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Ghana's Legal Framework for the Constitutional and Statutory Application of Arbitration

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Abstract

The legal framework in Ghana comprises a range of legislations that establish the fundamental principle of addressing specific concerns through arbitration. The compulsory nature of this arbitration system significantly diverges from the consent-based arbitration framework. This Article provides an analysis of the legislative framework that governs statutory arbitration in Ghana and argues that it is crucial to thoroughly comprehend statutory arbitration as a mechanism within administrative law. Unlike contractual arbitration, which relies on the parties' consent, statutory arbitration receives its authority from legislation. The present study examines the historical origins of statutory arbitration, create an extensive inventory of legislation with provisions for statutory arbitration, and assess the underlying rationales for the adoption of statutory arbitration. The study further examines the issue of consent in statutory arbitration, investigates the procedural aspects of statutory arbitration, and assesses the legitimacy of this specific form of arbitration. The article argues that the notion of statutory arbitration and the provisions found within specific legislations that establish statutory arbitration do not infringe upon constitutional norms. The study concludes that considering the solid legal foundation upon which statutory arbitration is based, the Ghanaian government should contemplate expanding the areas where statutory arbitration can be utilized as a feasible alternative to litigation.

Keywords: Ghana, statutory, arbitration, constitution, mutual consent, private law

1. Introduction

The legal structure of Ghana comprises numerous rules that mandate the resolution of specific problems through arbitration (Labor Act, 2003, s 160(2) and 162(2); Banks and Specialized Deposit-Taking Institutions Act 2016, s 141(1). Statutory regulations have been placed to require arbitration as the designated mechanism for individuals to resolve their disputes with various governmental agencies and organizations, also known as statutory arbitration. According to (Maritime and Dockworkers Union of the Trades Union Congress of Ghana v. State Shipping Corporation, 1982), Statutory arbitration pertains to the procedural mechanism governed by explicit legislative provisions, which require the parties involved in a dispute to engage in arbitration as a compulsory resolution. In the past, statutory arbitration did not give rise to significant legal issues, and lawful precedents about this subject were limited. This occurrence may be ascribed to the seldom utilization of the provisions or their efficacy when implemented.

However, the legal consequences of statutory arbitration have gained significant attention due to the outcomes of two recent court decisions *(Dodoo v. Duffour*, 2018; *Duffour v. Dodoo, 2020*), and an arbitral verdict (*Duffour v. Dodoo, 2019)*. The above occurrences emerged due to Unibank Ghana Limited's banking license revocation by the Bank of Ghana. This article's purpose is not to analyze the strengths or flaws of the court's two opinions or the arbitration award. Instead, the aim is to comprehend the fundamental nature of these legislative initiatives.

This article argues that despite the general perception of arbitration as a voluntary and private means of conflict resolution, it is essential to recognize and consider the arbitration rules imposed by statutes as integral elements of administrative law. As propounded in *Maritime and Dockworkers Union of the Trades Union Congress of Ghana*

* The author takes exclusive responsibility for any error found in this article.

v. State Shipping Corporation, (1982), the nature and characteristics of statutory arbitration are determined by the precise regulation upon which it is founded.

Private law arbitration, also called contractual arbitration, entails the voluntary consent of parties to refer their disputes to an arbitral tribunal. This particular sort of arbitration should be distinguished from statutory arbitration. The Article posits that a thorough analysis reveals the inadequacy of adopting the legal concepts developed in private law arbitration to statutory arbitration. Moreover, the paper argues that statutory arbitration is sufficiently safeguarded within the parameters of the Constitution of the Republic of Ghana 1992 (hereafter referred to as the Constitution).

This Article analyzes the legal framework that governs statutory arbitration in Ghana while offering a concise explanation of the historical roots of statutory arbitration. This Article presents a comprehensive analysis of legislation about statutory arbitration, examining its precise features and assessing the rationale for its adoption. Although the article intends not to provide an exhaustive examination, it thoroughly analyzes some particular facets. This study examines the notion of consent in the context of statutory arbitration and investigates the procedural aspects related to statutory arbitration. The paper also discusses the present and pertinent issue of the legality of statutory arbitration, analyzing its conceptual foundation and implementation in specific legislative measures, such as the 2016 Act of the Bank and Specialised Deposit-Taking Institutions, section 141(1).

2. The Legal Framework Governing Statutory Arbitration in Ghana

Before achieving independence, the legal system in Ghana incorporated the practice of statutory arbitration. The legal system in question is observed in several jurisdictions that follow the common law tradition, including Australia, Canada, India, and New Zealand (Arbitration Act, 1996, s 2(1)(b), British Colombia); Arbitration Act 1996, s 9 (New Zealand); Arbitration and Reconciliation Act, 1996, s 2(4) (India); Commercial Arbitration Act, 2010, s 1(6) (New South Wales, Australia) & Commercial Arbitration Act, 2011, s 1(6) (Victoria, Australia). Various UK Legislation is supposed to have provided for many arbitration statutes and thus Arbitration in Ghana appears to have originated from the United Kingdom based on judicial precedent as seen in (In Re an Arbitration between Knight and the Tabernacle Permanent Building Society, 1891; In Re the County Council of Kent and the Sandgate Local Board, 1895). According to specific theories, statutory arbitration first appeared in England in the 19th century due to laws requiring forced purchases. These laws felt that some issues, especially those on valuation, should not be decided by courts. Even though there was a widespread mistrust of arbitration then, it was the only clear choice. Tribunals were not “invented” at that time (New Zealand Law Commission Arbitration, 1991). According to Alexander (1952), it was observed that statutory arbitration was gaining increasing prominence and importance. This was evident via enacting laws of many domains such as land, building, housing, town and country planning, rating, health, and nationalization. According to Crease (1949), statutory arbitrations have significantly diverged from the fundamental concepts that underpin common law arbitration. It might be argued that their classification as arbitrations is questionable.

