Processing Continuum in Anglo-Saxon England and Today, 11 Ohio St. J. on Disp, Resol 1, 1.

less as an alternative to litigation and more as a tool to avoid unrest, strikes, and the resultant economic disruption.

With the enactment of statutory ADR systems, lawyers and entrepreneurs realized the importance of providing nongovernmental voice to ADR-related policymaking. In 1926, the American Arbitration Association ("AAA") was formed to provide guidance to arbitrators and parties as to ADR methods and time-tested procedures. Using the collective expertise of individuals in the field, AAA developed and promulgated rules on the proper methods for arbitration. Over the years, AAA has become the premier organization promoting and nurturing business arbitration in the United States.[120]

Throughout the 20th Century, ADR grew in popularity as an alternative to the litigation process. At the governmental level, state and federal governments began utilizing ADR in a number of programs. For instance, during the 1970s, the Department of Health, Education, and Welfare was designated as the administrator of the Age Discrimination Act of 1975, to resolve claims of age discrimination in federal workplaces. To facilitate speedy resolutions of the matters, the Department enlisted the help of FMCS to mediate complaints under the new law, a process that became routine in 1979. At the academic level, the 1980s brought significant interest from legal experts in the uses of ADR in a variety of fields. Universities and law schools began introducing courses and degrees in ADR related topics. By the turn of the 21st Century, an American Bar Association survey showed that the majority of law schools had some form of ADR related program, including extracurricular competitions.[121]

Today, arbitration exists at all levels of the U.S. legal profession. Law firms regularly employ retired judges or AAA certified attorneys with ADR expertise to offer mediation, negotiation, and arbitration services to individuals and businesses.[122] In 1979, retired Judge Warren Knight of California started the Judicial Arbitration and Mediation Service, an organization dedicated to providing law firms, businesses and individuals with access to judges willing to serve in ADR capacities and in 1995, database providers, like Martindale-Hubbell, began publishing routinely-updated directories of ADR practitioners, their firms, and areas of

[120] Ian Macneil (1994), Federal Arbitration Law: Agreements, Awards & Remedies under the Federal Arbitration Act.
[121] Ian Macneil (1994), Federal Arbitration Law: Agreements, Awards & Remedies under the Federal Arbitration Act.
[122] Cole, McEwen and Rogers, Mediation; Law, Policy and Practice pg 5:1 (3d ed.).

practice, affording more individuals access to ADR related services. Thus, ADR as a legal system has become firmly entrenched in the United States.[123]

Of all the types of ADR, mediation has emerged as the primary ADR process in the federal district courts." Most federal jurisdictions offer some form of mediation and many require it. Mandatory mediation either requires parties to engage in mediation in certain cases or creates disincentives for parties to decline it. [124]

In the United States, federal and state laws on mediation consist of a complex body of statutes, codes of civil procedure, local rules of court and common law rules of contract. Current practice strikes a balance between self-determination and court-ordered dispute settlement. As legalism crept in, California, Florida, Ohio (and, to a lesser extent, Texas) took the lead in regulating the relationship between mediation and the regular trial, incentives to mediate, confidentiality, enforcement of settlements and professional standards for mediators.[125] After four decades of alternative dispute resolution, the climate for mediation is changing again. Dispute resolution is shifting from the authoritative trial to alternative dispute settlement. Procedural justice has to compensate for abandoning the proverbial day in court.[126]

3.4 Conclusion

The three countries; USA, Kenya and Nigeria have similar ways of settling disputes like Uganda. However, Uganda being one of the least developed countries still faces challenges of youth unemployment, domestic violence in families and land wrangles which have created too much disputes. Hence to avoid such and provide for alterative ADR focus should start from the grass root where local authorities be empowered to settle cases even before going to courts of law.[127]

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[123] Ibid.
[124] Elizabeth Phlapinger & Donna Stienstra (1996)., ADR and Settlement in the Federal District Courts 4.
[125] Mediation in the USA, **2012**, Alternative Dispute Resolution between Legalism and Self-Determination Rainer Kulms
[126] A. S.Valerie(1996), Towards a History of ADR; the Dispute Processing Continuum in Anglo-Saxon England and Today, 11 Ohio St. J. on Disp. Resol. 116.
[127] This is because in a few situations (like lawsuits between state governments or some cases between the federal government and a state) it sits as a court of original jurisdiction.

CHAPTER FOUR

EFFECTS OF ADR ON JUSTICE SYSTEM IN UGANDA

4.0 Introduction

This chapter will provide for the effects of ADR on the justice system of Uganda. In Uganda just like other African countries, the use of a third party neutral in the resolution of disputes is still very common today. In the early 2000, mediation was piloted in the Commercial Court as an alternative to litigation, and many cases were successfully mediated. Judicial officers were left with time to try cases which are ordinarily not amenable to mediation substantially increasing the productivity of the courts, satisfaction and confidence of court users in the justice system.[128]

Mediation and arbitration have been on the increase since the creation of the Centre for Arbitration and Dispute Resolution (CADER) in 2000 and in between 2003 and 2005 the Commercial Court Division implemented the mediation Pilot Project whereby cases were referred to CADER for mediation.[129] Mediation became a permanent feature at the Commercial Court with the passing of the Judicature (Mediation) Rules 2013. Following the success story at the Commercial Court, it was decided to rollout mediation at all the courts with the gazetting of the Mediation Rules 2013.[130]

Access to justice is ancillary to the right to a fair trial and, among others, respect for the principles of natural justice.[131] The Human Rights Committee[132] has noted in its General Comment 32 on article 14 of the International Covenant on Civil and Political Rights (ICCPR), inter alia, that "availability or access to legal assistance is often determinative of whether or not a person can access the relevant judicial proceedings or participate in them in a meaningful way.[133]Access to justice is therefore seen as a means to dismantle the structural barriers that marginalized people face in their attempts to obtain legal representation and a remedy where their rights are violated. In sum, it relates to how to attain qualitative justice at

[128]The Judiciary, Republic of Uganda, 2015, Mediation Rolled out to all courts.
[129] Ibid.
[130] The Judiciary, Republic of Uganda, 2015, Mediation Rolled Out to All Courts.
[131] Tilda Hum et al, The Right to a Fair Hearing and Access to Justice. Submission of the New South Wales Young Lawyers Human Rights Committee to the Senate Legal and Constitutional Affairs Committee: Inquiry into Access to Justice (2006).
[132] The treaty-based body for the International Covenant on Civil and Political Rights.
[133] The article deals with the right to equality before the courts and tribunals and the right to a fair trial.

the end of the legal process for the poor generally, children, women, persons with disability and indigenous minority groups and other marginalized entities. Qualitative justice is about justice that is sensitive, responsive and effective which recognizes the peculiar and unique perspectives and concerns of the marginalized entities and provides mechanisms for responding to these concerns which in the end provides a kind of justice that brings satisfaction to the victim.[134]

Like ADR, the concept of access to justice can be traced to ancient times;[135] however, it has come to acquire renewed importance in the post-Cold War period, particularly as part of the law/justice reform package that has accompanied Western development assistance to developing countries.[136] To attain its objectives, access to justice is re-packaged to take into account the desire for a form of 'justice' which may or may not be possible through the existing legal system and therefore may involve a substantial reform of the actual system rather than merely focusing on the mechanisms for utilizing it. In this regard, the services may be carried out by the formal system of justice the judiciary or where that is found to be inadequate, through alternative dispute resolution (ADR) mechanisms which may include the judiciary or other bodies.[137]

Access to justice employs various methods, both within and outside the formal justice system, to promote qualitative justice for disadvantaged groups. One of the effective means for realizing this goal is through the ADR process. However, the work reveals that there are some situations where the ADR process perpetuates the status quo and does not lead to expanding the frontiers for accessing justice, particularly for women. This is as a result of the fact that the originators of the access to justice concept failed to take into account the fact that the ADR process is not new to developing countries. It was the sole means for dispute resolution in pre-colonial Africa until colonialism, with its mission civilisatrice, came to set it aside and replace it with what is known today as the "formal legal system." Even where it was allowed to function alongside the formal system, it was pejoratively termed as the "indigenous justice system" and declared inferior to the formal system. However, having recognized weaknesses in the formal justice system, legal/judicial reformers invented the

[134] The treaty-based body for the International Covenant on Civil and Political Rights.
[135] Leonard W. Schroeter, 2010, the Jurisprudence of Access to Justice.
[136] DFID, justice and poverty reduction; safety, security and access to justice for all (London, UK (2000) and, Cynthia Alkon, Lost in Translation; Can Exporting ADR Harm Rule of Law Development? (2011).
[137] R. Sudarshan(2012), Rule of Law and Access to Justice: Perspectives from UNDP Experience.

