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DISPUTE RESOLUTION IN THE NIGERIAN HYDROCARBON INDUSTRY: HOW FAR PIA 2021?

Millicent Idiong, Esq.*
Charles, Koko Josiah Esq.**
E. A. Essang, Esq.***

Abstract

Dispute resolution is a term that refers to several processes that can be used to resolve a conflict, dispute, or claim. These processes involve litigation and alternative processes which include mediation, negotiation, and arbitration. The authors examined the dispute resolution processes, the current legal framework for dispute resolution, specific provisions of the Petroleum Industry Act, 2021 that deal on arbitration in the Oil and Gas industry in Nigeria. The authors conclude that arbitration is most preferred to litigation in the oil and gas sector due to its neutrality, economy, ease of enforcement, and timeliness. The most popular dispute resolution method is arbitration since it is seen as private, non-adversarial, and gives parties to a contract more independence. Finally, authors recommends that arbitration should be encouraged and Nigeria should provide for in all oil and gas legislation by establishing more institutional arbitration centre, that would strengthen the country's economy and capacity development .

KEYWORDS: *Dispute, Resolution, Oil and Gas, Nigeria*

* LL.B (Uniuyo, Nigeria); BL (Abuja); LL.M (East London); Ph.D (in view) Rivers State University; Member, Association of Environmental Lawyers of Nigeria; Tel: 07032875041; Email: million1438@gmail.com

** LL.B; LL.M (RSU); BL (Abuja); Ph.D (in view); Tel: 08033103587

*** LL.B (Uniuyo, Nigeria); BL (Abuja); LL.M (in view) Rivers State University; MNSIL (Lagos); Member, Association of Environmental Lawyers of Nigeria; Tel: 08134657266; Email: edemumohessang@gmail.com

1. Introduction

Disputes are unavoidable in human relationship. They may arise in the economic aspect of human relationship, social, political, and even international relationship. Nonetheless, what is of essence is the way in which such dispute is resolved or handled between the disputing parties. The Oil and Gas industry is the mainstay of the Nigerian economy and contributes significantly to Nigeria's economic development. Disputes in the Oil and Gas Industry are unavoidable like every other sector involving a variety of stakeholders. The Nigerian Petroleum industry being the most lucrative sector of the Nigerian economy is poised to be faced with diverse disputes owning to the myriad contractual arrangement and nature of activities that are being carried out in the upstream sector (exploration and production); midstream and downstream sector (refining, transportation and marketing of Petroleum). Disputes generally arise amongst the investors or between operators and the oil-producing communities, contracting state governments and foreign investors, etc.[1]

The dynamism of the industry had drawn disputing parties and their advisers to possible choices in a spectrum of dispute resolution mechanism some of which are litigation, arbitration, mediation, negotiation, conciliation among others. The traditional way of resolving dispute is through litigation but the law encourages that disputes should be settled amicably between disputing parties. The advantage of this is to ensure that upon the settlement of the dispute, parties involved feel better to still retain their relationship. Hence, to achieve this, a more reliable system of dispute resolution different from the traditional one (litigation) are desirable. Also, due to the sophisticated contractual agreements involved in the Oil and Gas industry, foreign investors are reluctant to submit such contractual disputes to the jurisdiction of the host country's judicial system and would rather resort to arbitration where they can select arbitrators with the requisite experience and expertise to resolve their disputes.

2. Conceptual Framework

Dispute Resolution: Dispute resolution refers to all processes that are used to address disputes. It includes all disputes resolution methods and approaches from early resolution through to tribunal or court processes. For the purpose of this paper we shall look at negotiation, mediation, arbitration and litigation.

2.1 Negotiation

Negotiation is a process of disputants using bargaining techniques to resolve a dispute.[2]

Negotiation is a from communication between the parties for the purpose of arriving at a solution through discussion and mutual agreement. It is an informal process but can get complicated when it involves substantial use of strategies and tactics. Negotiation involves direct or indirect communication between aggrieved parties discussing joint actions for resolving subsisting disputes. Negotiation helps in dispute resolution and can be included in oil and gas agreements as part of the multi steps dispute resolution process. It is actually the first step in an escalating dispute resolution clause and common in the oil and gas sector.