The Rivers Act of 1903 was an initial legislative measure implemented in Ghana, then referred to as the Gold Coast. This Act introduced regulations about statutory arbitration. As per Section 10 of the third schedule to the Act, it is mandated that in the event of any inquiry, divergence, or disagreement concerning the precise understanding and importance of these Regulations or a particular segment thereof, such inquiry, departure, or controversy shall be addressed exclusively through the process of arbitration and subsequent determination by the Minister.

The Banks and Specialised Deposit-Taking Institutions Act Section 141 has an exemplifying example. This specific clause mandates that in the event of an individual's dissatisfaction with a decision rendered by the Bank of Ghana on a particular issue, the individual is obligated to pursue arbitration according to the procedures delineated by the Alternative Dispute Resolution Center. This center was established under the Alternative Dispute Resolution Act 2010 (Act 798) and serves as the avenue for seeking redress for such grievances. The provision above was the focus of the current legal examination of statutory arbitration in the jurisdiction of Ghana (*Dodoo v Duffour*, 2018). Specific statutory requirements contain clauses about arbitration, yet their interpretation may indicate that arbitration is not obligatory. As per the provisions outlined in the Public Services (Negotiating Committees) Act 1992, Section 11(4), the President is granted the authority to refer the matter to arbitration for resolution. This authority is under the guidelines specified in the Act 38, the Arbitration Act of 1961, after the receipt of the report mentioned in subsection (3).

In a similar context, it is noteworthy to mention that the Ghana Highway Authority Act 1977 specifies in section 37(2) that disputes over the proper amount of compensation can be handled by arbitration, as delineated in Act 38, the Arbitration Act of 1961. As per Section 21 of the Energy Commission Act 1997, it is the responsibility of the

Board to form an arbitration panel under the provisions of the Arbitration Act 1961 (Act 38) when requested by an individual who possesses a license under this Act. This panel's primary objective is to facilitate resolving conflicts among licensees in situations where the involved parties cannot achieve a consensus.

According to the National Petroleum Authority Act of 2005, section 47(2)(3), when a dispute cannot be resolved through amicable negotiation, the party that feels aggrieved can refer the dispute to the Board for arbitration. Under the provisions of the Act 38, the Arbitration Act of 1961, the Board shall establish an arbitration panel following consultation with the Minister. The primary purpose of this panel is to engage in arbitration proceedings and facilitate the resolution of the dispute at hand. These rules grant the decision to engage in arbitration as a matter of choice or permit one party to submit a formal request for the case to be referred to an arbitrator. The statement mentioned above implies that a party has the right to decline the referral of the subject to an arbitral tribunal. This connotes that, in contrast to legislative arbitration, arbitration conducted through these legislations is based on mutual agreement between the parties involved.

The historical scope of conflicts referred to statutory arbitration has demonstrated significant variability. In keeping with Section 141 (1)(a) through (d), of the Banks and Specialised Deposit-Taking Institution Act, there are provisions that encompass specific determinations that could be made by the Bank; an inquiry, distinction, or disagreement regarding the precise intention and interpretation of these Regulations (River Act, 1903, s 10), a conflict concerning whether the individual in employment was provided with comparable employment opportunities within the Republic (University of Ghana Act, 1961, s 16(c)), or regarding the quantification of compensation assessed by the Minister. Nevertheless, many of these instances are related to disputes over the evaluation of financial compensation required to address the harm caused to properties due to exercising the power bestowed by the relevant laws. One notable attribute of the regulations of statutory arbitration is their emphasis on resolving conflicts arising from the actions or decisions of entities that can be broadly categorized as public officials, state institutions, and agencies. Illustrations of such entities encompass the Ghana Broadcasting Corporation, Ghana Highway Authority, and the Bank.

The second characteristic under consideration is the subject of ongoing legal disputes. This applies to the absence of a requirement for permission in the applicable statutes, which differs from the conventional practice typically seen in arbitration within the realm of private law. This phenomenon becomes particularly apparent when examining the perspective of an individual involved in a dispute with a public official, state institution, or agency. It can be contended that the State implicitly grants consent to arbitration by designating arbitration as the mechanism for resolving conflicts of public officials, state entities, or agencies. Nevertheless, establishing legislative arbitration grounded on implicit acquiescence is misguided. According to Osei-Hwere J, the statute includes clauses requiring mandatory arbitration referral (*Maritime and Dockworkers Union of the Trades Union Congress of Ghana v. State Shipping Corporation*, 1982). The core essence of the situation is that the laws remove the necessity for the parties to give their consent, whether directly or tacitly, to participate in arbitration.