ADR system which incidentally contains key doctrinal and procedural processes inherent in the once denigrated pre-colonial justice system.[138] This ADR process is re-introduced as a "foreign package" that is meant to cure the woes plaguing the formal justice system in developing countries as well. In the view of the reformers, the formal justice system in the developing world is plagued by corruption, inefficiency, case backlog, lack of mechanization.[139]

4.1 Overview of Justice System and ADR

In Uganda, the challenge of access to justice is quite formidable and this is largely due to the high levels of poverty especially with respect to the practice of income generating activities. Only a small percentage of Ugandans can actually afford to pay for the services of an advocate. In fact, for many Ugandans the cost of court fees presents a serious financial challenge.[140]

Section 12 gave rise to uncertainty as to the actual finality of an award when procured another and perhaps even more critical traditional perception was that ADR decisions were not capable of being enforced as decrees of court.[141]This meant that where a losing party chose not to recognize an ADR decision that was the end of the mailer, however, there was a lot of merit in this traditional perception. ADR decisions are not binding by the nature of their definition and are only acted upon in "good faith" by the parties most authorities on the subject advise that ADR decisions should be reduced into writings as contracts between enforcement.[142]

It is now clear that traditional perceptions of ADR in Uganda are changing and ADR is becoming a credible method of dispute resolution even for common law countries. The first driving factor in changing the traditional perceptions was international trade which sought to create a dispute resolution mechanism that was universal yet at the same time insulated from national courts which could be biased against foreign business concerns. In this regard the United Nations Commission on International Trade Law (UNCITRAL) came up with legal

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[138] Centre for Democracy and Governance, supra note 4.
[139] Linn A. Hammergren, Envisioning Reform: improving judicial performance in Latin America(2007); Petter Langseth & Oliver Stolpe, strengthening judicial integrity against Corruption, United Nations Global Programme against Corruption, Centre for International Crime Prevention, Office for Drug Control and Crime Prevention, United Nations Office at Vienna, 20 December 2000.
[140] Justice Law and order sector, 2015, Alternative Dispute Resolution Project Launched, commission *on Legal Empowerment of the Poor; Making the Law Work for Everyone, Vol. 1, at p. 18.*
[141] Arbitration Act Cap 55.
[142] Cap 55.

documents like the UNCITRAL Arbitration Rules 1976 and the UNCITRAL Model Law on International, Commercial Arbitration 1985.[143]

These UNCITRAL documents coupled with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention) of 1953 are the main instruments that influenced the drafting of the new Cap 4 of the Arbitration and Conciliation Act of Uganda. As a result of this international trade angle there has been a push by donor countries to modernize the Ugandan commercial laws and court procedures along the lines that actively promote ADR and by so doing promote trade and investment in the country. In Uganda this led to the enactment of the Investment Code Act 1991 which talks of the settlement of investment, disputes amicably or through arbitration or other machinery for the settlement of investment disputes.[144]

The first driving factor for change came from the 1994 Justice Platt report on judicial reform which recommended the increased use of Arbitration and ADR along side litigation and the creation of a Commercial Division of the High Court. Shortly thereafter, a major statement was made in the new 1995 Constitution of Uganda which under Article 126 that enjoined the courts to inter alia apply the following principles, Justice shaft not be delayed, reconciliation between parties shaft be promoted and substantive justice shaft be administered without undue regard to technicalities.[145]

In the case of the old Arbitration Act, an arbitral award would have to be filed in court to be enforced as a decree of court. Even then it would only be filed according to that section if it was not first remitted for reconsideration or set aside so, for an arbitral award to be enforceable, it had to first pass the test or "non-remission and setting side which made the enforcement of ADR decisions on the whole long and burdensome.[146]

The application of the above principles would now stand to counter the traditional perceptions of adversarial dispute resolution methods and call for change in favour of court based ADR. In 1996 the Chief Justice Mr. Wambuzi as he then was by Practice Direction No. 1 of 1996 entitled Commercial Court Procedure established the Commercial Division of the

[143] United Nations Commission on International Trade Law (UNCITRAL).
[144] Section 28 (Cap. 92).
[145] Section 2 Constitution of the republic of Uganda1995.
[146] Section 13 (1) Arbitration Act Cap 55.

High Court Paragraph 5 (b) of the said Practice Direction enjoined the commercial judges to be 'Proactive', an essential ingredient for affecting a court based ADR System.[147]

Order 10 rule 2 adds that where the parties do not reach an agreement tinder sub rule (2) of rule, 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 Bur or of the Bench, named by the court(2) Alternative dispute resolution shall be completed within twenty-one days after the date of the order except that time may be extended for a period not exceeding fifteen days on application to court, showing sufficient reasons for extension.[148]

In Uganda, the Chief Justice may issue directions for the better carrying into effect of Alternative Dispute Resolution and with the passing of Order 10B, court based ADR had become of age in Uganda pushing in a new thinking of dispute resolution to be actively assisted by the Judiciary implying that Order 10B allows for ADR before a member of the bench for example a departure from the English approach which has not yet been used.[149]

However, Order 43 created a strict timetable for ADR failing which the court can continue with the hearing of the case in 2000, the Arbitration and Conciliation Act (Cap 4) was enacted repealing the old Arbitration.[150] Even though the Arbitration and Conciliation Act is not strictly speaking a court based ADR mechanism, provision is made in it for Court assistance in areas effecting interim measures S.17, taking evidence Section 27, challenging an arbitrator for misconduct S.13, setting aside an arbitration award Section 34, enforcing an arbitral award, the case stated procedure for domestic arbitration.[151]

4.2 Law guiding Alternative Dispute Resolution in Uganda

The Ugandan court systems have, of late, progressed and become more appreciative of global commercial developments and thus bringing about the establishment of other dispute resolution mechanisms in the administration of justice that are efficient and accessible; faster and cheaper.

[147] Legal Notice No 5 of 1996.
[148] Order 10B civil procedure rules 1998.
[149] Section 3.
[150] Arbitration and reconciliation Act, Cap 55.
[151] Section 35.

The Judicature Act, Cap. 13

This Act provides for Alternative Dispute Resolution under Court's direction. Sections 26 to 32 of the Act provide for situations when matters can be referred to a special referee or arbitrator to handle where such official has been granted High Court powers to inquire and report on any cause or matter other than a criminal proceeding. These provisions read together with section 41 of the Act, which stipulates for the functions of the Rules Committee give the origin of the Judicature (Commercial Court Division).[152]

In some instances, the intensity of a dispute may mean that the parties are not even in a position to hear each other out amicably.[153] This inevitably leads to seeking redress from Court with varying objectives, the most common of which are; for Court to assist the parties in determining the outcome of the case, (2) For the losing party to be punished through damages and costs to the winning party. Sometimes the issues to be resolved are too complex to be resolved through mediation. However, inspite of the aforementioned scenarios, the Judicature (Commercial Court Division)(Mediation) Rules, 2007[154]were recently made operational by the Commercial Court with effect from 1st November 2009, making mediation mandatory procedure for all litigants.[155]

These Rules are an after math to the Commercial Court's Mediation Pilot Project conducted between 2003 and 200563.[156] The Rules generally stipulate to the effect that a party filing pleadings at the Commercial Court shall provide for the mediator(s) in the matter; a concise summary of the case in dispute and; all documents to which the case summary refers and any others to which the party may want to refer in the mediation. Effectively as of November 2009, a Court litigant's pleadings will not be considered complete unless these Mediation Rules have been complied with.

