

**Mediation as an Alternative Dispute Resolution Mechanism
in the UAE Construction Industry**

الوساطة كآلية بديلة لتسوية المنازعات في قطاع التشييد بدولة الامارات
العربية المتحدة

By

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Abstract

This dissertation investigates whether mediation is a proper dispute resolution mechanism for the UAE construction Industry or not. Mediation as an alternative dispute resolution is a form of settlement process that is flexible, fast and the parties in disputes are not at risk of being bound by an unfavourable outcome by a third party's decision.

Mediation has been critically evaluated against the UAE culture and legal system and its possibility of accommodating mediation as a system of alternative dispute resolution. Also, it has been assessed on the possibility of using mediation as means of alternative dispute resolution mechanism in the construction industry of the UAE with a comparative analysis with other alternative disputes resolution methods. Furthermore, mediation has been evaluated for a proposition of a model for the implementation of mediation methods in the construction industry of the UAE.

The approach of the research used in this dissertation was deductive research. It has been conducted to provide a deduction of how well mediation can be used in lieu of litigation and other options that exists in dispute resolution. The research was conducted through a survey and interview. Data collected included data from a sample of two authorities in the field of construction in the UAE. In addition, a data was collected from a survey that has been conducted from 20 people in the field of construction in the UAE.

The conclusion showed that Speed, affordability and flexibility are important aspects of dispute resolutions in the construction industry. This makes litigation an inappropriate method to dealing with construction disputes and the approach of using mediation is a much more acceptable method for dealing with in the construction sector and the construction industry. Mediations and the mediation industry of the UAE is one that has potential and that the government should make arrangement to promote mediation in the construction industry. The main arrangements are to integrate international and local standards into mediation, the UAE's judiciary system must accept and recognize mediation, develop and train local mediators, putting a framework of ethics and standards in place for the mediators to follow, creating a regulatory authority to supervise the activities of the mediators and setting up a committee to examine and evaluate the activities of the mediations in the country's construction industry.

مستخلص الرسالة

تهدف هذه الرسالة الى التحقق عما اذا كانت الوساطة عملية ملائمة لحل النزاعات في صناعة التشييد أم لا. إن الوساطة كأحد الحلول البديلة للقضاء في حل النزاعات هي وسيلة سريعة ومرنة ، كما أن الاطراف ذات العلاقة في النزاع لا يتأثرون كثيراً من مخاطر عدم الوصول الى قرار لمصلحتهم من قبل الوسيط لأن هذا القرار غير ملزم الا اذا وافق عليه الاطراف.

تم تقييم الوساطة في ظل النظام القضائي الاماراتي و الثقافة السائدة فيه مع امكانية استيعاب الوساطة كنظام بديل للقضاء واستخدامها في حل النزاعات وبخاصة في مجال النزاعات الناشئة عن الخلافات المتعلقة بقطاع التشييد في الامارات مع مقارنة ذلك ببعض الوسائل البديلة للقضاء في حل النزاعات. كما تم تقييم الوساطة بهدف تقديمها كنموذج لحل النزاعات المتعلقة بالتشييد بديلاً للقضاء.

تم اتباع المنهج الاستنتاجي في هذه الرسالة وذلك بغرض استنتاج مدى امكانية استخدام الوساطة مقارنة بالدعاوى القضائية والوسائل الاخرى المستخدمة كبديل للقضاء، حيث تم جمع معلومات من خلال عمل استبيان ومقابلات تمت لهذا الغرض. تم استطلاع رأي عشرون شخصاً ممن لهم خبرة في مجال التشييد في الامارات وكذلك مقابلة عينة تتكون من شخصيتين من ذوي العلاقة بمجال التشييد في الامارات.

توصلت خاتمة هذه الرسالة أن السرعة، والقدرة على تحمل التكاليف والمرونة في حل النزاعات الانشائية هي عناصر مهمة لحل النزاعات المتعلقة بمجال التشييد، مما يجعل الدعاوى القضائية حلول غير مناسبة لحل نزاعات التشييد وأن الاخذ بالوساطة في حل هذه النزاعات يلقي قبولاً أفضل. إن أعمال الوساطة في حل النزاعات الانشائية يتوقع لها نمواً مستقبلياً ، لذا على الحكومة أن تتخذ التدابير اللازمة لتشجيعها وتمكينها. ومن هذه التدابير الرئيسية، دمج المعايير الدولية والمحلية في عملية الوساطة وكذلك أن يتوجب على النظام القضائي الاعتراف والقبول بعمل الوساطة ، كما ينبغي تدريب وسطاء محليين للقيام بعمل الوساطة، وأيضاً وضع معايير وأخلاقيات مهنة الوساطة، وانشاء هيئة تشرف على مزاولة نشاط الوسطاء وتشكيل لجنة لمراجعة وتقييم أنشطة مهنة الوساطة في حل نزاعات صناعة التشييد.

Table of Contents

CHAPTER 1	1
INTRODUCTION	1
1.1 Background.....	1
1.2 Research Questions.....	5
1.3 Aims and Objectives	6
1.6 Structure of Dissertation	7
CHAPTER 2	8
LITERATURE REVIEW I: DISPUTE RESOLUTION AND MEDIATION	8
2.1 Overview of Alternative Dispute Resolution.....	8
2.2 Basis for Mediation in the Construction Industry.....	9
2.3 Types of Mediation	11
2.3.1 Expert Advisory Mediation.....	12
2.3.2 Settlement Mediation.....	13
2.3.3 Facilitative Mediation.....	13
2.3.4 Wise Counsel Mediation.....	15
2.3.5 Tradition Based Mediation	16
2.3.6 Transformative Mediation	17
2.4 Steps in Mediation	17
Conclusion	19
CHAPTER 3	21
LITERATURE REVIEW II: CONSTRUCTION DISPUTES AND UAE LEGAL SYSTEM	21
3.1 Construction Disputes.....	21
3.2 Culture and Conflict Resolution	23
3.3 The Legal System in the UAE.....	28
3.4 Concerns for Integration of Mediation	29
3.5 Conclusion	30
CHAPTER 4	32
RESEARCH METHODOLOGY	32
4.1 Research Scope	32
4.2 Research Philosophy.....	32
4.3 The Research Approach	33
4.4 Research Strategy	34
4.5 Data Collection	34
4.6 Data Analysis	34
4.7 Interpretation.....	35
CHAPTER 5	36
FINDINGS.....	36
5.1 Field Work	36
5.2 Interview Results	37
5.3 Survey Results	41
Conclusion	52
CHAPTER 6	53
DISCUSSIONS OF FINDINGS.....	53

6.1 Expectations in the UAE Construction System	53
6.2 Fundamental Inferences from the Stakeholders in the Construction Industry.....	62
6.3 Implementation Evaluations in the UAE Construction Industry	64
CHAPTER 7	67
CONCLUSIONS AND RECOMMENDATIONS.....	67
7.1 Possibility of Using Mediation in the UAE's Construction Industry.....	67
7.2 The Case for Mediation	68
7.3 Recommendations for the Adoption of Mediation as a tool for Dispute Resolution.....	69
7.4 Recommendation for Future Research	70
Bibliography	72
Appendix 1.....	79
Appendix 2.....	81

CHAPTER 1

INTRODUCTION

This chapter provides an insight into the dissertation as a whole. It will commence with an inquest into the background of the study. This will involve a critique of the elements and structures that set out the framework for the research. From the background, there will be the formulation of the research structure.

1.1 Background

A person who has sustained an injury or loss needs not resort to self-help or violence against the wrongdoer¹. In other words, when a person is wronged by another or suffers some kind of injuries or losses, that individual will not have to try to take revenge or use unorthodox means to deal with the manner. There is a clearly laid out judicial process for dealing with such civil cases or cases between one person and another person.

In different jurisdictions, civil cases are classified under tort or delicate, where persons bring other people to court to get legal remedies to their problems and issues. A court system exists to deal with these cases in which people come up with cases and issues against other. This is often done under a jurisdiction of civil courts which hear such cases.

Civil law, which involves cases between one person and another is distinguished from criminal law on the grounds that the latter involves dealing with individuals who are involved in wrongs that are considered to be against the state. However, civil law involves cases between person and person and not between person and the state, as criminal law does.

Litigation is a formal aspect of civil law. It involves a situation where one person takes a case to court in order to make a claim in a lawsuit. In that process, the claimant or plaintiff will

1 William Hart & Roderick Blanchart, *Litigation and Trial Practice* (Mason, OH: Cengage, 2010) p7.

have to prove that he was wronged and was injured. In that case, the defendant will have to explain his position and other elements of the situation which requires him to be exonerated. The claimant will have to prove on the basis of the balance of probabilities in order to ensure that the damages can be granted by the court or jury².

Much of legal litigations is adversarial in nature and this means it has an orientation in which the focus of the parties is on maximising victory³. This means that litigation involves a win-lose situation.

In the famous Woolf Reforms that changed the face of civil law in the UK significantly, Lord Woolf stated that “a fair trial of complex issues will always be expensive”⁴. This is because the parties to a litigation are likely to do everything possible to defend their positions. This will mean paying lawyers and possibly involving in illegal activities with the hope of winning the case. Also, judges will have to deal with extended cases. This is because the parties in the case will always come up with various claims to support their case. This has led to the promotion of alternative dispute resolution in lieu of litigation in the Civil Law system.

Alternative dispute resolution is a form of facilitated settlement that is confidential and without prejudice consequently, the contents of the process need not really be disclosed to the course. This is because it is a form of settlement process and the client is not at risk of being bound by an unfavourable outcome by a third party's decision⁵.

Alternative dispute resolution is flexible and fast. The parties are required to work within a timetable of usually 28 days or less as the case may be for adjudication and a much lesser

2 William Hart & Roderick Blanchart, *Litigation and Trial Practice* (Mason, OH: Cengage, 2010) p7.

3 David Spencer & Michael Brogan, *Mediation Law and Practice* (Cambridge: Cambridge University Press, 2010) p10.

4 Stuart Sime & Derek French, *Blackstone's Civil Practice* (Oxford: Oxford University Press, 2011) p70.

5 GRIN Verlag, *Alternative Dispute Resolution in Patent Disputes* (Berlin: GRIN Verlag, 2013) p14.

period for mediation⁶. In the process, the hearings are expedited and the different parties are made to present their views and evidence. Based on the findings, the third party hearing the process passes a ruling that will be based on compromise. Hence, a win-win situation whereby the best interest of both parties in the dispute are met.

If alternative dispute resolution fails, the parties can still take the case to court without disclosing the reasons for the failure⁷. This means that alternative dispute resolution provides a simple and fairly flexible approach to a dispute and all parties get the chance to get a fair solution to the problem at hand.

Due to the successes and positive nature of alternative dispute resolution, it has become popular around the world. The Woolf Reforms of the United Kingdom has ensured that alternative dispute resolution in particular mediation, will be made an option in cases relating to civil disputes⁸. In most cases, particularly in cases where the parties might need to conduct some kind of interaction after the dispute, like cases relating to child custody, alternative dispute resolution is made an option prior to the commencement of the hearings⁹. Another feature of the Woolf Reforms is that, in civil cases, there is a more structured case management system that takes place to ensure that cases are classified and a quick approach is used to deal with it¹⁰.

The advantages of alternative dispute resolution are presented by Martin Hunt in his book, *Constitutional and Administrative Law* (2010) which include:

1. Proceedings are inexpensive both in absolute terms and in comparison with litigation and court proceedings;
2. Proceedings are quicker than litigations and they are able to deal with more cases;

6 GRIN Verlag, *Alternative Dispute Resolution in Patent Disputes* (Berlin: GRIN Verlag, 2013) p14.

7 Ibid.

8 Stuart Sime & Derek French, *Blackstone's Civil Practice* (Oxford: Oxford University Press, 2011) p72.

9 Ibid.

10 Ibid.

3. Proceedings are kept informal and private;
4. Experts can easily be appointed to deal with specific cases as judges and not as invitees or witnesses as the case may be in normal civil proceedings¹¹

There are different types of alternative dispute resolution which include:

1. Tribunal system
2. Arbitration
3. Mediation and Conciliation

Mediation is a voluntary non-binding private dispute resolution process in which a neutral and independent person assists the parties in facilitating the discussion between the parties in order to help them to resolve their difficulties and reach an agreement¹². Mediation is therefore a form of alternative dispute resolution in which the parties choose a neutral third party to deal with the case and provide some kind of arranged conciliation or settlement. The primary role of the mediator is to assist the parties to come up with a decision. The mediator does not rule in a strict manner and impose it on any of the parties.

Mediation is a negotiation based process that is facilitated by the mediator who is a neutral third party¹³. This effectively means that the mediator plays a very central and important role in the whole process and attains results through a joint decision making process.

Mediation can be viewed as the process by which the participants together with the assistance of a neutral person or persons systematically isolates dispute issues in order to develop options, consider alternatives and reach a consensual settlement that will accommodate their

11 Martin Hunt, *Constitutional and Administrative Law* (London: Sweet and Maxwell, 2010) p36

12 Council of Europe, *European Judicial Systems* (Brussels: Council of Europe, 2010) p107

13 Sarah Greco Morasso, *Argumentation in Dispute Mediation* (Philadelphia: John Benjamins Publications, 2010)

needs¹⁴. Thus, mediation is a process by which the participants find ways of identifying issues and systematically working towards the development of options and alternatives. Through this, the mediator usually guides the parties to come up with a choice that will provide the best results for both parties in the case at hand.

There is evidence that shows that the construction industry is gradually tilting towards a system that supports alternative dispute resolution. This is particularly true in the United States and the United Kingdom. The main reason for this is probably because disputes are often technical in nature and referring it to court does not really help, thus, there is a better reason to get parties to settle their differences within the confines of alternative dispute resolution¹⁵.

Furthermore, in construction disputes, there is often a limited set of stakeholders. Since the stakeholders are likely to deal with each other, it is not wise for them to indulge in adversarial dispute Mechanism like litigation¹⁶. This is because the elements of tensed and destructive conflicts could affect projects and stand in the way of the stakeholders in the industry who seek to work to attain technical results. This could create unhealthy competition. Hence, alternative dispute resolution is prescribed.

1.2 Research Questions

The research will need to answer the question of whether mediation is a proper dispute resolution mechanism for the UAE construction industry or not. In doing this there are some fundamental questions that ought to be answered.