The pertinent statutes do not adequately articulate the rationale behind including provisions for statutory arbitration. However, one might deduce that these mechanisms are specifically created to provide a cost-effective method of settling conflicts that is more readily available than traditional legal proceedings for individuals affected by the conduct of governmental institutions, agencies, or public authorities. The utilization of statutory arbitration offers several benefits as it effectively reduces the likelihood of prolonged delays that can be commonly encountered in litigation proceedings. Based on a prior analysis conducted by the New Zealand Law Commission, it has been observed that numerous statutory arbitration regulations primarily address the dynamics between individuals and governmental or local governmental institutions. In some instances, these rules also pertain to interactions among multiple governmental or local organizations. Suppose an individual were to identify a broad purpose within the given situation, in this scenario, it seems to construct a conflict resolution mechanism that is defined by its simplicity and a less aggressive tone than the conventional court process while providing a greater degree of practical expertise (New Zealand Commission, 1988).

Arbitration has practical merits in resolving conflicts under statutory provisions, even when the relevant parties do not willingly agree to the process. The extent to which Ghana has effectively employed legislative arbitration measures remains unclear. According to *Maritime and Dockworkers Union of the Trades Union Congress of Ghana v. State Shipping Corporation* (1982), when examining the prevailing circumstances in documented legal proceedings, it is seen that the occurrence of their narration may be rather seldom.

3. Arbitration Under Statute and Consent

The underlying principle of private law arbitration, whether it pertains to contractual arbitration within a domestic or international framework, is predicated upon the consensus established by the parties involved (Blackaby et. al,

2015). As previously stated, recording a mutual agreement among the parties involved to participate in arbitration is essential for any dispute resolution outside of national legal systems (Blackaby et. al, 2015). Although the consent of the parties is of great importance in private law arbitration, it is not without its limitations. The arbitral process remains subject to local legislation, although administered by a reputable arbitral institution such as the Ghana Arbitration Center. Historically, there has been a prevailing inclination to regard the provisions constituting statutory arbitration as tantamount to an arbitration agreement within the framework of the Arbitration Act 1961, section 33. However, as discussed in the following sections, enacting the Alternative Dispute Resolution Act of 2010 removed the abovementioned clause.

In *Dalla v Bellat* (1986), it was argued that Statutory arbitration diverges from private law or contractual arbitration by deviating from the conventional notion of consent. The determination and jurisdiction of the arbitral tribunal are exclusively formed through statutory regulations, without any effect from the voluntary decisions or agreements made by the parties involved. However, one could contend that statutory arbitration retains a degree of volition, as the claimant exercises agency by initiating a claim before the arbitral tribunal that is legally required. The party presenting the claim invokes the tribunal's jurisdiction, while the opposing party either consents to the jurisdiction or is deemed to have assented to it.

The distinction between private law and statutory arbitration is essential when determining the arbitrator's source of authority. McKendrick and Goode (2010) asserts that private arbitration originates from the parties' voluntary agreement. In contrast, statutory arbitration is mandated upon the involved parties through a particular legislative enactment, whereas customary arbitration derives its authority from an international treaty or other pertinent written agreements. Using statutory arbitration to derive powers has significant implications for the interaction between the arbitrator or arbitral panel and the judicial system.

This Article argues that the combination of the source of the arbitrator's authority, namely the statute, and the inherent character of their job as a judicial entity renders the arbitrator or arbitral tribunal capable of being subject to judicial examination. The function performed by an arbitral tribunal strongly resembles the public function performed by courts of law when resolving disputes. In the case of *R v. Panel on Takeovers and Mergers (1987)*, ex parte Datafin, Lloyd LJ made a clear assertion that when an entity derives its authority from a statute or subordinate legislation enacted under a law, it becomes subject to judicial review. In cases where power is derived from a commercial agreement, such as private arbitration, it becomes apparent that the arbitration process is immune from judicial review.

In the landmark case of *Council of Civil Service Unions v. Minister for the Civil Service (1985)*, Lord Diplock underscored the requirement for a decision to be susceptible to judicial review. According to Lord Diplock, this condition is met when the decision-maker is granted authority by public law, as opposed to a private agreement such as arbitration, to render decisions that, if deemed valid, will lead to administrative action or abstention from action by an authorized executive body, thereby producing the outcomes above. Lloyd LJ and Lord Diplock exhibited prudence in confining their assertions within private law arbitration. It is reasonable to infer that the individuals in question, who occupy positions of power, possessed knowledge of statutory arbitration within English law. The role of the arbitrator or arbitral tribunal in statutory arbitration might be regarded as a result of legislative enactment rather than a contractual arrangement between the involved parties. Within this particular framework, they are regarded as a subordinate adjudication body and, as a result, are constitutionally obligated to be under the oversight of the High Court (Ghana Constitution, art. 141). The principle of judicial review confers upon the court the jurisdiction to supervise and uphold the limitations of authority granted to the arbitrator by legislation, as well as evaluate the legitimacy of the arbitrator's decisions.

4. The Procedural Elements of the Statutory Arbitration Process

Part II of the Arbitration Act 1961 regulated statutory arbitration until its subsequent repeal. Section 33 of the Act pertains to Part II and encompasses all arbitrations conducted under other enactments, regardless of whether they were established before or after the Act. It deems these arbitrations governed by the Act, treating them as if they were arbitration agreements and considering the passage to be an arbitration agreement. This statement holds unless there is a contradiction between the Act and another or any regulations or processes it allows or acknowledges. This provision is reiterated in Section 33 of the Arbitration Ordinance 1928 (Cap 16). The scope of this Ordinance encompasses all arbitrations conducted under any ordinance enacted before or after the enactment of this Ordinance. Those arbitrations shall be treated as if they were innate under a prior submission unless there are inconsistencies between this Ordinance and the Ordinance governing the arbitration or any rules or procedures authorized or recognized by the Ordinance. Section 24 of the Arbitration Act of 1889 in the United Kingdom, subsequently incorporated into subsequent UK Arbitration Acts with slight linguistic revisions, serves as the

foundational basis for formulating section 20 of the Arbitration Ordinance.