However, in some instances, what the parties want can be more safely and conveniently arrived at through mediation than through litigation. It should also be considered that with the new mediation rules, some parties may appear to be forced into mediation out of fear of

[152] Rules, No. 55 of 2007.
[153] Commercial division of the high court, Rules, No. 55/2007.
[154] S.I No. 55 of 2007.
[155] With certain exceptions under rules 9 and 10.
[156] This was Court-annexed mediation in Uganda created by the Chief Justice through two instruments namely: The Constitutional Commercial Division (Mediation Pilot Project Rules) Practice Direction, 2003(Legal Notice No. 7 of 2003); and The Commercial Court Division (Mediation Pilot Project) Rules, 2003.

repris although costs sanctions from the Commercial Court judge as a result of either failure to agree to mediation or absence from mediation meetings.

Rule 18 of the Mediation rules provides for the payment of costs by the party that fails to attend mediation meetings without sufficient cause. With the Commercial Court embracing mediation, a party's refusal or reluctance to attend to mediation may drastically turn the case against such party even before the case takes off. ***Lord Justice Brooke in Dunnet v Railtrack (2002)***[157] stated that parties which turn down a suggestion of ADR by the Court "may face uncomfortable consequences". Jon Lang, a practicing mediator, argues that it is human nature to reject any form of compulsion. He adds that;

> If it becomes regular practice to force reluctant parties to mediate, we may well end up with a process characterized by stage managed and doomed mediations, rather than the high success rates we have seen over the last 10 years."[158]

The Commercial Court Mediation Rules provide a softer landing, however, through rule 10 which gives an exemption from mediation. It is to the effect that where sufficient cause is shown to exempt a matter from mediation, Court shall allow such exemption. One may thus argue that there is no coercion as such by Court pushing parties into mediation. The Rule clearly implies that where the parties do not envisage a way out in resolving their case through mediation, then once they have convinced Court of this situation, then they would be exempted from proceeding through the Mediation Rules.

Avoiding protracted litigation through Peacemaking, collaborative legal practice is a new concept that is yet to receive appreciation in Ugandan judicial practice. Mr. Arinaitwe Patson, a Ugandan lawyer trained in Collaborative practice and a member of the International Academy of Collaborative Professionals (IACP) Texas, USA, describes the practice as "about cooperation, not confrontation."[159] He further states that "It is a way of solving problems with lawyers assisting the parties to understand each other's perspective."[160]

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[157] Cited by Jon Lang: Should warring Parties be forced to mediate?-The Lawyer, 23 February 2004 – see http.//www.jonlang.com/pdf/sweet-talk.pdf accessed 20th November 2009.
[158] Ibid.
[159] Arinaitwe P.W; Collaborative Law and Lawyers in Peace Making: A paradigm Shift in Dispute Settlement; The Uganda Christian University Law Review, Vol. 01, No. 2 August 2009, Faculty of Law, U.C.U at pp. 87-116.
[160] Ibid, at p. 93.

Basically, Collaborative legal practice can be understood as a tool in dispute resolution that is similar to negotiation or mediation only that the lawyers involved play a key role in advising the parties as to the positive benefits that may arise from any course of action taken. In this way, they are guiding the parties to determine the best course of action to take while in the same vein ensuring that there is no ultimate loser. Arinaitwe states that the procedure involved relies on an atmosphere of mutual respect, honesty, cooperation and a commitment to maintaining a safe environment with the objective of ensuring the continued good business relationship for commercial entities and future well-being of the parties and their children in the case of family disputes.

Legislative provisions on Mediation

The Land Act, Cap. 227

The origins of mediation as a mechanism in dispute resolution and administration of Justice can be better appreciated through the practice of land law in Uganda. Traditionally, elders have always played the key role of mediators over land disputes as opposed to such matters being handled by western-style Tribunals that, in most respects are regarded as not being appreciative of the traditional modes of handling such disputes, as well as the fact that they may lead to permanent enmity between the warring parties instead of reconciling their differences. This is the basis for the recognition of traditional mediators under the Land Act.

Sections 88 and 89[161] provide for Customary Dispute Settlement and mediation as well as the functions of the mediator. Approximately 75% of land in Uganda is categorized under the customary tenure system, thus it is only appropriate that the statutory law provisions should stipulate for a combination of customary systems of settling disputes together with the modern mediation strategies.[162]

Section 88 (1)[163] provides; nothing in this part shall be taken to prevent or hinder or limit the exercise by traditional authorities of the functions of determining disputes over customary tenure or acting as a mediator between persons who are in dispute over any matters arising out of customary tenure.

[161] Land Act Cap. 227.
[162] A.C.K. Kakooza: Land dispute settlement in Uganda: Exploring the efficacy of the mediation option; Uganda Living Law Journal, Vol. 5, June 2007; Uganda Law Reform Commission.
[163] Land Act Cap. 227.

Justice Geoffrey Kiryabwire of the Uganda Commercial Court adds credence to this position as well. In his article; Mediation of Corporate Governance, disputes through Court annexed mediation a case study from Uganda,[164] hestates that "mediation as a dispute resolution mechanism is not all together new in traditional Ugandan and African society. There has for centuries been a customary mediation mechanism using elders as conciliators/mediators in disputes using procedures acceptable to the local community but which were not as formal as those found in the courts."

Significantly where a Land tribunal adjudicating over a land dispute in Uganda has reason to believe, on the basis of the nature of the case, that it would be more appropriate for the matter to be handled through a mediator, whether traditional authorities or not, may advice the disputant parties as such and adjourn the case accordingly.[165]

Section 89[166] provides guidance on the basis of which the selection and functions of a mediator follow. It provides that the mediator should be acceptable by all the parties should be a person of high moral character and proven integrity; not subject to the control of any of the parties; involve both parties in the mediation process and should be guided by the principles of natural justice, general principles of mediation and the desirability of assisting the parties to reconcile their differences.[167]

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.** [168]These are there is a valid agreement to have the dispute concerned settled by arbitration.[169]Proceedings in Court have been commenced, the proceedings have been commenced by a party to the agreement against another party to the agreement, the proceedings are in respect of a dispute so agreed to be referred.[170]

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[164] A paper given to The Global Corporate Governance Forum on Mediating Corporate governance disputes, World Bank office, Paris –February 12, 2007.
[165] Sec. 88(2) Land Act, Cap. 227, Laws of Uganda, 2000 Ed.
[166] Land Act Cap. 227.
[167] S.I No. 55 of 2007.
[168] (1991) H.C.B 72.
[169] Supreme Court Civil Appeal No. 49 of 1995 (unreported).
[170] ibid.

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.[171] The existence of an ongoing Court case where a similar matter is brought before an arbitrator, does not render such matter as res Judicata. In the arbitration case of **Bayeti Farm Enterprises Ltd & Anor v. Transition Grant Services**[172] was an application for the compulsory appointment of a single arbitrator.