14 Bernadine Van Gramberg, *Managing Workplace Conflict: Alternative Dispute Resolution in Australia* (Sydney: Federation Press, 2011) p27

15 John Carter, Paul Grossman and Douglas Coppi, *Construction Disputes: Representing the Contractor* (Newark, New Jersey: Aspen Publishers, 2011) p425

16 William Schwartzkopf and John McNamara, *Calculating Construction Damages* (Newark, NJ: Aspen Publishers, 2012) p18

The first question will be the impact of mediation as a dispute resolution mechanism in the UAE construction industry. Has it been employed in the past? How has it fared? What were the issues and matters relating to mediation as a tool for dispute resolution in the UAE construction industry?

The second question will relate to the cultural and legal attitudes that mediation has encountered in the UAE in general. In this regard, it is important to answer questions of whether the Islamic culture has any relationship or impact on mediation or not? Does it conflict with the Islamic culture in any way?

Finally, there is the need to undertake the comparative analysis between mediation as an alternative dispute resolution mechanism in the UAE construction industry and other approaches. How does mediation compare with other approaches like tribunals and arbitration?

1.3 Aims and Objectives

The aim of the research is to “*critically evaluate mediation as an alternative dispute resolution mechanism in construction disputes in the UAE construction industry*”. In achieving this aim, the following objectives will be evaluated:

1. A critical analysis of the evaluation of the UAE culture and legal system and its possibility of accommodating mediation as a system of alternative dispute resolution;
2. Assessment of the possibility of using mediation as a means of alternative dispute resolution mechanism in the construction industry of the United Arab Emirates;
3. A comparative analysis of mediation and other alternative dispute resolution methods; and
4. Proposition of a model for the implementation of mediation methods in the construction industry of the United Arab Emirates.

1.6 Structure of Dissertation

The research will be conducted in seven chapters. This chapter is the first chapter which opens the discussion and outlines the scope and focus of the research. Chapter 2 is a critical review of the literature which involves investigation core ideas, concepts and definitions which provides the basis for the formulation of hypotheses and ideas for further studies. Chapter 3 is a critical review of the constriction disputes in the UAE legal System.

Chapter 4 is in the research methodology that will be put ahead of a fieldwork which will seek to gather data and information for critical analysis and evaluation. This will culminate in the definition of several research methods and instruments that will be used to conduct the field work to gather information for the formulation of valid conclusions.

Chapter 5 is on the presentation of the core findings of the fieldwork. The findings will be discussed and interpreted in Chapter 6 whilst Chapter 7 will be the conclusions

CHAPTER 2

LITERATURE REVIEW I: DISPUTE RESOLUTION AND MEDIATION

This section of the research is a critical review of secondary sources including journals and books. The literature review will evaluate the core ideas and concepts that are related to mediation and its structures and systems.

2.1 Overview of Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) “is a method or procedure for resolving a legal dispute without litigating it in a court [system] or administrative agency”¹⁷. This means the ADR system ensures that the parties to a given dispute get their case heard out of court. This is done through a preliminary evaluation of the facts in order to determine the most appropriate route for the hearings and the evaluation of the case at hand.

William Statsky identifies that in most jurisdictions, ADR is initiated through an approach whereby a screening panel examines the facts of the case to come up with an ideal route or system through which the case can be heard through an ADR system. A screening panel is “a group of individuals who will examine a case before it can be litigated in court. The panel can often make recommendations and encourage the parties to settle.”¹⁸.

Most commentators view ADR as a settlement that is done outside the precincts of the court. This is done through a critical review of the facts and the identification of the best approach to deal with the case without going through the official systems of the court.

In 1996, the United States government put forward a framework for the commencement and dealing with ADR which are as follows:

1. Fill complaint form.

¹⁷ William Statsky. *Torts: Personal Injury Litigation* (Mason, OH: Cengage, 2010) p336

¹⁸ Ibid.

2. Run settlement conferences.
3. Identify alternative methods and choose one.
4. Review and settle the case out of court¹⁹

This process of recognising ADR in US law was also introduced into UK law. This promoted the recognition of ADR in mainstream law around the world.

2.2 Basis for Mediation in the Construction Industry

Conflict is defined as “any situation in which two or more parties perceive they possess mutually incompatible goals”²⁰. This implies that conflict is based on a situation where two or more disagree about their goals and each party believes his or her view must be adhered to. Incompatibility implies that one party realizes s/he has an interest and this interest will be blocked when the other party attains his goals²¹. The extent of conflicts involves four different components:

1. Conditions
2. Attitudes
3. Degree
4. Forms²²

Karl Brunner identifies that there are two different approaches in dealing with conflicts. The first view is that conflicts are as a result of the dominance of stronger motives against weaker motives²³. In other words, each of the parties has different motives and each party will

19 Marshall Breger, Gerald Schutz and Deborah Schick, *Federal Administrative Dispute Resolution* (New York: ABA Press, 2011) p190

20 Joelle Demmers, *Theories of Violent Conflict: An Introduction* (London: Routledge, 2009) p5

21 Ibid

22 Ibid p7

23 Karl Brunner, *Economic Analysis and Political Ideology* (Surrey: Edward Elgar Publications, 2011) p1

believe his motives are superior than the other party.

The second view Karl Brunner puts forward states that conflict is as a result of a clash between capital and labour²⁴. Thus, there is a view that in most cases, disputes that need to be resolved occur due to a conflict between money and people's wishes and aspirations. Thus, there is the need for a fair hearing to be conducted to ascertain the actual interests and the expectations and find a reasonable solution in the conflict.

Mediations are appropriate for four main conditions and circumstances. In other words, when these four conditions exist mediation is arguably the best method for dealing with the following cases:

1. Disputes are long-draw-out and complex;
2. Disputants' own conflict management efforts have reached an impasse;
3. Neither side is prepared to countenance further costs or escalation of the dispute &
4. The disputants are prepared to break their stalemate by cooperation and this leads to antagonism²⁵

Where a dispute has gone on and on for a very long time and there has been no clear solution to the problem at hand, there is the need for some kind of mediation. This will bring on board a third party who has absolutely no interest in the case. That individual will provide a solution to a long-standing deadlock to be broken.

Also, it is best where all the parties have used their own approaches to deal with the problem with absolutely no results. This implies that the parties to the dispute have all exhausted options and they need a neutral third party to deal with the problems and issues.

Mediation is also important and acceptable in a case where the parties have spent a lot on

²⁴ Ibid.

²⁵ Karl Brunner, *Economic Analysis and Political Ideology* (Surrey: Edward Elgar Publications, 2011) p1

disputes and they do not want to spend any more money²⁶. This leads to a situation where the parties need a cheaper and a less demanding solution to the case at hand. Thus, there is a good and considerable argument for the use of a neutral third party to attempt to deal with the matter at hand.

Finally, if the parties are ready to cooperate, rather than seek to attain absolute results at the expense of another, mediation is seen as the most appropriate approach and tool for dealing with the dispute. Hence, mediation is preferred in that instance.

Hence, more and more entities set up different elements in their contracts to support mediation. Many organisations allocate resources for full-fledged mediation programmes and this ensures that they integrate mediation in their contracts and pay for mediation through such resources²⁷.

2.3 Types of Mediation

Figure 1. Mediation Metamodel

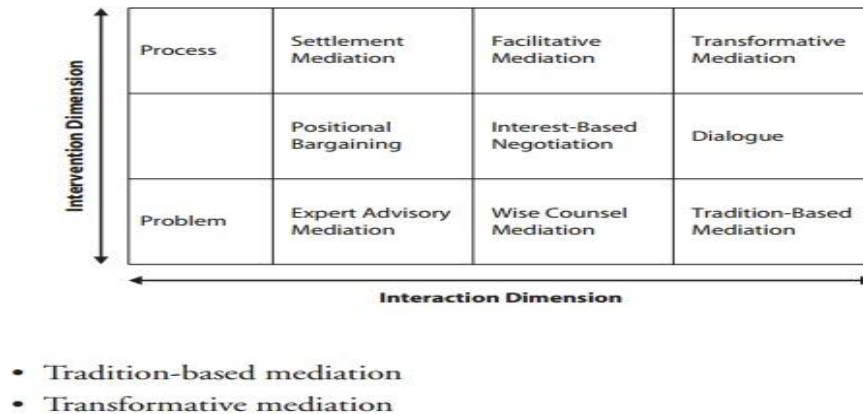


Figure 2.1 Mediation Dimensions

26 Menassa, Carlos, and Peña-Mora, Frederick, and Pearson, Neil. "Study of real options with exogenous competitive entry to analyse dispute resolution ladder investments in architecture, engineering, and construction projects." (2010) *Journal of Construction Engineering Management*, 136(3), 377–390.

27 Kathy Domenici and Stephen Littlejohn, *Mediation: Empowerment in Conflict Management* (New York: L Waveland Press, 2011) p92

The mediation model presented by Alexander Nadja is displayed in figure 2.1 above. This provides dimensions that define the different methods and the different types of mediations that exist. The differences are based on the intervention dimension and the interaction dimension. The different approaches are based on how the parties interact and how the mediator does his work. Thus, there are several types of mediations that exist. These are discussed in-depth below:

2.3.1 Expert Advisory Mediation

Expert advisory mediation involves a high level of mediator intervention in the problem and adapts predominantly, a positional approach²⁸. The primary goal is to support speedy and technical settlements. This implies that the mediator will intervene with a system whereby there will be a technical settlement. However, the mediator applies skills and competencies in order to come up with a solution for both parties.

It is a major approach whereby the parties and the disputants are encouraged to provide their position and the mediator uses rules and dominant techniques in the system. This culminates in a settlement with vital elements of the theory and practice of mediation integrated fully. The positions of the party are recognized and used as the basis for the discussions and analysis. And this leads to a settlement that puts each of the parties in the best possible level.

Expert advisory mediation is used where technical matters require expert support and expert assistance. It is also used where the parties have an unrealistic view on the legal limitations of the case. In that case, an expert might be needed to present the facts and the components of the case in a very factual manner and aspect.

This type of mediation is also used where the parties need an objective and specialized view. In that case, the parties will need someone who has an expert approach to hearings and

28 Nadja Alexander, "The Mediation Meta Model: Understanding Practising" *Conflict Resolution Quarterly* 26 (1) 2008 pp97 – 113

analysis of matters in order to assist the parties to reach a reasonable settlement.

2.3.2 Settlement Mediation

Settlement mediation is a form of access to justice and a delivery of justice to parties to a conflict. Settlement mediation focuses on processes and promotes party autonomy²⁹. In this case, the parties have their own expectations and desires and they are guided to get a settlement in the case as an alternative means of going to court and wasting times in a destructive approach to a given case.

Typically, the parties have legal representatives in a settlement mediation and the representatives seek the best interest of their clients³⁰. Settlement mediation is more or less another alternative to going to court and spending time in a seemingly endless dispute with no end in sight.

Settlement mediation is used where positional bargaining is preferred over interest-based bargaining³¹. This is also preferred where outcome is placed ahead of relationships. And this is more ideal where the parties will have no hope of a future relationship after the case is over.

Another situation where settlement mediation is preferred is in a situation whereby the results are somewhat fixed and there must be negotiations to ascertain a fair result for all the parties in the dispute at hand. This is also preferred where there is a single issue and this issue can only be dealt with through a given settlement or view on the whole situation at hand.

2.3.3 Facilitative Mediation

Facilitative mediation is an interest-based negotiation approach which is employed where

29 Nadjia Alexander, "The Mediation Meta Model: Understanding Practising" *Conflict Resolution Quarterly* 26 (1) 2008 pp97 – 113

30 Ibid.

31 Nadjia Alexander, "The Mediation Meta Model: Understanding Practising" *Conflict Resolution Quarterly* 26 (1) 2008 pp97 – 113

there is evidence that the parties have interests and expectations that they seek to attain. Thus, the mediator has the obligation of ensuring that all the parties' interests are brought to bear and the process enhances discussions and debates on the interests of the parties³².

It combines process intervention with integrative approaches to bargaining. This implies that facilitative mediation uses different methods to get the parties to present their ideas and expectations and the mediator ensures completeness. Thus, parties reveal all their relevant needs and expectations and the mediator ensures that all the expectations are dealt with.

Facilitative mediation is used where parties have a relationship that will subsist after the dispute is over. It is imperative to ensure that all parties present their arguments and cases in order to have a discussion which is healthy. This way, the parties do not become adversaries after the case is over.

The duty of the facilitative mediator is to ensure that the parties negotiate on a level playing field. This is done by bringing out all the interests and expectations of the parties so that they attain the best and the most optimum results in the discussions and the debates that will persist.

The mediator therefore ensures that all parties have an equal footing and the discussions continue in a safe environment. Mediators in this category often deal with cases in business, social and other familial contexts and matters.

Facilitative mediation is often futuristic in nature. The mediator encourages the parties to look at the opportunities for creating a good and preferred future. This therefore forms the basis of all the discussions and the debates. Hence, the parties address the needs of the parties and they are outlined to promote cooperation and conciliation.

32 Nadja Alexander, "The Mediation Meta Model: Understanding Practising" *Conflict Resolution Quarterly* 26 (1) 2008 pp97 – 113

Also, this is a most ideal for a situation where there is a series of multiple issues and matters the parties ought to deal with. Hence, the parties to a facilitative mediation need to work together and ensure they attain the best results through a system where all parties and all components are outlined, discussed and factored into the case at hand.

2.3.4 Wise Counsel Mediation

This technique of mediation combines a problem-orientation mediation intervention with an integrative approach to mediation. The mediator considers the broader interests of the parties and does not focus only on the case at hand or the settlement only³³.

Mediators in wise counsel mediations are selected for their high standing in society. They are chosen because they have a strong view of the best interests of people in the community and they are well informed of the interests of all people. Mediators are chosen because of their communication abilities, wisdom, sense of fairness, ability to understand aspects of the conflict at hand³⁴.

Wise counsel mediation is used where there are multiple issues and the disputants need substantive advice in order to attain the best results possible. Hence, the wise counsel mediation helps them to identify options and possibilities for better results and attain their best interests.