Section 33 of the Arbitration Act 1961 indirectly acknowledges that those arbitrations were conducted without a legally binding agreement. Implementing Section 33 resulted in interpreting the pertinent statute, including Part II, as if it constituted an arbitration agreement between the parties involved. Merkin and Flannery (2019) argue that the objective of the rule is to achieve a fair and equitable balance between statutory and private consensual arbitrations to the maximum extent feasible. It is imperative to emphasize that statutory arbitration differs from consensual arbitration in terms of the absence of a formal agreement.

The inclusion of Part II of Ghana's Arbitration Act 1961 in the framework of statutory arbitration was enacted by Parliament to provide a well-defined legal framework for the execution of such proceedings. Furthermore, the aforementioned legislative measure has effectively tackled the interpretation of consent between parties involved in private law arbitration, particularly within the framework of statutory arbitration. Regrettably, the repeal of section 33 of the Arbitration Statute of 1961 occurred upon enacting the Alternative Dispute Resolution Act, resulting in the deletion of its provisions. In contrast to Ghana, the United Kingdom has enacted the Arbitration Act of 1996, which has substantially expanded the extent of statutory arbitration by including sections 94-98.

The rationale for refraining from restoring section 33 of the Arbitration Act 1961 lacks clarity. One could posit that the omission of a comparable provision in the Alternative Dispute Resolution Act can be ascribed to its strong dependence on the UNCITRAL Model Law on International Arbitration, which predominantly focuses on arbitration in private arbitration law (Onyema, 2012). However, one may make the case that the decision not to reinstate section 33 of the Arbitration Act 1961 does not impede the implementation of the Alternative Dispute Resolution Act regarding statutory arbitration.

It is indisputable that the statutory arbitration provisions present in various legislations of Ghana, which have been previously scrutinized, remain in force. The absence of the legislature's re-enactment of section 33 of the Arbitration Act 1961 in the Alternative Dispute Resolution Act should not be interpreted as an abolition of said section. This scenario necessitates an examination of the suitable legal structure that may be utilized to regulate the processes of statutory arbitrations. Within administrative law, it is deemed unacceptable for the parties concerned to arrogate the power to ascertain the procedural elements of statutory arbitration. The process would essentially transition into a variant of private consent-based arbitration by conferring upon the parties the authority to dictate or exert control over the arbitration procedures.

The regulations governing statutory arbitration should be governed by the rules provided in the relevant statute. Statutory arbitration in Ghana is the foundation for every individual case. The regulatory framework in Ghana handles the procedural elements of arbitration inside the country. In contrast to private arbitration, the parties involved in the arbitration process are not allowed to jointly select a venue for the arbitration proceedings that is located outside the jurisdiction of Ghana. The selection of arbitrators, the method of rendering decisions, and the provision for statutory arbitration are discussed in Section 164 of the Labor Act of 2003. Similarly, specific conditions being deliberated necessitate that arbitration conform to the parameters of the Arbitration Act of 1961. The outcome of this is to enable the regulation of statutory arbitration to be governed by the Alternative Dispute Resolution Act.

The effect of section 35(1) and (3)(b) of the Interpretation Act 2009 is that the preexisting acts requiring arbitration under the Arbitration Act 1961 must now be construed as conforming to the provisions of the Alternative Dispute Resolution Act 2010. One could argue that the Alternative Dispute Resolution Act may apply to statutory arbitration, even in the absence of utilizing provisions 35(1) and (3)(b) of the Interpretation Act 2009, given there is no express provision excluding such arbitration from the scope of the Act. As per Section 1 of the Alternative Dispute Resolution Act, the Act's applicability is restricted to issues that are not related to national or public interests, environmental matters, the interpretation and enforcement of the Constitution, or any other legally prohibited concerns that cannot be resolved through alternative dispute resolution mechanisms.

The scope of the Alternative Dispute Resolution legislation is delineated in Section 1 of the statute, specifying the issues to which it does not apply. Statutory arbitration is not encompassed within the purview of those subjects. The exclusion of statutory arbitration from the scope of the Act would be inconsistent with the provisions outlined in section 1(d), which pertain to matters that can be effectively resolved by arbitration. The exclusion of statutory arbitration from the scope of the legislation would result in its treatment as a severe offense comparable to a felony, per the stipulations outlined in section 73 of the Courts Act 1993. This provision prohibits reconciliation, an alternative dispute resolution mechanism, for resolving such offenses (Alternative Dispute Resolution Act, 2010, s 135). The scope of the Alternative Dispute Resolution Act is restricted to the processes associated with statutory arbitration, subject to compliance with the statutory arbitration legislation and any prescribed rules or procedures

authorized or recognized by said legislation.

When a statute incorporates provisions for statutory arbitration but does not explicitly outline the procedures for conducting such arbitration or make reference to either the Arbitration Act 1961 or the Alternative Dispute Resolution Act, the court possesses the jurisdiction to grant permission to develop procedures about statutory arbitration. The idea can be interpreted as the court's duty to ensure the effectiveness of statutes rather than as a fair effort to help parties comply with these statutes.