In opposition to the application, the respondent argued that the matter was creating a multiplicity of suits basing on an existing suit before Court and relied upon Section 6 of the Civil Procedure Act, Cap. 71 which provides for the stay of suits on the basis of res Judicata. This argument was rejected by CADER on the basis that the Civil Procedure Act (CPA) has no application to section 11 of the Arbitration and Conciliation Act (ACA) (which provides for appointment of Arbitrators) because the CPA applies as per its Section 1, to proceedings in the High Court and Magistrates Court.[173]

Section 5 (2)[174] leaves the option open to both parties to proceed with arbitration inspite of the existence of an application for stay of such proceedings pending in Court. He goes further to note that section 9 provides a bar to court intervention where it states that; except as provided in this Act, no Court shall intervene in matters governed by this Act." He asserts that this section seems to amount to an ouster of the inherent jurisdiction of the Court. He states; firstly, it appears to make arbitration and conciliation procedures mutually exclusive from Court proceedings as for instance to make Court based or initiated mediation or arbitration untenable.[175]

In the case of **Oil Seeds (Uganda) Limited vs Uganda Development Bank Karokora** JSC, stated that, "the Court has jurisdiction to interfere with the arbitrator's award if it is found to be necessary in the interest of Justice." He further relied on the persuasive authority of Rashid Moledina & Co. (Mombasa) Ltd & others v Hoima Ginneries Ltd in which a question arose

[171] This principle is well laid out in section 7 of the Civil Procedure Act, Cap. 71 (Laws of Uganda, 2000Ed.) which provides that: No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties.
[172] CAD/ARB/No. 4 of 2009.
[173] Section 7 of the Civil Procedure Act, Cap. 71 (Laws of Uganda, 2000Ed).
[174] Civil Procedure Act, Cap. 71 (Laws of Uganda, 2000Ed).
[175] Civil Procedure Act, Cap 71.

as to whether or not, having regard to the arbitration award, the High Court had any jurisdiction to set aside or remit the award to the appeal committee.[176]

The Court of Appeal for East Africa held that although in the case before it, there were sufficient facts to support the award, nevertheless the Court went ahead to say; "Courts will be slow to interfere with the award in the Arbitration, but will do so whenever this becomes necessary in the interest of justice and will act if it is shown that the Arbitrators in arriving at their decision have done so on a wrong understanding or Interpretation of the law".[177]

The Arbitration and Conciliation Act therefore, with precision, provides for the particular instances and limitations under which Court intervention and assistance is necessary. This is through: staying of legal proceedings (sec.5); effecting interim measures (sec.6); taking evidence (sec. 27); setting aside the arbitration award (Sec. 34) and enforcement of an arbitral award (sec. 36).Significantly, the Court does not come in to impose its authority upon the parties but continues to give due respect to the autonomy of the parties and assists in the successful attainment of their interests.

On another note, the East African Court of Justice[178] also has jurisdiction to handle disputes arising from an arbitration clause contained in a commercial contract or agreement in which the parties have conferred jurisdiction on the Court.[179]

Another significant provision in the Act is the empowerment of the Arbitral tribunal to rule on its jurisdiction.[180] It stipulates that the arbitral tribunal may rule on its own jurisdiction as well as ruling on any objections with respect to the existence or validity of the arbitration agreement. It further stipulates that an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract[181] and a decision by the arbitral tribunal that the contract is null and void shall not itself invalidate the arbitration clause.[182]

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[176] Supreme Court Civil Appeal No. 203 of 1995.
[177] (1967) E.A 645.
[178] This is a regional judicial body that serves to ensure adherence to law in the interpretation and application of and compliance with the treaty establishing the East African Community.
[179] Article 32.
[180] Sec. 16.
[181] Sec. 16 (1)(a).
[182] Sec. 16 (1)(b).

The Act therefore empowers the arbitral tribunal to not only examine issues facing illegality in the performance of the contract with authority to rule on objections to its jurisdiction[183] but also issues facing illegality in the existence of the contract.[184]Interestingly, the arbitral panel may also proceed to hear and resolve a case not withstanding that a question regarding the jurisdiction of the panel is pending before Court as provided under sec. 16 (8) of the Act.

This provision on the powers of the Arbitral tribunal further emphasizes the autonomous authority yielded by an arbitration agreement. In the case of Shell (U) Limited vs. Agip (U) Limited[185] Tsekooko JSC., stated to the effect that;

> It is now trite law that where parties have voluntarily chosen by agreement, the forum for resolution of their disputes, one party can only resile for a good reason." In coming to this decision, Tsekooko JSC relied on the case of ***Home Insurance v Mentor Insurance*** (1989)[186] in which Parker had this to say in respect of commercial disputes arising from agreements containing arbitration clauses ". In cases where there is an arbitration clause, it is my judgment the more necessary that full scale argument should not be permitted. The parties have agreed on their chosen tribunal and a defendant is entitled, prima facie, to have the dispute decided by the tribunal in the first instance, to be free from intervention of the Courts until it has been so decided."

The Arbitration and Conciliation Act further serves to ensure respect and adherence towards arbitration awards. There are rather limited grounds upon which a person can challenge such an award. [187]Undoubtedly, the true essence of arbitration would entirely lose meaning if it were easy to set aside arbitration awards. Similarly, a party to an agreement containing an arbitration clause cannot turn round and deny its existence. For instance, in the case of ***Fulgensius Mungereza vs Price water coopers Africa Central***[188] in which the appellant was appealing, inter alia against the lower court's decision to stay proceedings on the basis of an existing Mediation and Arbitration Clause in a framework agreement between the parties.

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[183] Principle of "Kompetenz , Kompetenz".
[184] Ibid, See supra note 5.
[185] Supra note 12.
[186] All E.R 74 at page 78.
[187] Sec. 34.
[188] Court of Appeal Civil Appeal No. 34 of 2001.

G.M. Okello, JA, in his judgment, stated that;" The arbitration agreement was freely and voluntarily entered into by the appellant and the respondent.

4.3 Effects of ADR on justice system in Uganda

In Uganda, like other African countries, ADR is not meant to replace the formal court system or diminish the need to improve the current system but only as an alternative to full-scale court processes.[189] It is often used as the default resolution method in connection with, for example, cases which may not "cover or deal with constitutional or legal interpretation where there is a need to set precedence, in cases with major public policy implications or as a last resort after ADR has been tried."[190] It is usually not recommended for use in instances where cooperation between the parties to the dispute is lacking, where a court ruling on a case may result in the law being changed where control offered by the justice system is required or where punishment by jail is required to show disfavour for criminal actions.[191]

The general tendency in Uganda over the years was to litigate disputes with the view to get a legally binding decision. The courts themselves emphasized litigation as the main dispute resolution mechanism and its rules did not provide for mediation.[192] However, a Uganda Commercial Justice Study carried out in 1999 showed that 53.75% of all respondents interviewed found delays in the regular courts to be a serious problem. Of course the judicial system and courts in Uganda as an institution was inherited from the colonial days; which did not provide for court annexed ADR.[193]

In Uganda; inspired by the customary mediation/conciliation mechanism, grass root local councils have been given judicial powers under Section 26 (e) of the Local Government Act Chapter 243 revised Laws of Uganda 2000 and the Resistance committees (Judicial powers) statute No. 10 1988 to operate local council courts. These courts however have very limited monetary Jurisdictions though in practice they do go over the limit. A study of the Commercial Justice Reform Programme in 2004[194]showed that there were about 4000 such

[189] Ernest E. Uwazie, Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability, 16 Africa Security Brief, at 3 Nov 2011.
[190] Centre for Democracy and Governance, Alternative dispute resolution practitioners' Guide 8 (Technical Publication Series, March 1998).
[191] Ibid.
[192] Clare Manuel, Richard Hooper, Justice Ben Odoki under auspices of the Department for International Development (UK) and Private Sector Foundation Uganda 23, July 1999.
[193] Average taken from statistics given in Para 1.24 on delays P.17.
[194] Commercial Justice Reform Programme fist follow up user survey; April 2004 Para 3.1.2 P11.

local council courts throughout Uganda as compared to one (1) Commercial Court. In terms of nationwide user perceptions, the formal sector (where most corporations fall) said they had greater access to these local council courts (59%) as opposed to the Commercial Courts (27%).[195] Whatever the situation, it shows that the formal commercial sector also uses these local courts where customary mediation is applied. Even in the area of criminal law involving crimes against humanity in Northern Uganda, the Government of Uganda has been reported to be agreeable to using the local Justice system in the area called "Mato Oput".[196]

The use of ADR processes in the criminal justice system is often associated with the restorative justice movement which seeks to shift the emphasis from the ideas of violation of the state and punishment towards reparation and inculcating in the offender a sense of responsibility towards the victim and the community. Restorative justice is viewed as more 'victim-centred' indeed, the movement grew largely from victims groups who felt that victims were excluded and disempowered by formal criminal justice processes.[197]

In the case of **S.S *Enterprise Ltd and Anor vs. Uganda Revenue Authority***[198] (unreported) counsel for the Uganda Revenue Authority (URA) argued that only the Board of Directors of the URA had the power to settle a case via mediation so it was not possible for URA to submit to mediation where the judge held that internal institutional processes were not a good reason to avoid mediation explaining that reasons to avoid mediation must be legal or procedural in nature.[199]