Wise counsel mediation is also appropriate where the parties are reluctant to initiate constructive suggestions due to pride. In that case, the parties might want to have their own ways and try to save their face and hence, there is the need for a mediator with credibility to get all the parties to accept a verdict that integrates advice and recommendation that the parties are reluctant to take. Hence, the mediator provides a safe avenue through which the parties can have a reason to do what is best for themselves and the other party.

33 Nadjia Alexander, "The Mediation Meta Model: Understanding Practising" *Conflict Resolution Quarterly* 26 (1) 2008 pp97 – 113

34 Nadjia Alexander, "The Mediation Meta Model: Understanding Practising" *Conflict Resolution Quarterly* 26 (1) 2008 pp97 – 113

Also, wise counsel mediation is often used where the parties are seeking to allocate moral responsibility for the outcome of the case to a credible third party. The credibility of the mediator enables the parties to get some confidence in the recommendation and based on this framework, they can carry out their activities and work hard to attain the result of the mediation. Hence, there is some kind of quality assurance based on the credibility and goodwill vested in the mediator.

Wise counsel is also very crucial in cases where there are major power imbalances amongst the disputants. This includes imbalances in language and literacy. Hence, the wise counsel will provide a middle-view for both of the parties and they will get the best result and the best solution to the problems and issues at hand. This will help to provide a safe and proper solution to the problems at hand and lead to a more balanced approach to the identification of a solution to the problems.

2.3.5 Tradition Based Mediation

Strictly speaking, tradition based mediation is a form of wise counsel. The mediators provide a wise and informed view to the parties and this helps them to resolve their issues. This is a problem-oriented approach to mediation and the mediator is sought for his wisdom, skills and persuasive abilities³⁵.

The differentiating point is the fact that tradition based mediation is conducted in a framework of traditional rules and values of the society within which it is conducted. It was the main means of dispute resolution in pre-colonial times and communities used them. Hence, after colonisation and the formation of modern nations, these tradition based mediation methods are seen as informal and often lack the legal backing necessary for implementation in the formal

35 Nadja Alexander, "The Mediation Meta Model: Understanding Practising" *Conflict Resolution Quarterly* 26 (1) 2008 pp97 – 113

sector.

However, they are still recognized in many nations around the world. Countries have adjustments that enables informal mediations and hearings by religious leaders and community leaders to be recognized by courts of law.

2.3.6 Transformative Mediation

Transformative mediation is based on healing and is conciliatory in outlook³⁶. It is steeped in the principles of restorative justice and applies elements of the behavioural sciences to ensure that parties are given a mediation that helps them to develop in a holistic manner. It is viewed as some form of therapeutic practice that enables the parties to the dispute to resolve their problems and also heal all old wounds in the mediation process.

The mediator uses elements of therapeutic practice and mainstream counselling to deal with the issue. The mediator identifies the options and leads the parties through to make wise and informed choices. In this process, the mediator helps the disputants to help themselves.

This method is preferred in cases where the dispute in question recurs and there is the need for a lasting solution to the problems it brings. Also, the method is preferred where the parties have a relationship and there is the need to ensure they deal with the dispute in a manner that will ensure peaceful co-existence. Transformative mediation is best where there is significant emotional or behavioural issues and matters. Or where the parties to the dispute argue on the basis of values and principles. There is a lot of time invested into transformative mediation and the mediator needs to use a proactive approach to monitor and control the case at hand.

2.4 Steps in Mediation

There is no conventional approach or view on how mediation must be completed. There

36 Nadja Alexander, "The Mediation Meta Model: Understanding Practising" *Conflict Resolution Quarterly* 26 (1) 2008 pp97 – 113

is however a broad view that is presented by some authorities in the field of mediation. Russell Murray identifies six main steps that are used in the resolution of disputes by mediation³⁷:

1. Opening remarks of the mediation: At this stage, the mediator will identify what the parties are in for and the procedures to be used. The main issue will be pointed out and the possibility of dealing with the case will be discussed.
2. The problem statements of the parties will be collected. This will be done by taking submissions from the competing parties to the conflict. These are sent to the mediator who examines the facts of the dispute at hand.
3. After that, there is an exchange of information concerning the interests of the parties in the conflict. This will be done through the identification of main expectations and needs of the parties.
4. Information gathering follows and the mediator gathers information about the needs and expectations of the parties in the dispute. This leads to a formulation of a position and negotiations can begin on the part of the mediator.
5. Problem solving will follow after the information from both parties are presented. The parties will therefore be put against each other and there will be discussions on the choices to be made by each of them. These will be discussed and resolved through bargaining and discussions in order to find solutions to the pointers raised in the process. The mediator will guide the parties throughout the process and analysis will follow through after each submission.
6. The final stage will be the formalisation of the agreements to the dispute at hand. The mediator will come up with a final decision that both parties agree on. The final decision

37 Russell Murray, *The Mediation Handbook* (Denver, CO: Bradford Publishing Company, 2010) p14

will be endorsed and accepted by all the parties involved in the case at hand³⁸

Conclusion

Non adversarial approaches to dispute resolution have gained the upper hand in resolving civil disputes. This is because they are faster, they cost less and they are more flexible and much more considerate of the realities in the case. ADR provides a system of case management in which the parties are heard in good ear and provided a win-win solution. Mediation is one of the most dominant and fast growing methods in ADR.

There are several types of mediations. Expert advisory mediation revolves around high level intervention. The mediator uses a positional approach and provides a legal and technical solution that both parties agree upon. Settlement mediation is used when the parties have limited relationships and the future of their relationship is not important. Settlement mediation is used where there is a case and the parties need to use negotiations to fix a final outcome to a dispute.

Facilitative mediation is about interest-based disputes in which the parties have a need to interact with each other after the case. There is the need for a level playing field and the mediator facilitates that. Wise counsel mediation is about a system where the mediator considers the broader scope of the dispute. The mediator looks at the broader context and prescribes the best results for the parties.

Tradition based mediation is a form of wise counsel mediation that is based on traditions and ethics in the society. It is considered informal in most legal jurisdictions. Transformative mediation on the other hand appear to have a healing connotation. It is a form of restorative justice that uses behavioural science and therapeutic methods. This is used where dispute occurs from time to time and the parties need to cooperate in future. Hence, this provides a sustained

38 Ibid

approach to dealing with problems and issues.

The standard approach to mediation involves opening remarks which outlines the problem. After that, the submissions of both parties are taken and there is an exchange of information. The mediator gathers information and the two parties are encouraged to take part in the problem solving stage. After that, the mediator assists the parties to come up with a formal agreement which is presented at the end of the process.

CHAPTER 3

LITERATURE REVIEW II: CONSTRUCTION DISPUTES AND UAE LEGAL SYSTEM

This chapter will focus on the practical aspects of dispute resolution and their definitions and scope. The chapter will commence by examining construction disputes and the role of culture in construction disputes and disagreements. This will provide the framework to assess the feasibility of the use of mediation as a means of dispute resolution in the UAE in the industrial and the cultural context.

3.1 Construction Disputes

Disputes are somewhat common in the construction industry. These disputes have various roots and various sources which can be traced and examined from a very critical perspective. Such disputes provide a degree of tension in the industry and this prompts the need for dispute resolution mechanisms to keep the industry running.

There are different approaches and different elements of these causes. One school of thought identifies the following as the leading cause of disputes in the industry³⁹:

1. Scope of contract: This stems from disputes relating to whether there was a contract over a given subject being contested or not. In that case, there is the need for the reinterpretation of the existing contract in the best way and manner possible on the basis of the circumstances at hand.
2. Incompatible contract terms: This is a case where some of the terms of the contract are seemingly unclear and they lead to some degree of confusion in the construction process.

39 John Carter, Paul Gorman & Douglas Coppi, *Construction Disputes; Representing the Contractor* (New Jersey: Aspen Publishers) p203

3. Unclear risk apportionment of contracts: In this situation, the risks relating to the contract are not clearly outlined or foreseen. Hence, when they come up, there is a disagreement on who bears responsibility for the eventualities⁴⁰.

Other risks relate to the activities that occur during the building process. In this context, there is an issue with the identification and notification of the parties in the construction contract⁴¹. In this case, there are issues with identification and notification and differing site conditions as well as interpretation and delays in activities⁴².

This includes issues with the records and documentations as well as the interpretation of requirements and contract specifications. Such matters can lead to confusion which might require some kind of attention by both parties of the conflict at hand.

Another classification of construction dispute is in the order of contractual and speculative issues⁴³. Contract incompleteness has been identified as the fundamental root of construction disputes⁴⁴. Task factors and other factors relating to human errors plays a major role in construction disputes⁴⁵.

Disputes in the construction industry are often avoided by assessing the risks in the contract more accurately and correctly⁴⁶. Also, there is the need for the identification of the proper scope of the contract and the definition of the right terms in the contract⁴⁷. Usually, tensions in previous negotiations often lay the foundation for more conflicts and disagreements

40 John Carter, Paul Gorman & Douglas Coppi, *Construction Disputes; Representing the Contractor* (New Jersey: Aspen Publishers) p204

41 Paul Lewin, *Construction Contract; Claims, Challenges and Dispute Resolutions* (Reston, VA: American Society of Economics, 2010) p32

42 Ibid

43 Diekmann, John, and Girard, Michel. "Are contract disputes predictable?." *Journal of Construction Engineering Management*, (1995) 121(4), 339.

44 Jehn, Kenneth "A qualitative analysis of conflict types and dimensions in organizational groups." *Administrative. Science. Quarterly*, 1998 42(3), 538

45 Hart, David, and Moore, James "Incomplete contracts and renegotiation." *Econometrica*, 1988 56(4), 762

46 Victoria Russell & Diane Hind, *Resolving Construction Disputes* (Oxford: Chartbridge Books, 2009) p7

47 Ibid p9

in mediations that are conducted later⁴⁸

3.2 Culture and Conflict Resolution

To a large extent, the ability to resolve contractual disputes and confusion relating to contracts has a strong connection to the culture of the people in question⁴⁹. Hofstede identifies that culture is “the collective programming of the human mind that distinguishes the member of one human group from those of others”⁵⁰.

Another view is that culture is the way a group of people think and perceive things and this varies on the basis of differences in values and conception⁵¹. Culture therefore forms the software of the mind and provides the framework within which people will perceive things and act towards them⁵²

Culture defines the behavioural patterns, practices and values of a group of people⁵³. Culture is therefore a set of processes and activities that separates one person belonging to one group from a person from another group. Culture shapes the way people think and perceive things and this defines the elements of morality which in turn shapes the legal structures⁵⁴.

There have been various dimensions and conceptual frameworks within which culture is defined and perceived. One of the most famous models is the Hofstede Cultural Dimension system. This system identifies that cultures differ on five main components⁵⁵:

1. **Power-Distance Index:** This relates to the extent to which a culture accepts a subordinate to be distant from his superior. In high Power-Distance cultures, subordinates are required

48 Anderson, E., and Weitz, B. (1992). “The use of pledges to build and sustain commitment in distribution channels.” *Journal of Market Research*, 29(1), 24

49 Edgar Schein, *Organizational culture and Leadership* (Hoboken, NJ: John Wiley and Sons, 2010) p23

50 Geert Hofstede, *Software of the Mind* (New York, McGraw Hill, 2010) p21

51 Thomas Wagner, *Foreign Market Entry and Culture* (Berlin: GRIN Verlag, 2012) p2

52 Geert Hofstede, *Software of the Mind* (New York, McGraw Hill, 2010) p21

53 Phillip Herzog, *Open and Closed Innovation* (London: Springer, 2011) p60

54 Edgar Schein, *Organizational culture and Leadership* (Hoboken, NJ: John Wiley and Sons, 2010) p20

55 Geert Hofstede, *Software of the Mind* (New York, McGraw Hill, 2010)

to perceive authorities in extremely high regards. An individual will take instructions from his supervisor and not question decisions from the top. In low Power-Distance cultures, there is a trend towards strong communication linkages and it is somewhat normal for superiors to debate with their subordinates and take inputs from them.

2. ***Individualism***: This refers to the extent to which an individual is perceived as a unique entity as opposed to connection to a group. This dimension indicates that a person perceives himself and resources in individual terms rather than in relation to the social grouping s/he belongs to. In high individualistic societies, people live uniquely and distinctively from the rest of the society. On the other hand, low individualistic societies are more collectivist and people tend to be defined by the social group they belong to.
3. ***Masculinity***: This is about the quality of life versus the quantity of life. In this dimension, societies are examined on the basis of whether roles in life are strictly defined or not. In a highly masculine society, the roles in life are strictly and stringently defined on the basis of gender and other social structures. In feminist societies, there are more flexible social classifications and people can take up different roles depending on what they want, rather than who they are.
4. ***Uncertainty Avoidance***: This refers to the extent to which a society tolerates uncertainty. IN high uncertainty societies, people go the extra mile to ensure things are fixed and risks are dealt with.
5. ***Long-Term Orientation***: This is a fairly new categorization added to the Hofstede Cultural Dimension Model. Long-term orientation refers to the degree of importance people of a given culture attach to long-term results in their endeavours.

Hofstede conducted various studies which provided reports and results of how societies

and communities around the world score in these dimensions.

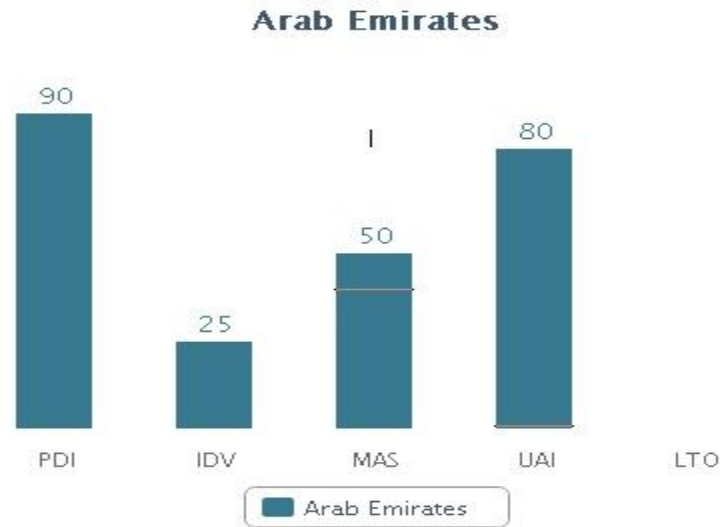


Figure 3.1 UAE on the Hofstede Dimension Scale⁵⁶

The United Arab Emirates is a high power dimension culture. Subordinates are expected to take ask few questions to their superiors. Also, Uncertainty avoidance is high in the country.