In the context of statutory arbitration, it is essential to note that the arbitrator or arbitral tribunal is subject to potential judicial review and falls within the supervisory jurisdiction of the High Court. This suggests that if an individual is not satisfied with the decision or conclusion made by the arbitrator, they can pursue a judicial review of the award through the court system. The legal recourse of certiorari may be sought to challenge the validity of a decision rendered by an arbitrator in the context of statutory arbitration. This is analogous to the possibility of annulling an award arising from an arbitration agreement, as section 58 of the Alternative Dispute Resolution Act stipulated.

5. The Legal Validity of Compulsory Arbitration

Statutory arbitration is characterized by its compulsory nature, as opposed to being a voluntary process. However, the absence of a consent or agreement requirement should not serve as a justification for evading statutory arbitration. If a standard is available that provides a fair and legal method for resolving disputes that Parliament has designated for statutory arbitration, it is advisable to utilize that standard. Furthermore, it is essential to refrain from perpetuating the notion that arbitration is a less productive form of justice than the judicial system while evaluating the legitimacy of statutory arbitration (*Desputeaux v Éditions Chouette, 1987)*. Although there existed a period during which the courts exhibited considerable apprehension towards arbitrations, as articulated by Lord Campbell, that era has long since passed (*Scott v Avery, 1855*). During that period, the individuals involved argued that removing courts from their jurisdiction would contravene the policy established by the law (Brekoulakis, 2018).

It can be contended that imposing statutory arbitration as a means for parties to resolve their disputes does not possess any constitutional infirmity. Other causes can be related to this phenomenon. The Constitution does not explicitly address the exclusive utilization of the court system to resolve disagreements. It is customary within the legal field for parties to be prohibited from employing alternative mechanisms for resolving conflicts. For example, utilizing self-help methods for resolving disputes is subject to rigorous legal limitations and arguing that something is unconstitutional poses a challenge.

Similarly, the legal doctrines articulated by the Supreme Court of Ghana affirm the violation of constitutional norms when statutory limitations impede citizens' ability to exercise their right to access the judicial system *(Adofo v. The Attorney General, 2005)*. In the legal matter of *Adofo v The Attorney General (2005*), the Honorable Dr. Date-Bah JSC, for the entire court, emphatically said that the total deprivation of the judiciary's jurisdiction in cases on justiciable rights constitutes a violation of the Constitution. However, it is imperative to acknowledge that statutory arbitration does not wholly eradicate the courts' authority. Ensuring the accessibility of the participating parties is of utmost importance in statutory arbitration. The accessibility element is evident during the arbitral processes, wherein the involved parties can present legal inquiries for resolution in the High Court.

Furthermore, after issuing an award, a party that perceives dissatisfaction can pursue a judicial review process, subjecting the award to a comprehensive examination. Distinguishing statutory arbitration from statutes that impose specific constraints, such as the proscription of legal proceedings or court protocols against the State or the restrictions on initiating actions against the Board, is paramount. The second alternative limits individuals' ability to avail themselves of the judicial system, whereas the preceding option presents an alternative avenue for pursuing legal claims, albeit subject to judicial supervision. Ghana's legal system comprises various components, including section 72 of the Courts Act of 1993. This Article confers upon courts the jurisdiction to facilitate and promote the peaceful resolution of conflicts. It might be contended that this incorporates the practice of arbitration and acts as a manifestation of Parliament's objective to foster alternative procedures for resolving disputes, which are separate from conventional court proceedings.

Furthermore, it is essential to acknowledge that the common law and the Constitution provide ample protections for persons engaged in statutory arbitration through mechanisms such as judicial review and the supervisory power of the High Court. As per Section 40 of the Alternative Dispute Resolution Act, the jurisdiction of the High Court extends to the resolution of legal matters upon the request of a party engaged in an ongoing arbitration proceeding. Hence, injustice is prevented when a statute mandates the resolution of specified issues through arbitration.

As previously stated, numerous statutes in Ghana confer discretionary power to choose arbitration or allow one party to seek the referral of a dispute to an arbitrator. These statutes enable individuals to participate in arbitration processes while concurrently preserving their right to initiate legal proceedings in the court system, should they want to do so. Statutory arbitration fails to allow individuals to exercise their freedom of choice. A persistent issue arising from this circumstance pertains to the constitutional legitimacy of the degree to which statutory arbitration limits the ability to seek recourse in court, even in the presence of judicial review within arbitral procedures. Based on the argument above, one could argue that imposing restrictions on direct court access may not necessarily constitute a violation of constitutional standards. In the context of the Ghanaian legal system, it is evident that individuals are not granted unfettered and unhindered access to the courts. The laws of procedural requirements present a significant obstacle to accessing the judicial system since the worthiest petitions are at risk of being dismissed if the prescribed procedural protocols are not followed.

Furthermore, the jurisdiction of other non-judicial adjudicating bodies is derived from either the Constitution or statutory laws. These entities have authority over issues on legally enforceable rights. These encompass the authority vested in the Judicial Committees of Traditional Councils and the Regional and National Houses of Chiefs to adjudicate upon and address matters about chieftaincy, hence facilitating the resolution of associated disputes or concerns (Ghana Const. art. 273). Moreover, the Commission on Human Rights and Administrative Justice has the authority to scrutinize grievances of violating essential rights and liberties, subsequently rendering adverse verdicts against public servants. Commissions of inquiry can conduct investigations and render unfavorable determinations related to individuals (Ghana Const. art. 280).