On the economic side, for Uganda, being a country that emerged from a history of political, social and economic strive leading to among other things institutional breakdown, a lot of effort is now being placed on institutional and capacity building. Over the last 16 years the Ugandan economy has moved from one which was largely state controlled through state owned enterprises (SOEs) to one which is private sector driven. Central to this economic change was a deliberate Government policy of privatization and liberalization of the economy

[195] OP Cit the perception was a lot higher for the capital city where the Commercial Court is based where figures were 55% for Local Council courts and 52% for the Commercial Court.
[196] Justice in a law less World; IRIN news.org UN office for the co-ordination of humanitarians affairs www.irinnews.org/webspecials/Rights and Reconciliation/54259.aspaccessed 03/02/07. This is in relation to atrocities committed in Northern Uganda by the "Lords Resistance Army".
[197] LL.B Makerere University, Dip. L. P. Law Development Centre (Uganda).
[198] HCCS No. 708 of 2003.
[199] Ibid.

which was spear headed through the enactments of the Investment Code Act 1991 and the Public Enterprise Reform and Divesture Act 1994.[200] As a result of this both foreign and local investment in the economy grew and a stock exchange was established. The Ugandan Courts of Judicature also under went several reforms to meet the challenges of this private sector development by the creation of a specialized Commercial Court in 1996 to deal with business and investment disputes.[201]

The statutory instrument setting up the commercial court in an apparent break from the prevailing judicial practice enjoined the Commercial Judge to be proactive.[202] It also made it the objective of the court to deliver to the commercial community an efficient, expeditious and cost effective mode of adjudicating disputes.[203] The instrument setting up the Commercial Court therefore allowed the court to explore more efficient and effective methods of dispute resolution outside the conventional method of litigation.

In regard to corporate disputes, courts have always intervened be it foreigners or nationals and this is expressed in the case of ***K.M. Patel and another V United Assurance Company Ltd*** Company.[204] In that case two Asian brothers both by the names of Patel who as shareholders filed a minorities petition to wind-up one of Uganda's largest private insurance companies on the grounds that their 40% shares in the company had been wrongfully and illegally diluted during a restructuring and sale of the company without notice to them. In that case, the judge in charge Justice Geoffrey Kiryabwire decided to have mediation as a Judge with the consent of the parties. To show how unique this decision to mediate was, a journalist in New Vision newspaper wrote that "Justice Geoffrey Kiryabwire of the Commercial Court did more advisory than a Judges role over a case between United Assurance Company and two shareholders."[205]

This however, implied that the journalist did not see mediation as a role of a Judge. However, the mediation was successful leading to a consent Judgment where the insurance company bought out the two shareholders and thus settling the dispute. The same journalist then

[200] Chapter 91 and 98 Law of Uganda 2000 Rev Edition, respectively.
[201] Legal Notice No. 5 of 1996 (Statutory Inst. No. Constitution 6) now statutory instrument; constitution 6 Revised Laws of Uganda 2000. Direction 4 gives it Jurisdiction all disputes of a commercial or business nature.
[202] Direction 5 (2).
[203] Direction 2 (2).
[204] Cause No. 5 of 2005.
[205] New Vision 27th April, 2005, Kiryabwire takes advisory role in united assurance suit.

carried another report in the newspaper highlighting the settlement and quoting the Chief Executive Officer of the insurance company saying "we are happy this has been amicably concluded. Evidently this is a clear case where mediation worked to resolve a corporate governance dispute. Another avenue created by the court to handle mediations was by dedicating one of the court's Registrars to handle mediations where the parties so agree.[206]

The Commercial Court in Uganda has initiated many procedural and legal reforms in the country. Mediation is one of its success stories even though there is still a lot to be done. The impact of these reforms including court annexed mediation have been very positive on the court as a whole making it more efficient and effective. The work of the Commercial Court in Uganda is starting to draw international recognition. Indeed the World Bank in its report entitled "Doing Business 2006" out of 177 countries ranked Uganda overall 107 but ranked her at 71 the in case of the enforcement of contracts. This put Uganda above the sub Saharan average and while at the same time competing favourably with some OECD countries.[207]

4.4 Challenges to the practice of ADR in Uganda

In Uganda, the civil division handles many cases more so from central Uganda but neither has a mediation registry nor a mediation room, something which has left the court in utter disorganization. At the Family division, where mediation was instituted in 2014, only 25 cases have been settled out of the 228 which were registered by 2015. Nicole Banister, an American from Pepperdine University School of Law, is the only fulltime mediator at the court where she is being assisted by three other volunteers.[208]

This in relation to the case of ***Verner Vs General and Investment Trust*** (1894)[209] where the judge said that "a proceeding may be perfectly legal yet opposed to sound commercial principles. There is also a criticism that mediation could turn in to a time wasting fishing expedition. The Mediation Pilot Project rules provided for a fine on the party who caused delays at mediation.[210] This fine was rarely applied during the pilot period. The other issue is that of sustainable financing of this court annexed service as the Pilot was donor funded. This

[206] New Vision 27th April, 2005, Kiryabwire takes advisory role in united assurance suit.
[207] Justice in a law less World, IRIN news.org UN office for the co-ordination of humanitarian affairs.
[208] Derrick Kiyonga, 2016, is mediation programme backfiring on the judiciary.
[209] 2 CH 239 at 264.
[210] Rule 19 provides a fine of Uganda Shillings 50,000/= (about US$25). In the English case of Susan DunnetV Railtrack PLC (2002) 2 All E.R. 850. It was held that a court should deny a successful party at litigation costs if it can be shown that the mediation would have worked.

was to encourage parties to use the service. It is proposed that when this service resumes each party will bear its own costs for the mediation.

Giving police time and as well letting the institution follow legal procedures because the problems concerning police are proverbial. Police lacks office and residential accommodation, are poorly paid, lack proper communication facilities whether motor transport, telecommunications or computers leading to grave hitches in their performance.[211] The force itself is inadequately equipped in terms of premises, training and personnel which is often forgotten that in criminal matters without an efficient police force the judiciary cannot be effective. It is the police that investigates crimes, summons and produces witnesses before court for trials and their approach evidently affects the tempo and quality of justice administered by courts.[212]

The constraints faced by the prisons department are similar to those identified above in connection with police. It is the prisons' department which produces remand prisoners before court for trial. If the judge is punctual and punctilious but prisoners arrive at court late there will still be delay in commencing work.[213] Some of the plight of the prisoners is due to lengthy periods and no doubt insufficient diet plus poor medical facilities. The outcry over orders for release on bail pending trial seems to be a result of insensitivity to the fundamental human rights of the prisoners rather than a desire to motivate the judiciary to operate more efficiently.[214]

The Attorney General as the representative of Government in courts and the Director of Public Prosecutions as the Chief Prosecutor and overall overseer of criminal investigations face same institutional constraints as do other public offices already discussed with the difference that private legal practice paying and therefore many members of the public bar (State Attorneys) leave for greener pastures in the private sector and it is therefore rather difficult for the directorate of Public Prosecutions and the Attorney General's Chambers to retain or attract advocates of long experience in sufficient numbers.[215]

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[211] Centre for Arbitration & Dispute Resolution (CADER) Code of Conduct for Mediators.
[212] Ibid.
[213] Alvin B. Rubin, 1975, "'A Causerie on Lawyers' Ethics in Negotiation," 35 Louisiana Law Review579.
[214] Alvin B. Rubin, 1975, "'A Causerie on Lawyers' Ethics in Negotiation," 35 Louisiana Law Review 579.
[215] The Advocates (Professional Conduct) Regulations, Statutory Instrument 267-2, Regulations 15, 16 and 18.