UAE is also a collectivist society since the IDV scale shows that it is a very low individualistic society. The country has a fairly flexible scale in terms of social roles in the society. The country is a moderately masculine society and hence, there is some hope of changes and reforms in the affairs of the culture and the nation.

⁵⁶ Geert Hofstede Official Website: <http://geert-hofstede.com/countries.html>

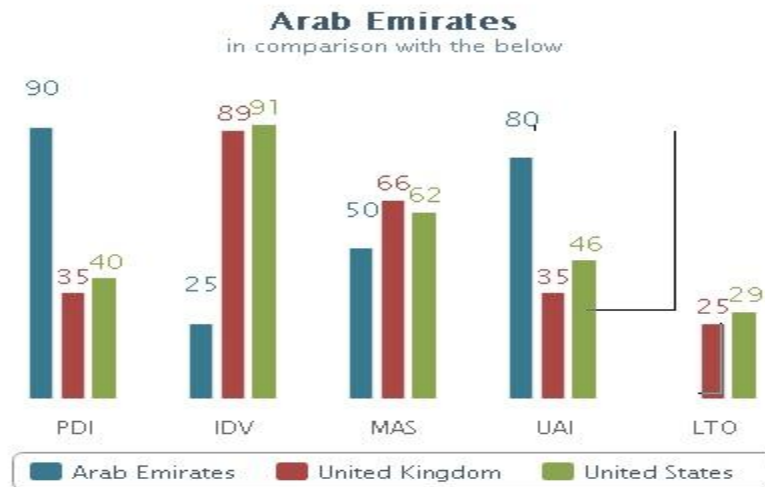


Figure 3.2 Comparison of the UAE and Anglo-American Cultures⁵⁷

From the diagram above, it is apparent that the United Arab Emirates has a higher PDI index than these countries. The UAE is much more collectivist than the US and UK. In terms of Masculinity, the UAE is less masculine and more flexible than the two countries. Uncertainty Avoidance in the UAE is much higher than the UK and US.

⁵⁷ Geerte Hofstede Official Website: <http://geert-hofstede.com/countries.html>

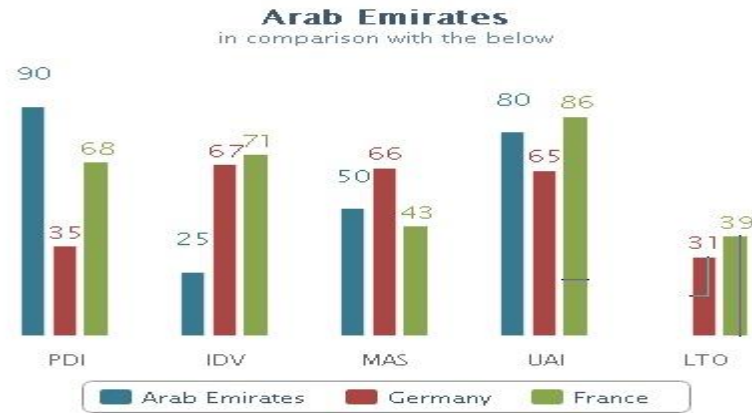


Figure 3.3 UAE and Central European Cultures⁵⁸

Comparatively, the UAE has a much higher power-distance relationship than Germany. However, it is somewhat close to France in PDI. In terms of individualism, there is evidence that the UAE is much more collectivised than both cultures. Masculinity levels in the UAE is higher than France but somewhat lower than that of Germany. UAE has a higher tendency for uncertainty avoidance than Germany but a lower uncertainty avoidance than France.

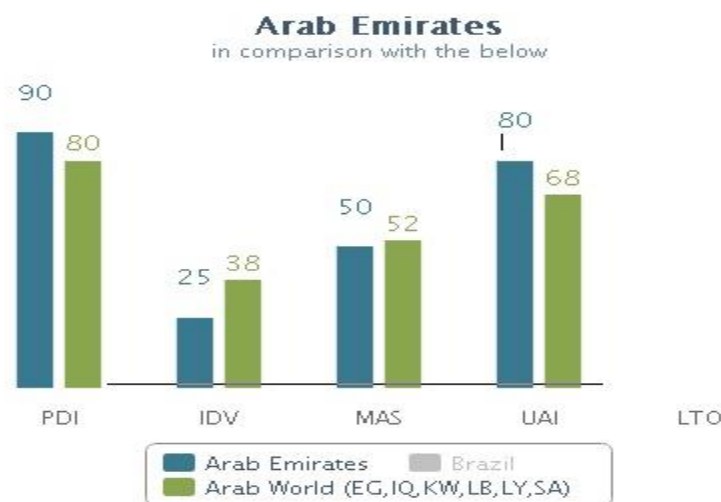


Figure 3.4 UAE and the Arab World⁵⁹

⁵⁸ Geert Hofstede Official Website: <http://geert-hofstede.com/countries.html>

The UAE ranks on levels that are close to the average in the Arab world. This shows that although the UAE is a relatively more modernized nation in the Arab world, they still have some cultural patterns that is similar to the mainstream systems and structures.

3.3 The Legal System in the UAE

The United Arab Emirates maintains a legal system that traces its based on the Sharia law system⁶⁰. However, like most other Islamic countries, the UAE came under the British and French legal influences in modern times⁶¹. The current modern system of law that exists in most of the Arab world can be traced to a modern legal code that was consolidated in Egypt throughout the 19th Century⁶². These laws were modelled on the French Civil Law codes which spread throughout the Middle East and North Africa. Most of these laws were imposed by the Ottoman Empire which also had room for local rules to be integrated into various legal codes and systems⁶³.

The United Arab Emirates was formed through the federation of different Emirates in the Arabian Gulf region in 1971⁶⁴. Although the federation creates a single nation, each Emirate runs its own judicial system⁶⁵. In each of the Emirates, there are three structures that define the court system:

1. Court of First Instance.
2. Court of Appeal

59 Geert Hofstede Official Website: <http://geert-hofstede.com/countries.html>

60 Marcus Noland and Howard Pack, *The Arab Economies in a Changing World* (Washington, DC: Peterson Institute for International Economics, 2011) p145

61 Ibid

62 Christian Campbell, *Legal Aspects of Doing Business in the Middle East* (London: Lulu Books, 2011) p159

63 Nathan Brown, *The Rule of Law in the Arab World* (Cambridge, Cambridge University Press, 2012) p2

64 Viktor Gorgenlander, *A Strategic Analysis of the Construction Industry of the United Arab Emirates* (Berlin: Diplomica Verlag, 2009) p31

65 Richard Price and Essam Al-Tamimi, *United Arab Emirates Court of Cassation Judgment* (New York: BRILL, 2011) pvii

3. Court of Cassation⁶⁶

The court of first instance is the first point of call in resolving a civil issue. This is done through hearings and a due process modelled on the Napoleonic code. When a party is not satisfied, the case is sent onto an appeal and finally to a court of cassation which is the final point where the case is heard and a final ruling is given. There is no redress after a case is sent to the court of cassation.

Alternative dispute resolution exists in the United Arab Emirates. However, it is traditional in nature and it is based on religious and respected persons in the society⁶⁷. This includes individuals and other respectable personalities who deal with cases from a mystical or religious perspective.

However, like most nations in the developing world, the formation of a modern state structure caused these different groups of mediators to be considered an informal unit of dispute resolution⁶⁸. These groups deal with family and social disputes that are not recognized in courts.

3.4 Concerns for Integration of Mediation

A study conducted by Redfern and Hunter provided different ideas and concepts that need to be taken into account critically before a jurisdiction adopted a specific ADR method. They include⁶⁹:

1. Jurisdiction of mediation: A consideration of whether the courts will accept the results of these mediations or not.
2. Scope: The kinds of cases that will be handed over to mediation and which aspects of

66 Viktor Gorgenlander, *A Strategic Analysis of the Construction Industry of the United Arab Emirates* (Berlin: Diplomica Verlag, 2009) p31

67 Jerome Barrett and Joseph Barrett, *A History of Alternative Dispute Resolution* (Hoboken, NJ: John Wiley and Sons, 2012) p51

68 Michael Moffat, *The Handbook of Dispute Resolution* (Hoboken, NJ: John Wiley and Sons, 2011) p13

69 Andrew Redfern and Mart Hunter, *Law and Practice of International Commercial Arbitration* (London: Sweet and Maxwell, 2010) p94

criminal law must be considered in such cases.

3. Local Restrictions placed upon the parties by conditions.
4. Ethics and duties of mediators
5. Enforceability of mediation rulings
6. Codes and meeting reports.
7. Setting timetables
8. Scope of awards
9. Conduct of meetings
- 10. Representation of the parties.**

3.5 Conclusion

Construction disputes involve different elements and aspects. There are two main elements of these disputes. This involves issues relating to the contract at hand like the scope, coverage of all risks and certainty issues.

Culture forms the values and moral codes of a people and this defines the legal system of a nation. The United Arab Emirates has a culture which has high power-distance relationships and high uncertainty avoidance. UAE has a moderate level of masculinity and it is a very collectivised society. UAE has a much higher power distance and collectivist system than most Western society. However, in most areas, UAE's cultural scores are somewhat similar to that of other Arab countries.

In order to make mediation a part of a given judicial system, there is the need to consider the scope of jurisdiction and the local restrictions to be placed on them. Also, issues like ethics, duties of mediators, enforceability of rulings and meetings are important. The representation of parties and other things are important aspects of every judicial system that seeks to admit

mediation as a central approach to dispute resolution.

CHAPTER 4

RESEARCH METHODOLOGY

This chapter provides important information about the methodology that was used for the study at hand. This includes a discussion of the research approach and the research system that will be used to answer the questions.

Research methodology provides a broad scope and a broad framework for the conduct of the research and the conduct of the study that will be conducted. This will involve outlining the main framework within which the study will be conducted. Additionally, research methodology sets out the way data will be collected and how the data will be analysed to provide information about the fundamental research questions of the study.

4.1 Research Scope

In order to identify the broad scope of research, it is fundamental for a researcher to identify the philosophical scope of the study at hand. This will involve the identification of the main approach that will be used to deal with the research questions and find solutions to the research problems.

4.2 Research Philosophy

Interpretivism or anti-positivism refers to a system of conducting research with the view of identifying the trends and patterns in a given phenomenon⁷⁰. To this end, the research will use

70 Aggrawal Singh, *Research Methodologies* (London: SAGE Publications, 2010)

various approaches and methods to identify the methods and sources of information that will best describe whether mediation will work in the UAE's construction sector or not. This will be based on the identification of tried and tested rules and regulations and the assessment of whether they will work or not through a set of scientific methods and approaches.

Interpretivism is often classified as qualitative research. And this approach involves the use of various methods and structures for the conduct of research in a way and manner that brings to bear the important elements and findings of studies and researches. This discusses how a phenomenon occurs in the real world and describes the way it exists. This is different from an empiricist approach where variables are defined and measured to provide various results for the researcher to identify a particular scientifically laid-down result.

4.3 The Research Approach

The research was conducted through deductive research. This is because it that strategy helps to deduce a number of patterns and trends in the UAE construction industry and the UAE culture in order to formulate some conclusions on the patterns and the dominant trends in the society and this will provide a deduction of how well mediation can be used in lieu of litigation and other options that exists in dispute resolution.

Deductive research is different from inductive research. Inductive research creates a given environment or situation within which the variables of the research is tested. However, due to a number of constraints faced by the researcher, it will not be possible to conduct the research on the basis of the dominant trends and the dominant methods of inductive research. Thus, the research will be deduced from the submissions and major trends in the construction industry and the cultural systems of the United Arab Emirates in order to come up with some conclusions on

how mediation might fit into the nation and the cultural frameworks and systems.

4.4 Research Strategy

The research was conducted through a survey and interview. This provided information about the overall culture and the other systems and structures that come together to define the terrain under review.

4.5 Data Collection

Data was collected from a sample of two authorities in the field of construction in the United Arab Emirates. This included two people who have played significant roles in the resolution of disputes in the UAE construction industry. The interview provided information about what exists today and how feasible it might be to integrate other approaches and methods to conflict resolution in the industry. The questions are presented in Appendix 1 below.

The second part of the data collection involves a survey. The survey was conducted through a questionnaire that was distributed to a sample of 20 people in the field of construction in the United Arab Emirates. This was done through a set of closed ended questions presented to the respondents who have various backgrounds in the construction industry. The questions as depicted in Appendix 2 below were formulated onto the Likert Scale to provide a view of the extent to which different possibilities could be put to play in the subject being investigated.

4.6 Data Analysis

The findings from the field work was subjected to critical analysis and review. These analyses and reviews involve the presentation of the findings in a laid out format. For the interviews, findings were transcribed and summarized to provide an insight to the terrain under

review. The findings will provide the impetus for critical analyses and reviews.

The survey findings was graded and evaluated in a statistical format. The findings are presented to show the extent to which the different phenomenons exist as per the Likert scale. The findings provide an important guidance on how to implement the model of the construction industry and its related structures and systems.

4.7 Interpretation

The findings form the basis for the possibilities to implement mediation as an approach to dispute resolution in the UAE construction industry. This culminated in the identification of the main elements and the possibilities for mediation in dealing with disputes. The findings involve a proposition of an ideal model for the construction industry of the United Arab Emirates.

CHAPTER 5

FINDINGS

In this chapter, the emphasis will be on the presentation of the results of the fieldwork that was conducted in the dissertation. This chapter connects with the previous chapter by way of the fact that the methodology proposed in the chapter was used to collect the data. The data is presented here in a format that supports and allows for a critical evaluation and examination of the core findings and the elements of the fundamental data that was collected.

5.1 Field Work

The fieldwork was commenced with an interview that was conducted with two legal experts. The first is an UAE judge who has dealt with many cases in the construction sector. The judge is an expert in cases and matters that relate to the country's construction and engineering industry. He has taken part in numerous legal committees that have been in charge of reforms and other things in the past two decades. The second interviewee is a British lawyer who has represented major international construction entities in the United Arab Emirates for over ten years.