In addition, it is worth noting that the Settlement Committee, which falls under the purview of the National Media Commission, possesses the authority to examine grievances lodged against journalists, newspaper proprietors, and publishers (National Media Commission Act, 1933, s 13-15). In every case, the Constitution or statutory law has provided alternative means for seeking remedy, which diverges from the direct resort to the legal system. Remarkably, the absence of substantial public outcry in response to these alternate routes implies a potential infringement upon the core ideals that are safeguarded inside the Constitution.

The chosen methodology seems motivated by the need to integrate specialized individuals with distinct abilities in resolving conflicts or the administration of justice in an administrative role while still upholding the ultimate judicial power held by the courts. The adjudicatory function of these organizations is predicated on the concept that some issues can be more efficiently resolved through alternative methods rather than within the judicial system. Nevertheless, it is imperative to acknowledge that persons who are discontent with the decisions made by these organizations still retain the opportunity to pursue redress through the oversight provided by the High Court's supervisory authority. Statutory arbitration is reflective of a similar underlying ideology. When the constitutionality of statutory arbitration is called into question due to its potential obstruction of direct access to the courts, it raises concerns regarding the legitimacy of the proceedings above. However, this is not the case.

The situation presents the possibility of particular statutory provisions concerning arbitration that may contravene constitutional principles. This article examines two potential risks. A potential challenge to the constitutionality of the statutory provision requiring arbitration, as stated in section 141(1) of the Banks and Specialised Deposit-Taking Institutions Act, can be raised because the Bank's ability to revoke a license involves the exercise of discretionary powers that ought to be open to examination and contestation following the provisions outlined in article 296 of the Constitution. In summary, an individual discontent with the decision above should be able to challenge it based on the lack of compliance with Article 296, considering the governor of the Bank occupies a position of public office. There is potential for debate on the legitimacy of a parliamentary statute that imposes limitations on the ability of the aggrieved party to challenge the Bank's decision under Article 296 of the Constitution utilizing mandatory arbitration. The author posits that sustaining the contention surrounding the legitimacy of section 141(1) of the Banks and Specialised Deposit-Taking Institutions Act is unattainable. As to the provisions outlined in Article 296 of the Constitution, it is specified that:

> Where in this Constitution or in any other law discretionary power is vested in any person or authority –
>
> (a) that discretionary power shall be deemed to imply a duty to be fair and candid;
>
> (b) the exercise of the discretionary power shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law; and
>
> (c) where the person or authority is not a judge or other judicial officer, there shall be published by constitutional instrument or statutory instrument, regulations that are

> not inconsistent with the provisions of this Constitution or that other law to govern the exercise of the discretionary power.

Article 296 is concerned with how discretionary authority is employed. Determining the exact venue for contesting an alleged inappropriate exercise of discretionary power is not established. To adequately explore this issue, it is imperative to analyze supplementary provisions within the Constitution, particularly Article 23. Under the requirements outlined in Article 23, it is incumbent upon administrative entities and personnel to comport themselves in a just and rational manner while upholding the legal responsibilities imposed upon them. Suppose individuals experience negative consequences due to the actions or decisions made by administrative bodies or officials. In that case, they can pursue legal remedies through a court or alternative tribunal.

The facts stated in Article 23 indicate that the courts are not the sole avenue for persons to challenge alleged instances of discretionary authority misuse. This challenge may potentially be brought forth before an alternative tribunal. The Constitution does not define the term “other tribunal.” It can be argued that the term refers to a judicial body that derives its jurisdiction from a statutory law. Challenging a purported infringement of Article 296 of the Constitution in front of an arbitral tribunal, which derives its authority from legislation, does not diminish or conflict with the exclusive jurisdiction conferred upon the Supreme Court and the High Court by Articles 130 and 33 of the Constitution.

The exclusive jurisdiction of the Supreme Court to interpret and enforce the Constitution does not prevent an arbitral tribunal from regarding the Constitution as a type or category of Ghanaian law. Similarly, it should be noted that the contention that a particular claim is grounded in a fundamental human right or freedom does not necessarily indicate that the High Court has sole authority over its settlement. The Constitution of Ghana is an essential element of the nation's legal structure. Hence, in the context of a statutory arbitration conducted under the purview of Ghanaian law, the arbitral tribunal must recognize and engage with the constitutional requirements duly rather than rejecting or evading them. In Ghana, courts, other governmental agencies, and individuals consistently apply and enforce the Constitution. The inclusion of a provision in Ghanaian statutes that designates exclusive authority to the Supreme Court or High Court for the implementation and enforcement of the Constitution has not been observed. The Ghanaian judiciary has consistently dismissed any interpretation of Ghanaian constitutional law that lends legitimacy to such a perspective. It is essential to acknowledge that the judicial system in Ghana holds the power to execute and uphold the stipulations outlined in the Constitution. Submitting a case to the Supreme Court is necessitated exclusively by those who possess a genuine and substantial apprehension regarding the interpretation of the Constitution. In addition, the lower court must verify the presence of a real and significant performance issue. In essence, the mere citation or allusion to a constitutional provision inside a court of law does not inherently lead to the trial court relinquishing its authority and transferring the case to the Supreme Court.