This comes with the challenges in the judiciary like it is not uncommon for a State Attorney to commence his day in the Supreme Court after which he appears before the Court of Appeal and eventually, hazards appearance in High Court, all because of lack of personnel. Under such circumstances efficiency is compromised and endurance strained. Cases of pathological stress are known among State Attorneys.[216] Under Uganda's legal system, the Attorney General is not supposed to enjoy any privileges over and above the rights available to ordinary litigating public. Further, if any attempt is made to accommodate the constraints, delays are bound to occur as cases are stood over in the hope and anticipation that the State Attorneys representing Attorney General will appear after all. Stress leads to loss of morale and the inadequate remuneration, compared to earnings in private practice, is major factors contributing to backlog of cases in the legal system.[217]

Another challenge comes from the use of court assisted ADR to delay justice or to act as a fishing expedition to establish what is possible where the party at fault is just using ADR as a time wasting mechanism, Under Rule 19 of Mediation Rules, an adjournment cost of Shs.50, 000/= can be levied against a party who does not show up when a mediation hearing is caned. The enforcement of a Rule 19 cost has not been very successful because of the absence of a clear mechanism to do so.[218]

There is also little evidence to show that reconciliation of the offender with the victim and the community endures beyond the conferencing process which has also been questioned whether there is a criminological basis for the introduction of ADR in criminal justice processes. It is argued that there are factors specific to the criminal context which renders ADR techniques unlikely to succeed. Worst of all; victim-offender mediation is likely to be highly emotionally charged and that mediation can only be successful where there is a moderate level of conflict. It is argued that there is no true 'dispute' which can be resolved the dispute occurred in the past and entirely on the offender's terms. Hence there may not be sufficient motivation to reach an agreement. Further, the offender may feel pressured to reach an agreement, rather than genuinely seeking to repair the harm done. [219]

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[216] Ruth Fleet Thurman, "Chipping Away at Lawyer Veracity: The ABA's Turn Toward Situation Ethics in Negotiations," 2010 Journal of Dispute Resolution103, 2010.
[217] The Advocates (Professional Conduct) Regulations, Statutory Instrument 267-2, Regulations 15, 16 and 18.
[218] Commission on Legal Empowerment of the Poor, making the Law Work for Everyone, Vol. 1, 2008, at p. 18.
[219] Uganda's Center for Arbitration and Alternative Dispute Resolution Code of Conduct for Arbitrators, Cannon 1.

ADR is usually seen as appropriate where the parties have an ongoing relationship (which provides a significant motivation to achieve reconciliation), which is not usually the case with victim-offender mediations. However, stature and confidence in the mediator is important to court assisted ADR and training of mediators. Further in Alternative Dispute Resolution, it is important to change the attitude that ADR is a second best option that should be used purely as an exercise of good faith thus ADR should be taught as a first line dispute resolution mechanism.[220]

The Judiciary; contrary to public perceptions delay in administration of justice is not an attribute of the judiciary which is the totality of the problems that emanate from all law enforcement agencies. By virtue of the structural constraints in Uganda's legal system, judges will be like farmers who, the world over, complain throughout the year. For instance if climatic conditions are conducive and there is a bumper crop, the increased supply will lead to a drop in prices and if adverse climatic conditions prevail there will be a drop in harvest and hence little to market.[221]

Although prices will rise there will be little to market and hence limited income, and hence the farmer will grumble. So with judges, if the Attorney General/Director of Public Prosecutions were efficient there would be too much backload and so complaints would be expected since the official or public bar is overworked, the cause lists pile up. The need to coordinate and synchronize work in all government agencies is more than evident institutional incapacities in the judiciary include lack of accommodation, computers motor transport. Some time back there was massive retrenchment in the public service. Support staff in the Judiciary was not spared. Secretarial staff, interpreters, clerks, ushers and so many other categories is not enough.[222]

It is only axiomatic that, as earlier observed, that the private sector reward personnel better than Government does. Consequently, the Judiciary is unable to compete favourably for the

[220] S Kift, 'Victims and Offenders: Beyond the Mediation Paradigm?' (2006) High court Dispute Resolution Journal 71, 79.
[221] Justice Patrick Tabaro, 2012, observer, Alternative justice - a solution to backlog in Uganda's judicial system.
[222] Geoffrey M Peters, The Use of Lies in Negotiation, 48 Ohio State Law Journal1,11,1987.

best trained support staff. Work that should be done in matter of hours sometimes takes weeks or months, as corrections are made errors are committed.[223]

Hence Mediation is an alternative dispute-resolution mechanism that allows parties entangled in a dispute find a quick solution with the assistance of a neutral third party. This process avoids the costly and lengthy court process. The traditional adversarial adjudicatory system has long dominated society as the primary means of solving disputes but the introduction of mediation in 2013 was expected to help in swiftly settling cases. It is now three years after it was rolled out in all High court divisions and all magistrates' courts that deal in civil cases.[224]

4.5 Conclusion

The experience in Uganda will show that court annexed mediation can work in the settlement of Corporate Governance Disputes. However the Uganda experience has also shown that for mediation to succeed it has to be made part of rules of procedure of the court so that parties are clear that the filing of a case in court will not mean automatic litigation. There is still, however, need for awareness of mediation as a dispute resolution mechanism which is suitable for most disputes including those of which are corporate, political, social and geographical.

[223] Geoffrey M Peters, The Use of Lies in Negotiation, 48 Ohio State Law Journal1,11,1987.
[224] Derrick Kiyonga is mediation programme backfiring on the Judiciary.

CHAPTER FIVE
FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.0 Introduction

This chapter presents the findings, recommendations and conclusion to the study concerning Alternative dispute resolution in Uganda.

5.1 Summary of findings of the study

In regard to this objective, it was found out that the most prevalent disputes in Uganda are related to land, family matters and crime, with specifically high occurrences of disputes with neighbors over boundaries, rights of way or access to property, theft/robbery and domestic violence.

The majority of Ugandans seek information and advice from their social network and the Local Council Courts (LCCs). Formal legal sources are used as well but to a lesser extent. More vulnerable people (poor people in rural areas and people who received less education) tend to seek less information and advice because of a lack of knowledge and greater negative perception about the prospects of solving their problem.

Courts and lawyers are marginal to the experience of day-to-day justice of the people in Uganda: Less than 5% of dispute resolution takes place in a court of law and in less than 1% of cases is a lawyer involved. Justice problems that are most likely to end up in a court of law are problems related to land, public services and crime.

However, the study found out that more than a third of the people faced with a problem did not take any steps to resolve it which is mainly because people feel that they are unlikely to succeed in their efforts to solve the problem, either because of a lack of knowledge or because it entailed a high anticipated risk such as an aggravation of the relationship with the other party especially in case of family problems or high investment in terms of time and money

In regard to the three countries considered; Kenya, Nigeria and USA, the study results implied that the Local Council Courts particularly at the lowest level (LC1) hold an important place in Uganda's justice system especially in resolving conflicts. Despite the fact that these

courts have been ruled to be not validly constituted, they are presently the most widely applicable institution for dispute resolution in Uganda. Ugandan citizens experience the Local councils as an effective dispute resolution process, although they also report that existing power relations within communities affect decision making in Local councils. Focused investments to strengthen the capacity of Local councils would have a profound positive impact on access to justice in Uganda.

This was basically attributed to the fact that justice users in Uganda experience limited fairness in the processes and outcomes on their justice journeys, particularly when they go through the formal justice system. Also in terms of financial accessibility, community and hybrid processes seem to do better. On the other hand, regulation of stress and emotions seems to be better managed within formal dispute resolution processes.

Further Trust in justice institutions, in particular the formal system, is low and whereas informal for of dispute resolution (NGOs, legal aid centres) enjoy considerable levels of trust, courts and lawyers are among the least trusted institutions. Hence in findings related to the three research objectives of this study, Alternative dispute resolution can only be achieved if there is fairness in justice system of the country and if the law at local level strictly attains its power and embarking on the traditional means of conflict resolution.

5.2 Recommendations

5.2.1 To courts of law in Uganda

The rights enshrined in article 28 of the Constitution are non derogable and the courts must apply them. The accused persons are afforded all these rights to enable them defend themselves in court; to afford them human dignity and to promote self respect. If these rights are applied, the accused persons would have been accorded a fair, speedy and public hearing. Once this is done it helps the inmates in their rehabilitation and integration into society since justice would not only have been done but would have been seen to be done to them. There is always a need to show the accused persons that society cares for them and that they have a social responsibility. The judiciary therefore, through judicial correctional services contributes to the maintenance and protection of a society that is just, peaceful and safe and that is based on the rule of law.