Both of the interviewees granted an interview that lasted between 45 minutes and 1 hour. The interviews were transcribed and put together by the researcher. Although effort was made to ensure the interview was as structured as possible, external matters were integrated in the discussions and the meetings became somewhat unstructured at some points.

The second part of the field work was a questionnaire survey. The survey was conducted through an online questionnaire which was sent to different respondents in the UAE construction industry. The respondents were drawn from various construction firms and arbitrators who were

asked fifteen questions in a close ended questionnaire plotted on the Likert scale.

A total of twenty respondents were contacted. All respondents gave replies that were presented to through online means. The responses were put before the researcher and analysed for the purpose of undertaking a study into the research.

5.2 Interview Results

The interview responses provided a diverse set of responses that were critical replies to the fundamental questions in the research. The interview results are presented here under broad headings and it discusses the different responses simultaneously.

Overview of Competency of Legal Experts in the UAE Construction Industry

The Emirati judge identified that there is a lot of people entering the UAE construction industry on an annual basis. He identifies that the country's construction industry is attracting more and more legal brains. And many of them can be easily converted to mediators to deal with issues and problems. Also, he identifies another stream of construction experts who have learnt and are aware of construction matters and construction disputes. In his view, the construction experts and legal experts can both be trained and a convergence can be created to ensure that they become arbitrators and sit on important cases and matters in the construction industry.

The British lawyer stated that the legal industry of the United Arab Emirates has come very far over the past two decades. He argues that once the government shows interest in encouraging mediation and alternative dispute resolution in the construction industry, there will be rules and regulations that will be put together to keep the industry running. Secondly, the states that although there are people in the industry who can act as mediators, there is an opportunity for the immigration of qualified and competent experts in the construction industry to deal with matters and issues.

Quality of Potential Mediators in the UAE

Both parties were asked what the response of mediators might be when the number of cases requiring mediation is increased in the UAE construction industry. The Emirati judge stated that there will be a glut in cases since the mediators might not be able to respond to the cases at hand appropriately. Hence, there might be a lot of unsatisfied parties who might need to seek redress in court. This suggests there is the need for a revolutionary approach to deal with mediation in the industry.

The British lawyer however stated that the increase in cases requiring mediators will invariably be done gradually since more and more construction contracts will state the need for mediation rather than litigation. Hence, the mediators will get time to learn and analyse things. In the short run, there might be challenges but in the medium to the long-term, the mediators in the industry will acquire more experience and other players might enter the industry.

Cultural Implications of Mediation

The British lawyer stated that the United Arab Emirates has a rich cultural background but the country has been able to adopt a fairly secular system that all international and local parties adhere to. He therefore argued that if the mediation sector of the construction industry is built on a foundation of international mediation law, all stakeholders from all backgrounds will be able to integrate into the mediation system.

On the other hand, the Emirati judge identified that mediation in the UAE can be done in a framework of Emirati culture and Emirati social systems. This means the country can potentially come up with the systems and structures that the parties will use will reflect elements of Emirati culture and pre-colonial negotiations. However, he conceded that since most of the

major stakeholders in the UAE construction industry are of international and Western backgrounds, there will be the need to integrate some aspects of international mediation law and international mediation structures.

Possibility of Granting Wise Counsel in UAE Construction Industry Mediation

The two parties both said that the UAE construction industry has a lot of experts and a lot of experienced people in the construction industry. These are people who had a wide range of experience who could give wise counsel and guide parties to a dispute. They also stated that the fact that such wise counsellors are experienced and act in good faith, there is the need for them to be given a good compensation. And since most construction firms in the United Arab Emirates are quite successful financially, they can support mediators who can give them wise counsel.

Feasibility of Formalizing Traditional Mediation Practices in Construction Mediations

The Emirati judge stated that he saw a lot of possibilities in getting the parties to construction disputes in the Emirates use local systems and structures. To him, this can be done through laws that will reflect the ancient practices of dealing with disputes through Emirati traditions.

On the other hand, the British lawyer identified that although Emirati traditional methods can be used, they can be done only if the broad frameworks of the country's mediation systems are identified and put into laws. He also stated that it will be best if just the general elements and general aspects are integrated, rather than the totality of their traditional systems.

Feasibility of integrating elements of Transformative Mediation

Both interviewees identified that transformative mediation might not be relevant to construction matters in the first place. The British lawyer conceded that transformative mediation can only be integrated into wise counsels but it could only be done subtly and not overtly as

social and family disputes might require.

Power-Distance Gaps and Effective Mediation

The British lawyer identified that power-distance gaps can be problematic in defining a level playing field necessary for an effective and efficient mediation system. Thus, there will be the need for the mediators to gain skills and competencies necessary to handle the claims of different people.

The Emirati judge stated that power-distance exists but it is not likely to seep into dispute resolution. Hence, there is the need for a mediator to understand the culture and approaches of the country and exert his influence as a dispute resolution agent who has the right to do what he has to do.

Precedence Based System and Uncertainty Avoidance

The British lawyer identified that precedence based systems might be necessary and not only should the UAE mediation system be linked to local precedence. Rather, mediation in the country must be connected to a vast sea of mediation precedence and procedures in the international community. To him, this will make UAE's mediation system very popular for stakeholders in the construction industry.

The Emirati judge identified that a precedence based system is not really part of the Arab culture. However, since the business world in the UAE does not encourage uncertainty, there might be the need to set up a precedence system.

Collectivism and Mediation

The Emirati judge stated that since the country is more collectivist, it is a good idea to ensure there is a mediation system rather than litigation. He stated that the privacy of mediation and the non-adversarial nature is important.

The British lawyer was also of the same view as the judge. However, he added that the construction industry in the UAE often involves parties from very distant backgrounds and in that case, parties might even prefer to litigate rather than seek alternative dispute resolution.

Credibility of Mediators with ordinary backgrounds

The Emirati judge stated that a mediator is likely to be recognized even if he is a commoner who has the requisite qualifications and the requisite skills and follows procedures. To him, there is a strong view in the country's culture which makes people respect all judges.

The British lawyer was of a slightly different view. He identified that some very privileged people might treat the view of some mediators of foreign or non-respected backgrounds with disdain and contempt.

Recommended Mediation Process

The British lawyer argued that the best mediation method will be one that is based on international conventions which shapes and formalizes mediation in the country's systems and the country's structures. To him, the country will have to use a highly regulated mediation system in which there will be specific rules to help in the promotion of certainty and fairness in an objective manner.

On the other hand, the Emirati judge stated that the UAE will be better off if it improves the country's traditional systems of alternative dispute resolution. This is because the parties to mediation and those with interests will have some Emirati connections. Hence, there is the need to preserve the country's local structures and systems to ensure that the country gets the best systems that also reflects the cultures of the people.

5.3 Survey Results

The survey involved an online questionnaire that was distributed via email to 20

respondents. All respondents replied and provided views and opinions of important matters and important systems and structures. The raw data is presented here with further discussions of their implications conducted in the analysis section of this chapter.