The exclusive jurisdiction of the Supreme Court, as outlined in Article 130, is predicated upon the existence of a genuine and substantial dispute regarding the interpretation of a particular statute. The utilization of the Supreme Court's interpretation authority is claimed in cases where a legitimate matter arises due to a lack of clarity or ambiguity surrounding a constitutional provision. As aptly observed by Justice Date-Bah, the jurisprudence in Ghana demonstrates a conceptual distinction between applying an explicit requirement of the 1992 Constitution and the execution or clarification of the 1992 Constitution. The lower courts are responsible for the implementation of the Constitution of 1992. The Supreme Court exercises its original authority within its jurisdiction. A precise and unequivocal clause of the Constitution of 1992 is utilized to delineate a particular principle *(Bimpong-Buta v General Legal Council, 2003*). In the case of *Republic v. High Court* (2016) as previous cited in *Aduamoa II v. Twum II* (1999), the Supreme Court held the view that while the Supreme Court holds exclusive authority to interpret and enforce the provisions of the Constitution of 1992, it is the responsibility of every court and tribunal to implement these provisions when resolving disputes brought before them. The jurisdiction in question is not invalidated only by a party's mention of or dependence on a specific article within the Constitution. When the language of the clause above is evident, exact, and devoid of ambiguity, no need for interpretation arises, and the court is obligated to enforce said law.

The adherence of an arbitral tribunal to the Constitution is an undeniable requirement within the legal framework of Ghana, particularly where the parties have mutually consented to Ghanaian law as the controlling law. Hence, it is apparent that the mere reference to a constitutional clause in an arbitration does not automatically render the arbitral tribunal incapable of evaluating the claim or defense.

As mentioned earlier, the quote initiates an investigation into the exact interpretation of the term "exclusive jurisdiction" outlined in Article 130 of the Constitution. The delineation of Ghana's judiciary is clarified in Article

126 of the Constitution. The concept of exclusive jurisdiction is utilized to indicate that, within the legal framework of Ghana, certain subjects are solely designated to specific courts. They are precluded from being presented before any alternative court. Within the realm of the judiciary, the Supreme Court possesses the jurisdiction to deliberate upon issues of the interpretation of the Constitution, as explicitly outlined in Article 130. This stands in contrast to the typical jurisdiction of the High Court, which generally deals with civil claims, as specified in Article 140. Similarly, under the judicial system of Ghana, human rights claims are brought before the High Court, as articulated in Article 33. Furthermore, the Supreme Court authority to assess the requirement for creating an official document is vested exclusively by the provisions outlined in Article 135. In the absence of this provision, the case above would have been subject to the jurisdiction of the High Court as a conventional civil claim under the stipulations outlined in Article 140.

Therefore, it is evident that exclusive jurisdiction is utilized internally to allocate subject matter jurisdiction to courts working within the same judicial framework. Nevertheless, it is essential to acknowledge that this regulation does not obligate persons to participate in legal proceedings. Ghana lacks a law requiring parties involved in civil disputes to seek resolution through judicial processes. Nevertheless, it is imperative to note that parties engaged in a conflict are legally obligated to initiate legal proceedings in the court with the constitutionally designated authority to adjudicate matters on the precise subject matter under dispute.

In contrast, Oppong (2021) argues that when the parties have mutually agreed to resolve their conflicts through arbitration, the particular court in Ghana with exclusive jurisdiction becomes irrelevant. It is argued that parties should exhibit prudence and careful consideration when choosing the suitable court to commence legal actions since a failure to do so could lead to the rejection of their case on grounds of jurisdictional insufficiency. Exclusive jurisdiction is relevant for parties engaged in a legal dispute, especially those obligated by law to settle their disagreement through arbitration.

In situations where the Bank's discretionary actions, which are determined by its own judgment and not by any specific rules or regulations, come into play, the potential violation of Article 296 of the Constitution by section 141 of the Banks and Specialised Deposit-Taking Institutions Act will led to disputes before an arbitral tribunal established under the authority of the Act above. If the tribunal's decision negatively impacts an individual, they can pursue legal recourse through a judicial review process in the High Court. Furthermore, in the context of arbitration processes, it is possible for one of the parties concerned to pursue legal remedies by resorting to the High Court to address any legal matters that may arise throughout the proceedings (Alternative Dispute Resolution Act, 2010, s 40). If a constitutional issue is raised, the High Court possesses the jurisdiction to refer the subject to the Supreme Court for adjudication upon applying this kind. Hence, it may be argued that the legislative structure in Ghana effectively incorporates judicial protections to protect the interests of all parties engaged in both statutory and consensual arbitration. The arbitral tribunal operates inside the legal framework of Ghana, namely within the authority of the High Court; hence, revealing its lack of independent operation.

The second possible issue concerns the legal provisions that outline the structure for statutory arbitration in determining the suitable amount of compensation for property damage resulting from the exercise of rights under the relevant legislation (Ghana Water and Sewage Corporation Act, 1965 s 2(3); Ghana Broadcasting Act, 1968 s13(1) and (7); Ghana Ports and Harbours Authority Act, 1986, s 19–21; Plants and Fertilizer Act, 2010, s 16(1), (2) and (4); Ghana Railway Corporations Act, 1997, s 8(1) and (2); and Ghana Highway Authority Act, 1977, s 36 and 37(1). The subject under consideration relates to the potential infringement of Article 20 of the Constitution, which addresses obligatory property acquisition. Once again, it might be contended that this objection lacks viability due to the absence of any regulations relevant to compulsory acquisition.