[1] T Bello, 'Dispute Mechanism in Petroleum Industry: An Overview of Arbitration Frontiers' Babcock University: School of Law and Security Studies [2017] (29) (10) 26

[2] B. Edward and others, *Alternative Dispute Resolution "The Advocate Perspective (*5th edn Carolina Academic Press*)* 42

Negotiation is flexible and cost effective, it is conducted by parties themselves and the consensual nature makes them easy to conduct. It requires little preparation and parties have total control over the process and control the outcomes without third party scrutiny.[3] On the other hand, the success rate of negotiations depends on the skills, strategies, and tactics the negotiators will employ.[4] Because it is consensual and non-binding, it relies on the sole will of the parties to settle their disputes. It can lead to poor outcome and a problem if the strength and weaknesses of the case are not properly exploited, and it results to further attempt in dispute settlement.[5]

2.2 Mediation

Mediation is a flexible, adaptable, informal, non-binding dispute resolution process in which the neutral mediator who is a third party facilitates and guides the settlement process. The mediator's task is to facilitate the negotiation. Mediation is assisted negotiation. It is more formal than negotiation but less formal than arbitration. The mediator does not decide but instead helps the parties reach consensuses by listening, suggesting, and brokering comprise. The mediator will conduct separate discussions with each party to understand the case and the parties' positions. With mediation, parties can resolve their disputes without going to court. With the help of a mediator, parties can come to agreement if they focus on their long term commercial interest without getting preoccupied with details of asserting their legal rights and obligations under the relevant contract and the implementation of any agreement reached through consensus is more likely to be achieved than where a unilateral judgement is imposed.[6] Though parties have no obligation to stay in the mediation process and can walk away at any time because it is non-binding.[7] After the end of mediation parties can still initiate litigation to resolve their dispute and get an enforceable judgment.

Mediation is the alternative dispute resolution (ADR) method of choice in the business community, alternative from litigation and arbitration.[8] Mediation is faster and cheaper than arbitration[9] and has a high success rate of settlement.[10] Mediation can cost less than 5 per cent of the cost of an arbitration dealing with a similar dispute, take less than 15 per cent of the time of arbitration and have a success rate in the 75–85 per cent range. Despite those obvious advantages, it is still infrequently used in international disputes. There are a number of reasons for mediation not being widely used in international business disputes including lack of familiarity with the process, differences in culture, language and values, and the large distances separating. One main feature about mediation is that it is not a legally binding process. The results of mediation only become binding with a signed settlement agreement. It should therefore be seen as an adjunct and not as a replacement to a binding process, such as international arbitration. Despite its present infrequent use, it will likely grow as a useful and worthwhile international dispute resolution tool in appropriate circumstances with the support of companies and mediation organizations.[11]

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[3] M King and Others, *Non-Adversarial Justice* (The Federation Press Sydney 2009)101
[4] Ramsey
[5] (n5) 20.
[6] (n 5) 21.
[7] *Ibid* 399
[8] H Smith LLP, The Inside Track: How Blue-Chips are Using ADR, 6 (London UK, November 2007). This research is based on interviews with in-house lawyers at 21 leading multinational companies conducted by the Herbert Smith law firm in 2007.
[9] A Timothy Martin, 'International mediation: an evolving market' in A Rovine (ed) Contemporary Issues in International Arbitration and Mediation, The Fordham Papers, 2010.
[10] Centre for Effective Dispute Resolution (CEDR), The Fourth Mediation Audit: A Survey of Commercial Mediator Attitudes and Experience (London, 2010)
[11] International Mediation Institute (accessed at http://imimediation.org

Some of the dispute centres includes; international dispute resolution institutions, the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and the International Centre for Dispute Resolution (ICDR), which is the international division of the American Arbitration Association.