Speed is very Important in Dispute Resolution

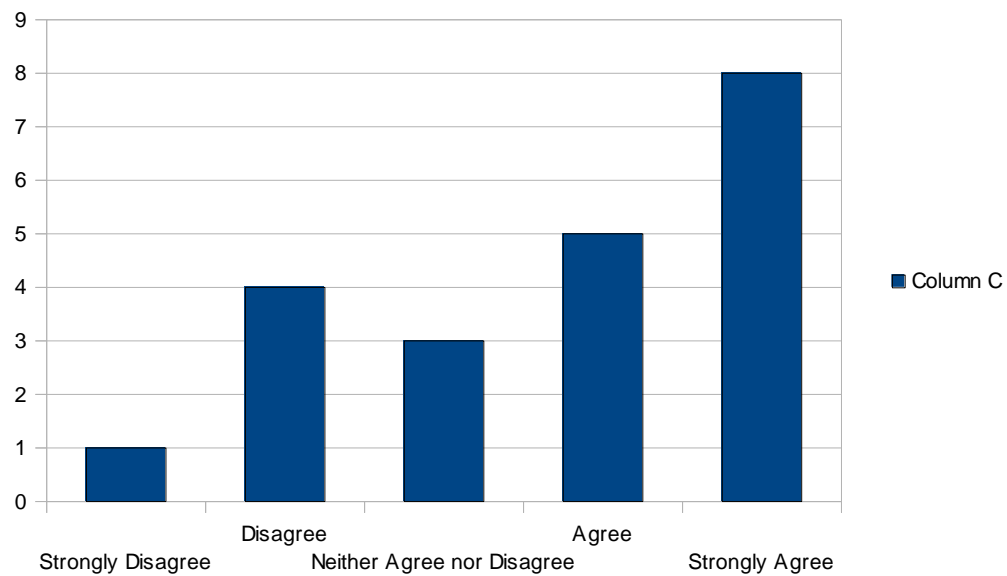


Figure 5.1 Promptness in Dispute Resolution

Cost is Important in Dispute Resolution

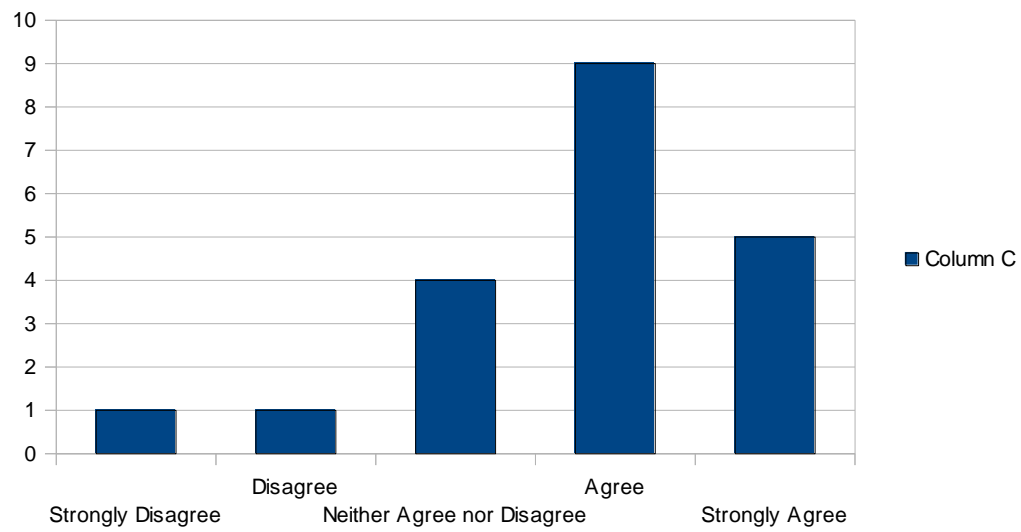


Figure 5.2 Importance of Cost in Dispute Resolution

Flexibility in Procedure is Important in Dispute Resolution

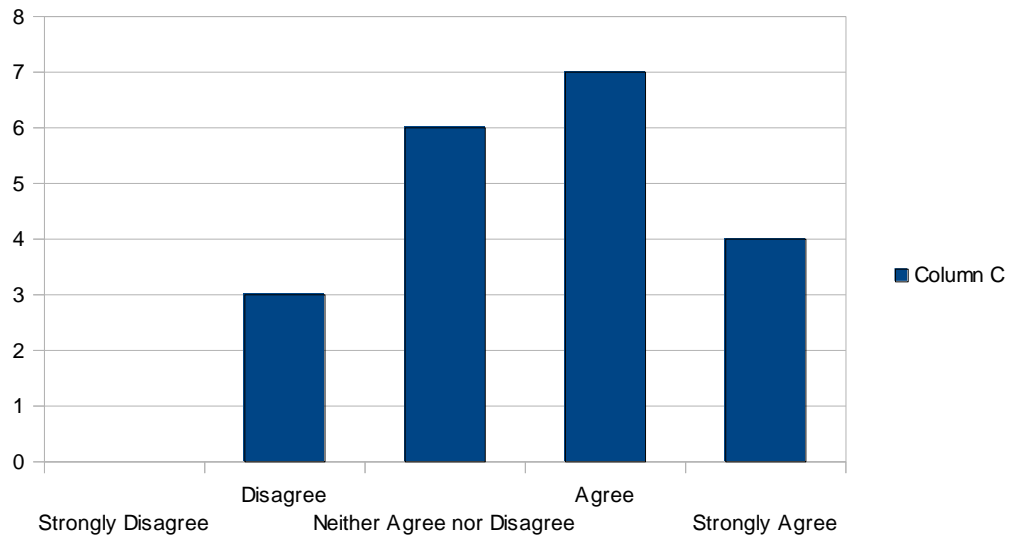


Figure 5.3 Procedural Flexibility

Construction Contracts and their Scope is important in preventing disputes

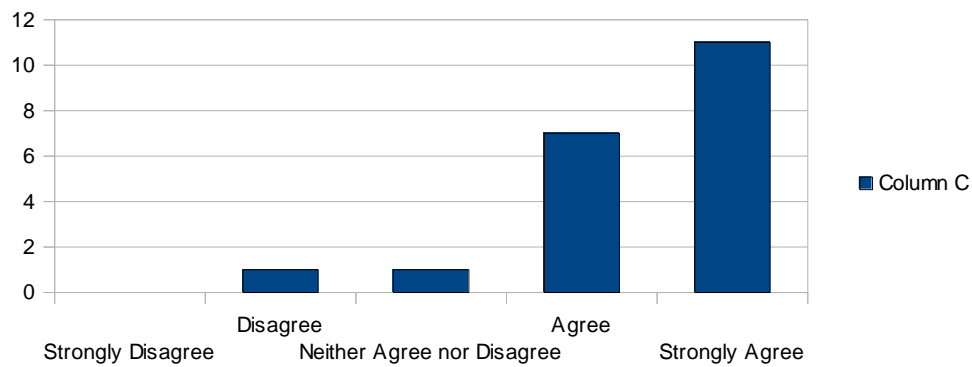


Figure 5.4 Scope of Construction Contracts and Clarity

Most disagreements in construction can be traced to a faulty contract

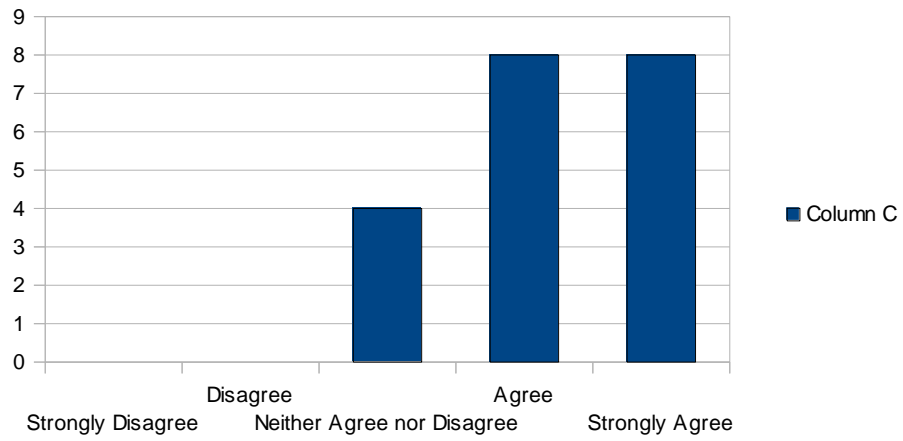


Figure 5.5 Impact of Faulty Contracts on Dispute

Guilty Party Must Get Nothing in a Civil Dispute

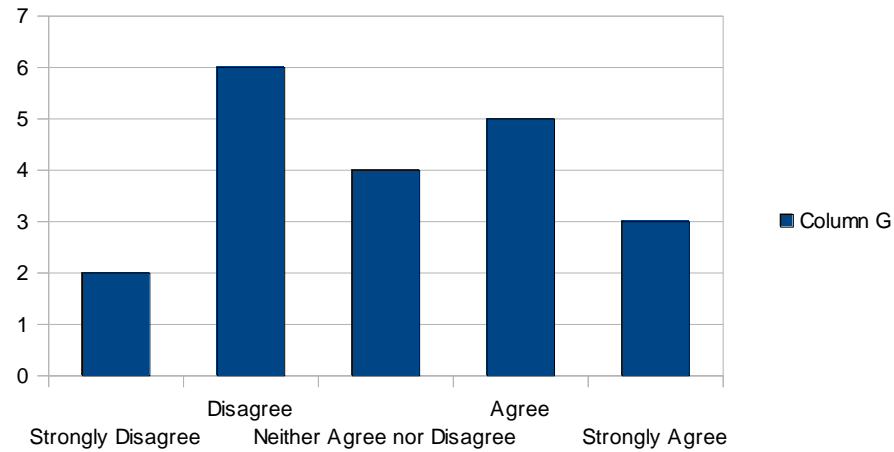


Figure 5.6 Rights of Guilty Party in Disputes

I prefer to be Heard Even if I am Liable

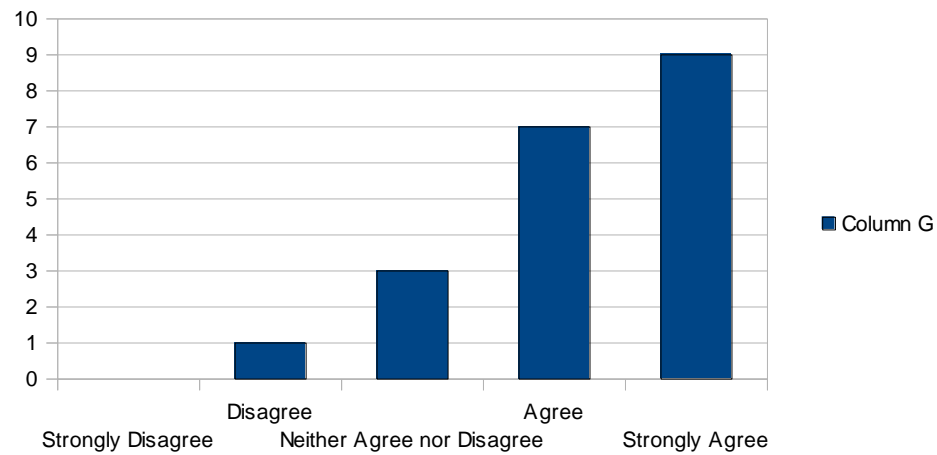


Figure 5.7 Rights to Hearing in Guilty

Parties must be given Equal Rights in Dispute Resolution Hearings

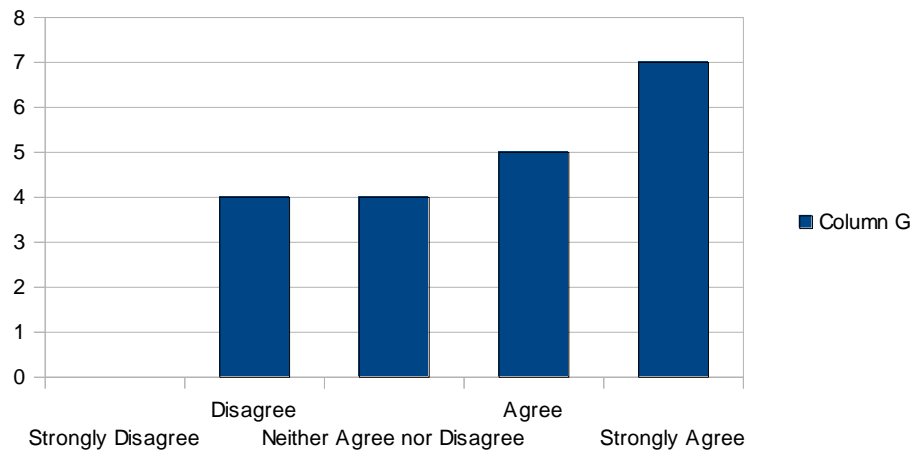


Figure 5.8 Equality of Parties in Disputes

There must be the Neutralization of the power of dominant parties in disputes resolution

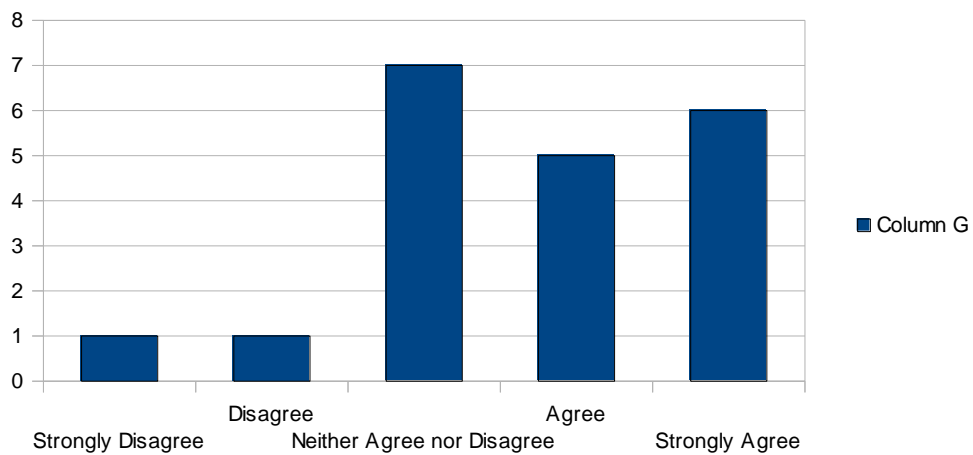


Figure 5.9: Neutralization of the power of Dominant Parties

The participation of weaker party in dispute resolution is important to ensure justice and fairness

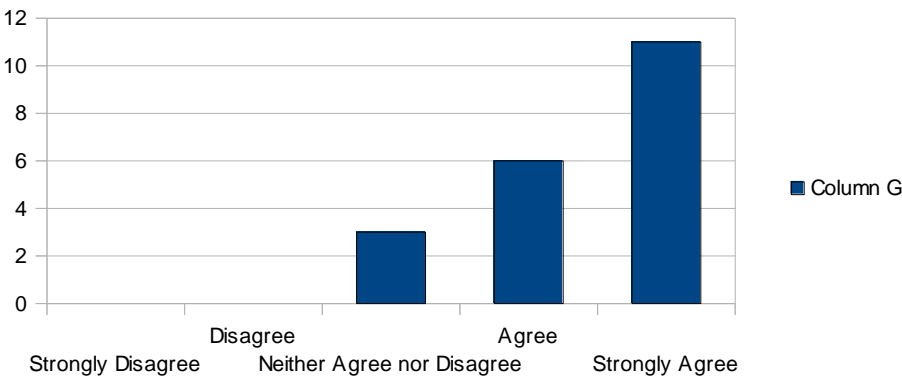


Figure 5.10: Guaranteeing Weaker Party's Right for Justice and Fairness

Justice is more important than procedures

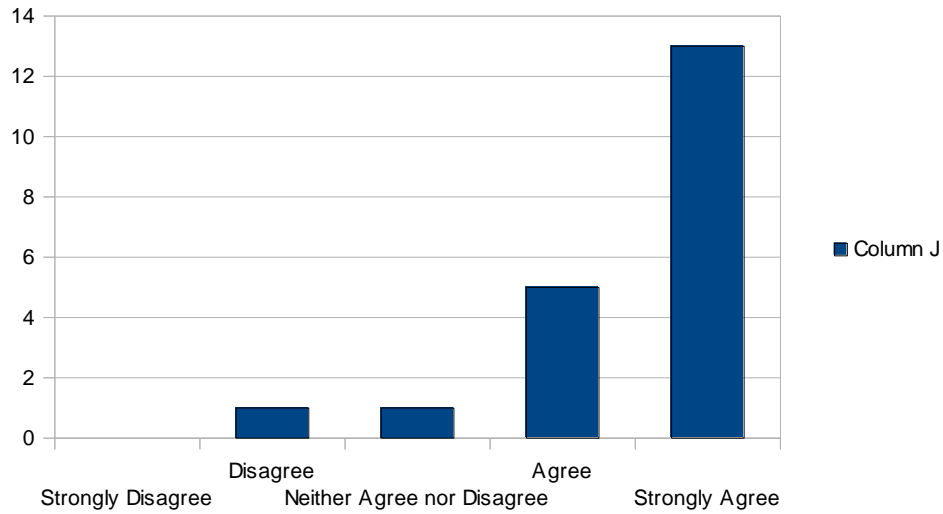


Figure 5.11 Emphasis on Justice Rather than Processes

The judicial authority of a dispute resolution process is very important

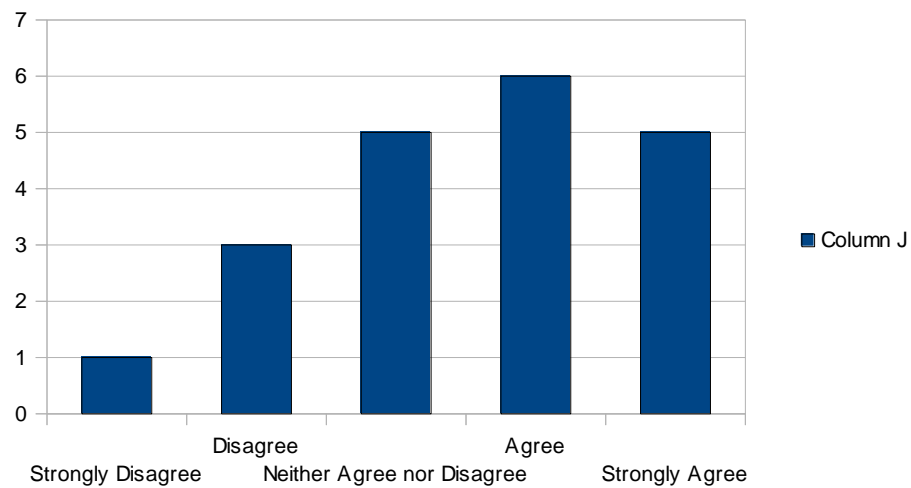
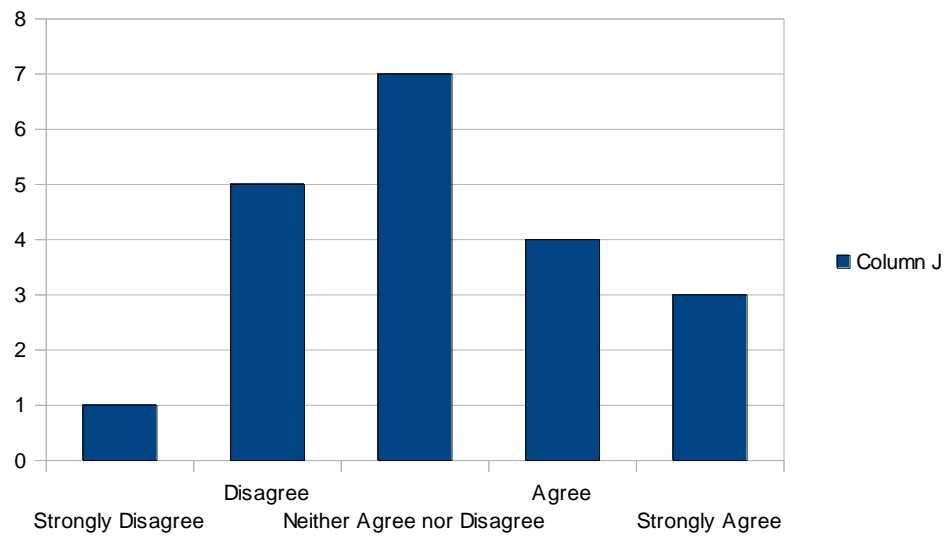


Figure 5.12: Judicial Authority in Dispute Resolution

It is easy to give a respectable mediator the same level of respect you will give to a judge in court



5.13 Ease of Respecting Mediator

The mediation industry will never carry the level of certainty a court carries

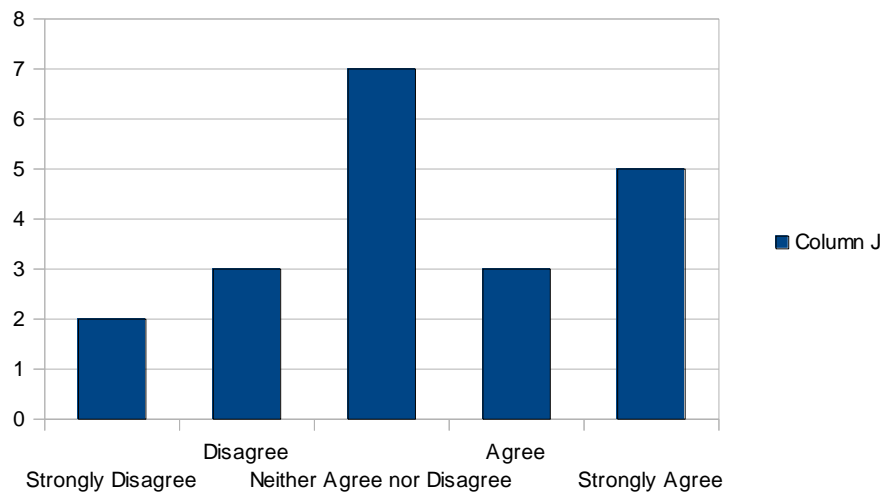


Figure 5.14: Credibility and Certainty Limits of the Mediation Industry

Privacy in mediation makes it better than the court system.