Further advocates are recommended not to be transformed from "watchdogs" of their clients' interests to "bloodhounds" pursuing their own clients using a client's information as a weapon. Nor must a client's trust be abused by turning their information into a commodity for reward-hungry whistleblowers.

Focusing on justice needs that affect many people and where successes can be easily scaled up and be on innovations that deliver to underserved populations or simplify procedures for the general population. Further there is need to promote awareness of opportunities in the field of legal and justice innovation.

Courts should prioritize the most urgent justice needs; there is need for courts of law to prioritize those problems that occur most often and have the greatest impact on people's lives and selecting these priorities ideally should be done in collaboration with Ugandan justice leaders so as to make it an inclusive process.

Statutory Code of Conduct for Mediators and Conciliators must be consistent with the role of the parties in mediation and conciliation and the definition and scope of mediation and conciliation, must be consistent with the general principles concerning mediation and conciliation must have regard to the involvement, where applicable, of a child or dependent in mediation or conciliation process.

It is also recommended that confidentiality privilege does not apply-where disclosure of the content of the agreement resulting from mediation or conciliation is necessary in order to implement or enforce that agreement; where disclosure is necessary to prevent physical or psychological injury or ill health to a person; where disclosure is required by law; where the mediation or conciliation communication is used to attempt to commit a crime, or to commit a crime, or to conceal a crime; or where disclosure is necessary to prove or disprove a claim or complaint of professional misconduct or negligence filed against a mediator or conciliator.

Further it is recommended that the evidence introduced into it used in a mediation or conciliation that is otherwise admissible or subject to discovery in civil proceedings outside of a mediation or conciliation shall not be or become inadmissible because it was introduced into or used in a mediation or conciliation.

A court may, in its discretion, enforce the terms of an agreement reached through a mediation or conciliation where it is satisfied that the agreement adequately protects the rights or entitlements of the parties and their dependents, if any, that the agreement is based on full and mutual disclosure of assets, and that one party has not been overborne by the other in reaching the agreement and that it complies, where relevant, with any statutory requirement or provision of the Constitution of Uganda.

It is also recommended that evidence of an apology made by or on behalf of a person as set out above in respect of a matter to which the action relates is not admissible in any civil proceedings as evidence of civil liability of the person.

5.2.2 Recommendations to the government

The government should undertake a detailed analysis of bottlenecks and needs per category of users and problem type

A more in-depth look should be taken into the quantitative Justice Needs and Satisfaction Survey data and qualitative interviews to identify the reasons for people's dissatisfaction with specific aspects of their justice journeys.

Follow-up interviews should be conducted with stakeholders and justice users and analyzed to confirm bottlenecks and needs per problem type.
Existing infrastructure/services should be mapped to gain a thorough understanding of the local context and possible obstacles, resistance and opportunities.

Develop and deliver legal information that empowers people to help themselves and find help since most problems are solved outside the realm of formal justice institutions, it is key to empower people to cope with their problems and negotiate their own fair solutions. At present, around one third of the Ugandans with an overrepresentation of people with less education, income and living in rural areas faced with a justice problem does not take any action to resolve it. Problem resolution behaviour is indisputably and directly linked to legal ability and empowerment.

The government should focus on providing effective and comprehensible public legal information and the development of visible and accessible services in the legal field is one possible way to encourage people to resolve their justice needs in a fair manner.

Raising public awareness and knowledge about citizen's legal rights on specific issues for example and family rights plus the legal system which institutions to approach for which problems) would help citizens to understand the different ways of obtaining advice on their legal problems, which in turn increases the likelihood of them seeking and finding appropriate avenues for dispute resolution.

Further development of a network of hybrid providers of justice services and facilitation and promotion of alternative dispute resolution mechanisms that can resolve disputes in a fair manner: Many Ugandan citizens rely on informal and customary justice processes.

Since their focus is mostly on dialogue and conciliation, these processes can integrate knowledge on modern mediation techniques and know-how on dispute resolution. Court procedures are found to be out of reach for the majority of Ugandans and the availability of legal aid, mediation or lawyers financing claims on a no-win no-pay basis does not change this situation.

The government is provisionally recommended to provide a non-statutory scheme under the auspices of the Department of Justice and Law Reform, to provide for the accreditation of organizations which, in turn, accredit individual practitioners. Such a non-statutory system would be without prejudice to existing arrangements in particular areas (such as family mediation) and could, in time, provide the basis for a more formal statutory structure at some future point.

5.2.3 Recommendations to mediators and conciliators

The training and accreditation of mediators is essential to ensure the quality of the process and it invited submissions as to whether this should be included in any statutory framework for mediation.

Mediators and Conciliators should also set out uniform complaints, disciplinary and grievance procedures to be enforced by all professional mediation and conciliation bodies. This would ensure that such procedures are open and transparent and that all mediators and

conciliators would be subject to the same procedures and sanctions for complaints or misconduct.

At this stage in the development of mediation and conciliation, regulating the enforcement of the Code should be achieved through self regulation by professional mediation and conciliation bodies who adopt the Code and consent to enforce it through disciplinary action.

The Code of Conduct for Mediators and Conciliators should also set out uniform complaints, disciplinary and grievance procedures to be enforced by all professional mediation and conciliation bodies

There should be a statutory framework for specific forms of Alternative Dispute Resolution (ADR) processes, in particular mediation and conciliation, and that the statutory framework should not include a prescriptive definition of ADR. Hence the statutory framework should make clear that it applies to individuals, partnerships, corporate bodies and State bodies.

ADR should be considered as comprising a broad spectrum of structured binding and non-binding processes, including mediation and conciliation but does not include litigation though it may be linked to or integrated with litigation. ADR processes can involve the assistance of a neutral third party and can empower parties to resolve potential or actual disputes.

Mediation and conciliation should be clearly and consistently separately defined in legislative form. When provision for mediation is made in legislative form, it should be defined as a facilitative and confidential structured process in which the parties attempt by themselves, on a voluntary basis, to reach a mutually acceptable agreement to resolve their dispute with the assistance of an independent third party, called a mediator.

5.3 Conclusion

ADR systems in Uganda have for a long time been provided by both state and non-state actors without any comprehensive policy backing from the Government. Due to lack of a national legal aid policy and a comprehensive legal framework to guide ADR provision, dispute resolution services in Uganda are currently provided in an adhoc manner using various models of service delivery. To date, there are many forms used to settle disputes although challenges like case backlog, poverty and discriminations based on gender, culture,

nationality and tribes still exist. When commentators get caught up in debates as to whether a criminal offence constitutes a dispute and whether a negotiated outcome for an offence already committed can be correctly labelled a 'resolution', it becomes clear that language can obscure more important considerations. Hence, the increased interest in the application of ADR processes to the criminal justice system was born from a general dissatisfaction with traditional adversarial methods of dispute resolution. However, the criminal justice system has attracted a particular set of criticisms which is seen as unsuccessful in reducing rates of recidivism (and even may increase the likelihood of re-offending for particular groups such as juveniles and Indigenous persons); it ignores the victims of crime and fails to recognize crime as a form of social conflict. Perceptions against Therefore, for ADR to succeed in Uganda; there is need for the Judicial Officer to be proactive and encourage litigants to explore ADR before going into fully-fledged litigation.

REFERENCES

A.A. Theresa, 'Methods of Conflict Resolution in African Traditional Society,'

Aarnim Langer (2012), Frances Stewart and Rajesh Venugopal (London: Palgrave), 84–107.

Abdullah Ahmad Badawi, (2004) speech at the Oxford Centre of Islamic Studies, Magdalen College, Oxford University.

Arbitration Foundation of South Africa (AFSA) (no date). *Labour Relations Conflict Resolution Service Handbook.* Johannesburg: The Arbitration Foundation of South Africa.