However, it is the responsibility of these institutions to address property damage resulting from the performance of their obligations. This discourse provides an analysis that suggests that the concept of statutory arbitration and the specific norms governing statutory arbitration on designated topics do not violate constitutional principles. The validity of statutory arbitration should not be misinterpreted as a rationale for Parliament to adopt a lax approach in mandating it as the favored mechanism for resolving disputes. To adequately meet the demands of certain statutory domains, it is crucial to thoroughly assess the appropriateness of different methods of resolving disputes within that domain. Conducting this assessment is vital when considering the potential inclusion of statutory arbitration inside a new legislative.

Section 141 of the Banks and Specialised Deposit-Taking Institutions Act deals with matters that are significant and are likely to attract public attention if the Bank decides related to them. The potential number of individuals who may feel wronged is likewise expected to be substantial. Hence, one could argue that arbitration would not be a suitable means of settling such matters. The arbitration arising from the revocation of Unibank Ghana

Limited's banking license (*Duffour v. Dodoo, 2020)* involved a total of 16 claimants. Additionally, it is worth noting that there are certain matters now being dealt with in court that fall beyond the jurisdiction of the arbitration. Moreover, one could argue that resolving conflicts anticipated to arise under section 141 can erode public confidence in the Bank, an essential governmental entity within the domain of the economy and finance because the rationale behind the confidentiality of arbitral procedures stems from their inherent private character.

Because of the confidentiality of arbitration, any award contrary to the Bank would have been rendered without public awareness of the underlying case supporting the Bank's judgment. The victorious side is permitted to showcase their achievement openly. In contrast, if it perceives itself as mistreated, the Bank will be precluded from pursuing public litigation once the arbitration proceedings have concluded. The potential ramifications of this situation for public confidence and the financial viability of the banking sector and the economy may be significant. These concerns are legitimate and merit careful study. However, one could argue that given the categorization of statutory arbitration within administrative law, it is crucial for all aspects of the process, including verdicts, to be made readily available to the general public (Labour Act, 2003, s 167(1)).

Based on the criteria above, one could contend that the circumstances outlined in section 141 provide a situation in which it would have been more prudent for Parliament to exercise restraint in mandating statutory arbitration. Alternatively, conferring jurisdiction onto the High Court, an institution endowed with comprehensive authority over all legal affairs, would have been more advantageous (Ghana Const. art. 140(1)). This measure would empower the High Court to effectively resolve the grievances expressed by those who perceive themselves as adversely affected by the Bank's actions. However, it is essential to acknowledge that legislative imprudence and unconstitutionality are separate ideas. Parliament is recommended to enact a legislative modification to the Banks and Specialised Deposit-Taking Institutions Act, specifically by eliminating section 141 from its statutory framework. This provision would provide persons who have experienced adverse consequences due to the Bank's judgments the ability to directly and expeditiously seek recourse from the High Court. It is imperative to underscore that the exclusion of statutory arbitration from the Act should not be justified only based on its alleged unconstitutionality. However, as previously mentioned, the justification for this removal should be grounded in its impracticality or lack of careful deliberation.

6. Conclusion

Legal professionals with a deep understanding of contractual arbitration may find themselves perplexed by the notion that parties are obliged to participate in arbitration to resolve their disputes. The author encountered a comparable degree of bewilderment when focused on it. However, it is apparent from the content of this article that statutory arbitration has played a significant role in Ghana's legal framework even before the nation's independence. The historical application of statutory arbitration to resolve conflicts remains unknown and open to speculation. Until recently, Ghana has had only one officially recorded instance of statutory arbitration. The legal community has shown considerable interest in the developments that followed the decision of the Bank to withdraw the banking license of Unibank Ghana Limited. This attention has focused on statutory arbitration and whether it aligns with constitutional norms. This article argues that it is crucial to thoroughly comprehend statutory arbitration as a mechanism within administrative law. Unlike contractual arbitration, which relies on the parties' consent, statutory arbitration receives its authority from legislation. There is a claim that arbitral tribunals in statutory arbitration are prone to judicial review and subject to the High Court's supervisory jurisdiction. In the context of statutory arbitration, it is worth noting that the parties engaged in such proceedings can approach the High Court to resolve any legal matters that may emerge during the arbitration procedure. The article argues that the notion of statutory arbitration and the provisions found within specific legislations that establish statutory arbitration do not infringe upon constitutional norms. Considering the solid legal foundation upon which it is based, the government should contemplate expanding the areas where statutory arbitration can be utilized as a feasible alternative to litigation. The proposed approach retains promise in providing a more economically viable and streamlined mechanism for addressing disputes between governmental bodies and individuals. However, it is crucial to recognize that mandatory statutory arbitration should be avoided in disputes between private sector persons. The preservation and respect for the fundamental principle of parties' autonomy, which serves as the foundation for contractual arbitration, and the entitlement of private individuals to pursue legal remedies through the court system to resolve their legal issues, is vital. Hence, the discourse expounded in this paper illustrates that statutory arbitration can be embedded within a more conclusive and robust legal framework, particularly regarding the protocols that should govern such arbitration. The utilization of the Minister of Justice’s jurisdiction, as specified in section 134 of the Alternative Dispute Resolution Act, is recommended to establish a legislative instrument that would effectively govern the many procedures involved in statutory arbitration. There is a debate surrounding the assertion that section 141 of the Banks and Specialised Deposit-Taking Institutions Act complies

with the Constitution and can survive scrutiny under constitutional analysis. However, given the inherent attributes and expected outcomes of the Bank's rulings, it would not have been prudent for Parliament to enact statutory arbitration to resolve issues with the Bank. It is recommended that the Act undergo amendment by the legislative body, mainly by eliminating section 141.

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