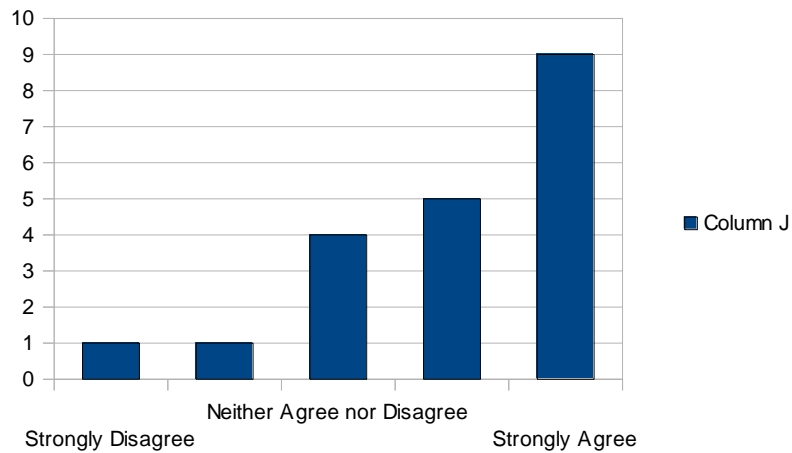


Figure 5.15: Privacy and Mediation

Conclusion

This chapter provided a broad view of the position of mediation in the United Arab Emirates. The survey provided information about the expectations of players in the industry and how they viewed the possibility of integrating mediation. Also, the interviews provided a view of how mediation practices can be instituted and honoured.

CHAPTER 6

DISCUSSIONS OF FINDINGS

This chapter will undertake a critical review of the core findings in the study. This will involve the identification of the important elements and aspects of the findings and connecting them with core concepts.

The findings are being interpreted in this chapter to provide an idea of an ideal method and system for the institution of mediation in the UAE construction industry. To this end, the chapter will evaluate the possibility and the potential for the proper implementation of mediation as a method of dispute resolution in the country's construction industry.

6.1 Expectations in the UAE Construction System

This chapter will postulate the systems and structures of dispute resolution in the UAE. The factor to be discussed in this section will be taken from the survey results and this will be the interpretation of the core and fundamental findings and elements.

Justice Elements and Dispute Resolution Expectations

In the construction industry, it appears that most of the respondents identify that speed is a very crucial and important element and aspect of dispute resolution. This is because most of the respondents stated clearly that they were expecting the cases they are involved in to be conducted quickly and speedily.

Another element of dispute resolution that most respondents expect is that the dispute must not be too expensive. To this end, most respondents expect the whole process to be done at an affordable rate. This is different from litigation which was identified to be extremely expensive for all the parties involved.

Respondents also stated clearly that they consider flexibility in procedures to be most important in dispute resolution. This is because the respondents expect the procedures to be changed and modified to deal with the issue at hand in a specific and appropriate manner and system.

This indicates that speed, affordability and flexibility are important elements and aspects of construction contracts and construction procedures. This means that alternative dispute resolution methods, one of which is mediation is important and vital for the UAE construction industry. This implies that ADR can be adopted and promoted in the country's construction industry to help to deal with the needs and expectations of most respondents.

These three pointers put alternative dispute resolution ahead of litigation. This shows that alternative dispute resolution might serve the construction industry of the United Arab Emirates better than the traditional method and the traditional approach to litigation. This is because litigation is time consuming and it can be dragged for a long time without any clear resolution.

Secondly, litigation is expensive. This is because a party that pays for the best lawyer is likely to get better results than one who cannot afford a good lawyer. This means there will be a lot of money an average party will spend in the hope of getting his case heard in court. Hence, ADR provides a better and a more cheaper outlook for the average party in a dispute.

Finally, it is apparent that the flexibility of the current system makes it possible for the parties in construction disputes to jointly define a means and a system of dealing with their dispute without having to go through the tensions of the restrictions placed on them by the legal systems and its relevant procedures.

Nature of Construction Disputes in the UAE

The respondents' position indicate that the most popular kinds of disputes are disputes

related to contractual failures and contractual difficulties. This is because over half of the respondents affirmed that confusions relating to the scope of construction contracts are the main cause of construction disputes. Over 80% of the respondents either agreed or strongly agreed with the fact that most disagreements in construction contracts can be traced back to faulty contracts. This asserts that contracts are important.

Since contracts in the construction industry are formulated by the parties themselves after they have arrived at a *consensus ad idem*, or they meet each other at the same point, it means the parties have an equal right to play a role in the settlements relating to it. Hence, mediation can be a proper and appropriate method through which all these challenges and all these disagreements can be dealt with. In the process, the parties will have to deal with each other on a level playing field. Hence, they will have to work with each other and define a system of getting an assisted settlement through mediations.

It is also likely to be complicated when the matter relating to contractual disputes are handled in litigation. This is because the litigants are likely to use legal representatives who are likely to find ways and means of seeking legal correctness and this will invariably come at the expense of the actual contractual dispute at hand⁷¹. This therefore means the disputants will be much better off if they are allowed to deal with the issue at hand through a hearing process that they mutually agreed upon. This will help them to handle their disagreements in a small framework that excludes external interests of lawyers and avoids the legal system altogether.

Perception on Mediation as a Dispute Resolution System Equality

There was a wide diversity in the views of how dispute resolution should be examined and how settlements should be granted. This showed that there were different positions taken by

71 John Carter, Paul Grossman and Douglas Coppi, *Construction Disputes: Representing the Contractor* (Newark, New Jersey: Aspen Publishers, 2011)

parties in the construction industry in relation to disagreements and dispute resolution.

Concerning whether guilty parties must be given nothing in civil disputes, the position of the respondents was split and distributed fairly. About a 60% of the respondents agreed that parties must get nothing. Another third said they should be given some kind of consideration whilst another third were in the middle of the road and they neither agreed nor disagreed. This indicates that there are a variety of views on how people with different views and different positions on disputes must be dealt with. Roughly 33% will endorse litigation whilst another third will support a mutual settlement. Yet, another third are neither here nor there. This shows there is a fairly distributed view on litigation and ADR.

In terms of critiquing this position further, we asked respondents what they think about hearings when they were guilty. An overwhelming majority agreed that they will prefer to be heard even if they knew they were guilty. This broke the tie in the previous question where they said the parties who were guilty either deserved nothing or they had to be given very little. In terms of interpretation, it appears that there is a unanimous agreement and consensus that where a party is even guilty, that party deserves to be given some kind of hearing.

Over 50% of respondents identified that parties in a dispute resolution hearing must be given equal rights. In other words, they all hold that the hearing process must not be discriminatory. The parties must all have a level playing field in order to push their cases and argue and make claims in a reasonable way and manner.

The need for equality indicates that litigation might not be the best and the most appropriate method of dealing with cases in the UAEs. This is because the parties are less likely to be given equal rights and an arms length hearing in a case at hand. Hence, there is the need for the parties to be given some kind of equality in the cases they will find themselves in. This shows

that the stakeholders in the UAE construction industry will expect some degree of equality and fairness in justice. Hence, it might be best for the parties to get an alternative dispute resolution system rather than a rigid pathway to litigation which could prove to be problematic and issue-ridden.

Equal rights is an important and fundamental aspect of construction dispute. And this is viewed as fundamental amongst the respondents to the survey. This indicates that there is a strong justification for the use of various methods and approaches to attain the best results in disputes. Thus, mediation is an appropriate method. This is because mediation allows the parties to come up with their own view of how to deal with the case at hand. Through that, the parties are able to deal with cases and ensure that their rights are selectively and appropriately identified and dealt with according to the needs and expectations of the parties involved.

Approximately 70% of the respondents acknowledged that there is the need to neutralize the power of the dominant parties in dispute resolutions. This shows that the parties agree that there must be some kind of reduction of the parties that have dominant powers. This indicates that there is a basis for the promotion of some kind of equality and fairness in construction and this will mean that litigation might not be the best approach and the best method to deal with dispute resolution.

Neutralization of the dominance of some parties in construction disputes show that there is a problem with litigation and the status quo. This is because parties might prefer to stay out of disputes because of the complications and the intimidating posture of the other party in the dispute at hand.

All the respondents showed that it was important for the participation of weaker parties in dispute resolution processes to be guaranteed. Over 80% of the respondents stated that the fact

that parties do not have the same level of power or social status might mean there will be the need to find ways of guaranteeing the right.

It is pervasive in Arab cultures to ensure that the rights and expectations of poor people are guaranteed. Traditionally, Arab societies provide justice to the poor and powerless. Hence, it is a common practice for justice to be extended to poor people who might not be in the rightful position to pay for the requisite level of justice in disputes.

The implication is that there is a justification for alternative dispute resolution. This is because the parties will need to be given some kind of equality and poor people will be given the right to take an active part in disputes and other conflicts which involve the parties in these conflicts and disagreements.

Justice and the Mediation Process

In this section, the position of mediation as a tool for dealing with disputes and resolving conflicts is examined. The procedures and the practices of mediation are evaluated on various backgrounds and basis to ascertain if they can be integrated and used in lieu of litigation and other laid out judicial processes.

To ascertain this, the respondents were asked some technical questions in relation to the appropriateness of mediation as a tool for dispute resolution. Subtle questions were asked to gauge the position of mediation and alternative dispute resolution in dealing with conflicts and the nature of conflicts in the industry.

The findings indicated that justice is more important than processes in construction dispute. Almost 70% of the respondents strongly agree with this point. This shows that the construction industry will expect to have a system of dealing with problems and issues that will utilize a flexible approach and system to deal with disputes and disagreements in the construction

industry or sector.

The implication is that disputants concentrate more on the results and the kind of fairness and justice that parties get rather than the procedures. This goes a long way to say that the construction industry, which is highly segregated and very specialized will be more receptive to a more appropriate method or process that deals with the issues of disputes and disagreements.

Also, substance is put ahead of the form of disputes that occur. This shows that the parties are expecting to get a bespoke approach and an acceptable method for dealing with their dispute. This means that the attempt to appear to be judicially correct rather than seeking justice will make the individuals or parties dealing with the case at hand a bit inappropriate for a construction dispute in the United Arab Emirates. Hence, the use of alternative dispute resolution methods is preferred to civil procedures and litigation.

Judicial Authority and Mediators

The parties were also asked if they consider the judicial authority of the parties involved in the dispute to be important or not. The essence of this question was to test the power and the authority that must be given to a person who tries to resolve a dispute. This was to detect how much importance and respect people were ready to give to mediators as they play the role of judges in construction disputes.

The first question sought to find out the level of authority and respect people gave to mediators where disputes were being resolved. They were asked the level of judicial authority and the credibility they assigned to a specified dispute resolution process. The vast majority of respondents identified that they agreed that the process was very important. Hence the ability of the process and procedures to deal with the case at hand was on so many levels very important and vital in defining the credibility of the ruling.

Hence, the processes that mediators were to use was important. If the mediators' process is seen to be inferior to the procedure of the courts, then mediation might suffer a setback and might not be respected and recognized as appropriate amongst people in the UAE construction industry.

This therefore means there is a strong case for the definition of a good and a respectable procedure that provides objective and certain methods for the conduct of hearings. This will be done through the adoption of a set of very credible rules and regulations that can be applied in all situations and contexts to ensure that the outcome of mediation processes are credible and are of a very good quality.

This can best be done if mediations are done according to a set of universally accepted systems and structures for the collection of information and the conduct of hearings. This will give mediation a positive status throughout the UAE construction industry which will enhance the credibility of the process in the country.

Without laid down rules, the credibility of mediation in the dispute resolution system of the UAE construction industry might not be very high. This is because different mediators will have different approaches and different views of how to deal with things. There will be a lack of consistency and mediators are likely to have a system of dealing with cases.

The lack of rules will also cause the ethical framework of the industry to be questioned. This is because the success of an alternative dispute resolution system will be strongly based on independence and objectivity and the standardisation of processes. If the mediation industry of the construction sector of the United Arab Emirates will suffer a setback if there are no rules. Hence, there is the need for the creation and adoption of a set of unified regulations for the regulation of professional mediators throughout the country. The position of these rules are

important. However, they must be done in the right way and manner to enhance the position of mediation as a dispute resolution system.

Respect and Honour for Mediators as Opposed to Judges

Another aspect of the evaluation of the credibility of mediation is to examine the position of mediators in relation to judges. In all cultures, judges who form a part of the judiciary have the highest level of respect. This is because in nations around the world, there are laws that promote the credibility of judges and prevents contempt of judges. Due to this, courts always have a high degree of respect for judges.

However, for mediation to take over from litigation, there is a question of the extent to which mediators' authority will be respected. Over 90% respondents agree that it will not be very easy to grant the same level of respect to the authority of mediators as one may grant to judges. This is because mediators are likely to be seen as very respectable and much more credible if and only if there are laws that protect their authority. However, the mediators cannot be put ahead of judges and other judicial authorities.

In most jurisdictions, although the authorities in alternative dispute resolution are not given the same level of respect as judges, they are honoured by the judiciary. This is because the mediators have the right and authority to have their rulings endorsed and upheld by the courts, as long as they are able to prove to the courts that they followed due procedure and the judges' views will not significantly deviate from the ruling of the mediator. Hence, there is the need for some kind of guarantee to ensure that mediators' authority are enhanced and respected.