B. Laurence(2005), "A History of Alternative Dispute Resolution," ADR Bulletin: Vol. 7: No. 7, Article 3, 2005. p.1.

Bendeman, H. 2004. A reconstruction of CCMA commissioners' perceptions of dispute resolution in South Africa: A multi-perspective approach.

Cole, McEwen and Rogers, Mediation: Law, Policy, and Practice pg 5:1 (3rd edition).

Collier, Paul (1999) 'On the Economic Consequences of Civil War', Oxford Economic Papers, 51, pp. 168-83.

Collier, Paul (2000) 'Rebellion as a Quasi-Criminal Activity', Journal of Conflict Resolution, (forthcoming).

Collier, Paul (2000a) 'Doing Well Out of War' in Greed and Grievance: Economic Agendas in Civil Wars, Mats Berdal and David Malone (eds.), Boulder, CO: Lynne Rienner.

Collier, Paul and Anke Hoeffler (2000), Greed and Grie Vance in Civil War', World Bank, Policy Research Working Paper 2355.

Collier, Paul and Anke Hoeffler, (1998) 'On the Economic Causes of Civil War', Oxford Economic Papers, 50, 563-73.

Constitution of Kenya, 2010. Government Printer, Nairobi.

D.L., Rhode (2001), "Access to Justice," Fordham Law Review, Vol. 69, pp. 1785-1819.

Elias, T.O. 2003, *The Nigerian Legal System*, London; Routledge & Kegan Paul, p.44.

Elizabeth Phlapinger & Donna Stienstra (1996), ADR and Settlement in the Federal District Courts 4.

Environment and Land Court Act, 2011, Laws of Kenya.

F.B., Mensah (2004), 'Indigenous Approaches to Conflict Resolution in Africa,' in the World Bank, Indigenous Knowledge; Local Pathways to Global Development, pp. 39-44.

Frances Stewart and Graham Brown, "The Implications of Horizontal Inequality for Aid" CRISE Working Paper, no. 36, (2006).

Fukuda Parr (2007), Correcting Horizontal Inequalities as a Development Priority; Poverty Reduction Strategy Papers (PRSPs) in Haiti, Liberia and Nepal," in Horizontal Inequalities and Post-Conflict Development, ed.

Genn, Hazel, Riahi, Shiva and Pleming, Katherine, 2014, "Regulation of Dispute Resolution in England and Wales: a Sceptical Analysis of Government and Judicial Promotion of Private Mediation", *Regulating dispute resolution; ADR and access to justice at the crossroads*, Bloomsbury Publishing, p.139

Graham Brown, "Nepal (2005) first Steps towards Redressing HIs? Horizontal Inequalities and Post-Conflict development," in Horizontal Inequalities and Post-Conflict Development, Arnim Langer, Frances Stewart.

Gregory C. Sisk (2006), *Litigation with the Federal Government* (Philadelphia; American Law Institute), 418-425.

Grossman, H.I. (1999) 'Kleptocracy and Revolutions', Oxford Economic Papers, 51, 267-83.

Healy, T. 2002, How to select an IR consultancy, Workplace, *Business Day*, 3 July 2002, p. 4.

Ian Macneil, Richard Speidel and Thomas J. Stipanowich, Federal Arbitration Law: Agreements, Awards & Remedies under the Federal Arbitration Act (1994).

Indexed African Journal Online, vol. 8(2), Serial No. 33, April, 2014; pp. 138-157.

International Multidisciplinary Journal, Ethiopia, Vol. 8 (2), Serial No. 33, April, 2014, pp. 138-157.

James K. Boyce (2002), Investing in Peace; Aid and Conditionality and Civil Wars (London: International Institute for Strategic Studies).

Jerome T. Barrett, (2004) a History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement 41.

Kimberlee K. Kovach, 2000, Mediation: Principles and Practice 6 (2d ed).

Kuran T., (1989) 'Sparks and Prairie Fires; a Theory of "Unanticipated Political Revolution', Public Choice, 61, pp. 41-74.

Logan, Carolyn (2017), "Ambitious SDG goal confronts challenging realities; Access to justice is still elusive for many Africans", Afro barometer, March, pp.21–22

Lynch, J.F, 2001, Beyond ADR: A Systems Approach to Conflict Management, Negotiation Journal. July 2001. pp. 207-215.

Mark R. Duffield (2001), Global Governance and the New Wars; The Merging of Development and Security (London, Zed).

McMillion BJ. (2013), President Obama's First-Term U.S. Circuit and District Court Nominations; An Analysis and Comparison with Presidents since Reagan, CRS.

Michael L. Wells (2009), *A Litigation-Oriented Approach to Teaching Federal Courts*, 53 St. Louis U. L.J. 857.

Michael T. Klare (2001), Resource Wars; the New Landscape of Global Conflict (New York: Henry Holt), 6.

Mischke, C, 1997, Beginnings; Conflict, Grievances, Disputes, In Brand, J (ed.). *Labour Dispute Resolution*. Kenwyn: Juta.

Mitchell Rogovin & Donald L. Korb (2008), "The Four R's Revisited; Regulations, Rulings, Reliance, and Retroactivity in the 21st Century; A View From Within", Duquesne Law Review 323, 366-367.

National Bureau of Economic Research, Cambridge, MA, 2002 and Branco Milanovic; "Half a World; Regional Inequality in Five Great Federations (Policy Research Working Paper 3699, World Bank, Washington, DC, 2005).

Nils Petter Gleditsch et al. (2006), "Conflict over Shared Rivers: Resource Wars or Fuzzy Boundaries?" Political Geography 25, no. 7.

Nupen, C. & Cheadle, H, 2001, Dispute Resolution: The uses of 'soft law'. Paper presented at the Thirteenth Annual Labour Law Conference, *Rethinking South African Labour Law*. Pretoria; Butterworths.

Odibo, Monalisa, 2016, "Access to Justice through Court Annexed Alternative Dispute Resolution Programmes; A Critical Assessment of the Multi-Door Courthouse System in Nigeria", Paper presented to the Society of Legal Scholars, Oxford, 8 September p.3

Okereafoezeke, Nonso, 2002, Law *and Justice in Post-British Nigeria: Conflicts and Interactions between Native and Foreign Systems of Social Control in Igbo*, Westport, CT: Greenwood Press, p.14

Pretorius, P. 1991. *Alternative dispute resolution. South African Human Rights and Labour Law Yearbook.* Vol. 2. Cape Town: Oxford University Press.

Pretorius, P. 1992. ADR: Successes and challenges. In: Centre for Applied Legal Studies: *Trends in South African Labour Law. Selected papers from the Fourth Annual Labour Law Conference 1991.* Johannesburg: University of the Witwatersrand.

Rajesh Venugopaled. London, Palgrave, (2012), 256–96. Collier et al., Breaking the Conflict Trap.

Robert J. Hume (2009), *How Courts Impact Federal Administrative Behavior* (New York: Routledge), 92-106.

Robertson, B. 1995, Dispute resolution systems in the draft Labour Relations Bill. *SA Labour Bulletin.* Vol. 19, No. 3, pp. 67-70.

Sander, F.E.A. 1979, "Varieties of Dispute Processing", *The Pound Conference 1976: perspectives on justice in the future Minnesota*: West Publishing Co., pp.65–87

Sharif S. Elmusa (1996), "The Land-Water Nexus in the Israel-Palestinian Conflict," Journal of Palestine Studies 25, no. 3: 69–78.

Svante E. Cornell (2005), "The Interaction of Narcotics and Conflict," Journal of Peace Research 42, no. 6: 751–60.

The Editorial Board. (2013). Courts without Judges, *NY Times.*

Valerie A. Sanchez (1996), Towards a History of ADR: The Dispute Processing Continuum in Anglo-Saxon England and Today, 11 Ohio St. J. on Disp. Resol. 1, 16.
Wheeler R. (2013) what is behind all Those Judicial Vacancies without Nominees? Brookings Institution.

Xavier Sala-i-Martin (2005), "The Disturbing 'Rise' of Global Income Inequality (Working Paper 8904.