Enhancing Privacy

All the parties identify that the privacy of mediation makes it a much better option than the other approaches in civil law and civil dispute resolution. This is because mediation and other

aspects of dispute resolution are mainly private in outlook. Hence, there is the need to guarantee the position of mediation by some degree of law and ethics to ensure that mediation is done in the construction industry and done so well.

6.2 Fundamental Inferences from the Stakeholders in the Construction Industry

The survey provided a broad range of views and ideas about how dispute must be resolved in the construction industry. This featured a series of views and opinions relating to people's opinions and people's idea of how disputes turn out in the construction industry.

The inference from the findings of the survey shows that disputants in the UAE construction industry seek speed, affordability and flexibility. To this end, mediation offers a promise of a good system of hearing cases and dealing with the demands and expectations of parties in disputes.

Contract failures are central and fundamental in the UAE construction industry. This is because parties either fail to cover fundamental areas of the activities that goes on throughout the process. This indicates that there is a degree of privity in construction disputes in the United Arab Emirates. The implication is that the parties will best be served if they are give the opportunity to deal with their cases and disagreements in a mutual settlement through an independent third party.

The responses indicate that the parties agree that hearing of all parties in an egalitarian setting will help to promote justice and fairness. Parties must seek be given equal rights and in that sense, litigation is limited this is because the parties with access to stronger and better legal advisers is likely to have an upper hand. Thus, mediation is an ideal approach and an ideal method to dealing with construction disputes in the United Arab Emirates. This is because mediation neutralizes the power of third parties and provides a level playing field for all the

parties involved in the dispute.

The responses show that the quest for justice in a fair environment is more important than procedures. Juxtaposing it with the UAE construction industry, the logical view is that litigation comes with strict legal procedures. This might have a negative impact on justice in the real sense in the construction industry. To this end, it might be the best option to consider mediation or alternative dispute resolution ahead of following strict legal procedures and systems.

However, over 70% of the respondents indicate that processes are important and they will hardly recognize or respect mediation unless there is a compelling system or structure that guides them and provides important rules and regulations that can provide authority for mediators and also standardise procedures. This will mean the country's construction industry will need to come up with a system of rules and regulations to guide the mediation process. This will entail adopting an important system and an important structure for the formulation of rules and regulations that will guide all parties and all components of dealing with construction disputes and construction matters which require some kind of resolution.

In the process of formulating rules and regulations, there is the need for the legal system to provide some kind of authority and recognition to mediation law and mediators. This will involve the creation of a system whereby mediators will be given a legal backing and the courts will uphold their rulings if they follow procedures.

Therefore it seem to be pervasive that mediation is an important and an acceptable method that is preferred in construction disputes in the UAE. However, there is the need to consider the possible options for dealing with mediation as a method and an approach for dealing with construction disputes.

6.3 Implementation Evaluations in the UAE Construction Industry

Implementation matters and implementation systems are an important aspect of the study. This is because although the study identifies that effectively, mediation is an ideal method and system for construction dispute resolution, there are some kinds of uncertainty about how best they can be implemented in the Arab Emirates.

Thus, to critique implementation options and implementation methods, it is important to examine the findings of legal authorities in the field to come up with important conclusions on how well mediation might be implemented in the United Arab Emirates.

Mediation and Mediators and the Construction Industry

The interviews showed that the mediations and the mediation industry of the United Arab Emirates is one that has potential. First of all, the legal system of the United Arab Emirates keeps growing and there is a potential for it to be enhanced to embrace more mediators if the country's mediation industry is enhanced. The United Arab Emirates has the option of either recruiting locally from the UAE industry and also encouraging a horizontal mobility of labour by getting other legal experts to act as mediators in the construction industry.

The parties to the study acknowledge that if the number of cases increase sharply, there will be a major issue with the ability of the parties to hear and act on cases appropriately. Hence, the respondents are proposing a range of revolutionary and evolutionary methods to deal with the changes in cases in case the number of cases increase. The logical approach is to try to get the government to make some arrangements to promote mediation in the construction industry. If the cases increase, there must be an alternative plan to increase the numbers in a short time. However, there must be a gradualist plan to get the mediation industry to grow.

Possible Approaches to Mediation

There are two possible approaches to the integration and institutionalization of mediation as an approach to conflict resolution in the UAE. One approach is to adopt an international system for the conduct and regulation of mediation. Another approach is to re-institute the traditional methods of mediation that have existed in the United Arab Emirates for generations. This way, there will be a system that will regulate the construction disputes and ensure that mediations are done in the right way and manner.

A wise approach will be to adopt a blend of international and traditional methods. The international methods will involve the adoption of a global construction mediation code that will be the yardstick for different nations around the world. This will enable the many international players in the UAE's construction industry to work and attain results in mediation. However, some approaches will be used that will be local and steeped in traditions and practices of the Emirates.

Formalization and Integration of Wise Counsel

The research indicates that wise counsel might be an important element that could enhance the UAE construction industry. Hence, there is a strong case to integrate some elements of wise counsel as a mandatory method for dealing with dispute resolution in the UAE. This will make it important for all parties to find ways of integrating wise counsel in their activities and in their directions during mediations and resolving issues and matters.

Ethics and Training of Mediators

The interviews indicate that power-distance gaps in the UAE's mediation system must be minimized throughout the various trainings and skill sets. This means there is a strong case for the training of mediators in the UAE's mediators. And this should ensure that there are conscious

efforts to train and enable mediators to acquire experience and skills in order to deal with the different problems and different matters that come with power-distance and equality.

Additionally, there must be training and ethics that ensures that there is a strong approach to ensuring privacy and enhancing performance through conscious rules and regulations as well as adherence to principles and ideas. There must also be important methods to ensure that the practitioners provide high quality mediation services that will help disputes to be resolved appropriately.

Thus, the formalization of mediation as a dispute resolution process is important. Practitioners will need to have a framework within which they can conduct their mediation and control affairs in the activities and the various things they do.

Conclusion

The field work indicates that speed, affordability and flexibility are important elements and aspects of dispute resolution expected by stakeholders in the construction industry of the UAE. They also identify that contract failures are major causes of construction disputes. Hence, a mutual settlement, rather than a court settlement is the best option for construction dispute resolution.

In order to conduct proper dispute resolution, it is important for the authorities of the UAE to formalize mediation processes and procedures. Through these formal structures, there can be proper ethics and proper training. The government will need to adopt a blend of international and local standards for the attainment of results in UAE disputes in construction matters.

CHAPTER 7

CONCLUSIONS AND RECOMMENDATIONS

This chapter provides a summary of the key findings and the key notifications that were gathered in the entire research. This chapter brings together all the other chapters that were discussed above.

The fundamental aim of the research was to critically evaluate mediation as an approach to the resolution of disputes in the UAE's construction industry. Thus, the research has conducted a review to critique the concept of mediation and its role as an alternative dispute resolution. Through that, the core variables of the research were identified and they were used to conduct the field work to examine processes and elements in the dispute resolution systems and structures of the construction industry.

7.1 Possibility of Using Mediation in the UAE's Construction Industry

The field work identified that speed, affordability and flexibility are important aspects and elements of dispute resolution in the construction industry. Players in the UAE construction industry want their dispute resolved quickly in order to allow the parties to deal with other projects and activities. Speed also ensures that disputes are resolved quickly and the parties can go back to deal with issues and matters.

Flexibility is supported by the fact that construction contracts are personal in nature and it is about the two parties involved in the construction. Hence, it is important for the parties to identify a procedure or approach to deal with the project. Thus, mediation is an important and acceptable method for the resolution of construction disputes as it provides an approach for the parties to define their own method of dealing with their dispute.

The ability to keep costs low is important for the stakeholders in the UAE construction

industry. This makes litigation an inappropriate method and approach to dealing with construction disputes in the Emirates. This means that the approach of using mediation is a much more acceptable method for dealing with disputes in the construction sector and the construction industry.

The research also identified that in the construction industry of the UAE, parties recognize the need for hearing as an essential and important component of dispute resolution. The parties view equal opportunities in hearings as a fundamental right and all respondents agree that the weaker and dominant parties must be given some kind of opportunity to be heard and contribute to the entire resolution process.

In order to ensure an egalitarian setting, the parties to the UAE construction industry seem to lobby for a system where the rights of dominant parties are neutralized and the rights of less dominant parties are upheld. This can be done through construction mediation. And mediation is seen as a proper approach and a proper method for dealing with construction disputes and disagreements.

7.2 The Case for Mediation

Mediation is a preferred method for dispute resolution amongst the parties interviewed for several reasons. They believe mediation enables the parties to get a level playing field in the hearings and this allows the parties to get justice.

The respondents believe that the substance of justice in a given judicial process is more important than the formal adherence to procedures and ensuring that the parties work perfectly to specification as the case might be in litigation. This makes mediation a much more preferred approach to seeking justice in construction disputes in the UAE.

The downside of mediation as a tool for dispute resolution in the UAE was identified in

the form of poor procedures and processes. This is because the respondents identified that procedures are important in dispute resolution. Hence, the procedures need to be done and used in a way and manner that will conform with some basic standards and elements for dispute resolution.

In order to deal with this limitation of mediation, a number of recommendations are put forward by some of the authorities interviewed in the process of the research. These recommendations are presented below to propose a set of processes that the UAE government and construction stakeholders need to satisfy before mediation can be adopted as a primary method of dispute resolution in the country.

7.3 Recommendations for the Adoption of Mediation as a tool for Dispute Resolution

In order to adopt mediation as the fundamental dispute resolution system, there is the need for some degree of standardisation to ensure that the country's construction industry has adequate dispute resolution systems and structures. These are important elements and aspects that will form a framework within which mediations and mediation processes can be conducted for optimum results. Also, there is the need for a long-term plan and vision for the improvement of the country's construction industry. In order to do these, the following recommendations are identified as important and fundamental for the improvement of the country's dispute resolution systems and structures:

1. The standardisation of procedures is essential. There is the need for the UAE government to accept a standardised set of procedures that integrate international and local rules in dispute resolution via mediation to help parties in disputes to resolve their matters and issues in construction disputes.
2. The UAE's judiciary must accept mediation in the construction industry as a recognized

dispute resolution system. Through this, construction disputes can be resolved and evaluated in a manner that will be recognized by law.

3. There must be a long-term plan for the development and training of local mediators who will be used in construction disputes. These mediators should be lawyers and other legal experts who will go through the appropriate training and work according to recognized and accepted standards.
4. There must be a framework of ethics and standards that will help the UAE's mediators to get a target system and structure for carrying out their activities. These ethics must form the basis for the regulation and training of mediators to work in the construction industry to deal with such disputes.
5. There must be a regulatory authority that will supervise and control the activities and affairs of mediators in the country's construction industry. This authority must have the right to control and sanction activities amongst mediators in the country's construction industry. This will ensure that standards are observed and respected in course of operations.
6. The government needs a standing committee to examine and evaluate the activities of mediations in the country's construction industry. This standing committee must be drawn from a wide array of stakeholders in the construction industry. They must make policy proposals concerning dispute resolution in the country's construction industry's mediation processes and procedures.

7.4 Recommendation for Future Research

This research lacks a deep insight into the position of the pro-Sharia legal system and its reaction to the integration of foreign and international law. This is because most of the

recommendations suggest that there will be some kind of tilt towards Western stakeholders. There is however no indication of how strict adherence to this will fare. Also, foreign businesses coming into the UAE might want various guarantees and methods to deal with their issues and matters. This could form further marginalisation. Thus, it is suggested that a future research be conducted to lead to an ascertainment of the synthesis of UAE law and international law as a framework within which mediation could be conducted in the country's construction industry.

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Appendix 1

Dear Sir,

In line with my dissertation, I will like to conduct this interview with you. My research seeks to study the possibility of choosing mediation as a means of alternative dispute resolution in the United Arab Emirates' construction industry. In line with this, I will need to your inputs to these questions to ascertain an appropriate model and method for dealing with the implementation of this method of dispute resolution in the country.

What is the overview of the skills level amongst top level experts in the UAE construction industry with the right legal background to act as mediators?

What is the quality of potential individuals who can act as mediators in the construction industry if the quantum of cases increase significantly?

Judging by the diverse cultural background of people in the UAE construction industry, will a standard facilitation process of a mediator be accepted by most players in the industry?

Will there be enough people to take up the role of wise counsel in mediations?

How feasible is it to formalize the tradition of mediation in the Emirates that existed in pre-colonial times and integrate them into construction disputes?

Will elements of transformative mediation be adopted in the United Arab Emirates?

How can the power distance gap amongst Emiratis be bridged for effective mediation to take place?

Is it feasible to set up a precedent based system to satisfy the high levels of uncertainty avoidance of people?

How will the collectivist attitude of the UAE society affect mediation efforts?

Will people accept mediators of non-honoured backgrounds as credible?

What mediation process will you recommend?

Appendix 2

This survey is conducted as part of my Masters Degree dissertation. The topic I am handling is the possibility of using mediation as a means of dispute resolution in the UAE construction industry. In line with this, I will be very grateful if you could take time off your busy schedule to fill this online survey.

The survey gauges the reaction to Emiratis in relation to some core and fundamental elements and structures of mediation. Each question is placed on the Likert Scale with the scale which is as follows:

1. Strongly Disagree
2. Disagree
3. Neither Agree nor Disagree
4. Agree
5. Strongly Agree

1. In a dispute resolution Speedily dealing with the dispute is very important.
2. In a dispute resolution, the cost of dealing with the case is very important.
3. I concentrate more on the flexibility of my disputes.
4. The scope of the construction contract and its ability to cover risks is very important.
5. Ambiguity in construction contracts lead to most of the disagreements I have been into.
6. In a dispute, I believe I must get what is due me and the guilty party must get nothing.
7. In a dispute where I am guilty, I will prefer to be heard out and even if the other party will get everything, I will prefer to be heard fully and my rights respected.

8. A dispute must be conducted in a way where all the parties have equal rights.
9. In disputes, the power of one party over the other must be neutralized to ensure the parties are equal.
10. The participation of a weaker party to a dispute is important to ensure that the ruling is fair and just.
11. Justice in a case is more important than procedures.
12. In a case, the judicial authority of the ruling is very important.
13. It is fairly easy to give a respectable mediator the same level of respect you give to a judge in court.
14. The mediation industry will never carry the level of certainty I will expect in a dispute resolution system.
15. I prefer the privacy of mediation to the publicity that comes with a court hearing.