2.3 Arbitration

Arbitration is a private dispute resolution mechanism adopted by disputing parties as an alternative to appearing in the court of law. In Halsbury's Laws of England arbitration was defined as the 'process by which a dispute or difference between two or more parties as to their mutual legal rights and liabilities is referred to and determined judicially and with binding effect by the application of law by one or more persons (the arbitral tribunal) instead of by a court of law.'[12]

Ronald Berstein has also defined arbitration as a private process whereby a private disinterested person called an arbitrator, chosen by the parties to fashion out, but without regards to legal technicalities, applying either existing law or norms agreed by the parties and acting in accordance with equity, good conscience and the perceived merit of the dispute makes an award to resolve the dispute.[13]

According to Orojo and Ajomo, arbitration is a procedure for the settlement of disputes, under which the parties are to be bound by the decision of an arbitrator whose decision is in general, final and legally binding on both parties.[14] Arbitration is thus an alternative dispute resolution system which is private in nature, involving the use of one or two arbitrators as agreed by the disputing parties, the decision of such arbitrator (s) usually referred to an award is final and enforceable at law. In the arbitration process, the disputing parties though have control over the process, they do not determine the outcome of the of the arbitral process.

In Nigeria, arbitration is regarded as an alternative dispute system strictly regulated by the arbitration and conciliation Act. It is also important to note that Nigeria has largely accepted, acceded to and ratified all international conventions relating to international arbitration. It has also adopted the New York Convention majorly for the enforcement of arbitral awards.

2.4 Litigation

Litigation is the process of taking a case to court of law. Litigation is the most common dispute resolution technique for lawyer. While it is practical in domestic oil and gas dispute where all parties are from the same jurisdiction, litigation is not preferred in international disputes because of issues relating to neutrality and enforcement of judgments in foreign jurisdiction, aversion to local courts by foreign investors and the times it takes to conclude a case. As a result, it is rarely chosen as a dispute resolution mechanism in international oil and gas agreements. It is sometimes chosen in international oil and gas agreements when all the parties come from the same jurisdiction and they are all comfortable with the courts of their

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[12] Halsbury's Law of England (4th edn. Butterworths 1999) 332.

[13] C N Dandy and Others, 'An Examination of the Legal framework on arbitration in Nigeria Oil and Gas industry, International Journal of Business Law and Research [2021] 9(3)

[14] J O Orojo and M AjomoLaw & Practice of Arbitration and Conciliation in Nigeria (Mbeyi and Associates Publishers 1999) 3

home country.Litigation is securely inhibited by rules of law and of courts, parties to court proceeding have minimal or none influence on the conduct of their dispute, litigation is slow and potentially very expensive, and access to the court can be highly restricted, normally to barristers,additionally, representation by each of Solicitor and Banister leads to communication difficulties and increased cost, parties to litigation do not own the dispute in any material way.[15] Courts are open to extensive publicity hence jeopardizing the parties business reputation.

3. Legal Framework for Dispute Resolution in the Oil And Gas Sector in Nigeria

The statutes that provide for arbitration in the Nigerian Oil and Gas sector include the ground norm, Petroleum Industry Act ("PIA"), the Petroleum Act ("PA"), Oil Pipelines Act, the Nigerian Investment Promotion Commission Act , the Nigeria LNG (Fiscal Incentives, Guarantees and Assurance Act) and the International Center for Settlement of Industrial Disputes (ICSID).

3.1 The 1999 Constitution of the Federal Republic of Nigeria

Section 6 of the Constitution established the judicial arm of the government vested with the responsibility to preside over legal issues and disputes between persons, persons and government, as well as disputes between governments.[16] Other relevant provisions of the constitution that provides for judicial adjudication in oil and gas disputes include Section 251(1) it states that:

> "the federal high court shall have jurisdiction to the exclusion of other courts in civil cases and matters relating to mines and minerals (including oil fields, oil mining, geographical surveys and natural gas).The Federal High Court has original jurisdiction over disputes arising within the oil and gas sector in Nigeria.

3.2 The Arbitration and Conciliation Act 2004

This is the governing law on commercial arbitration in Nigeria. This law as it were, makes provision for methods by which parties may establish a legally binding arbitration agreement, it provides for how arbitration may begin and terminate together with clear procedure in constituting an arbitration tribunal. It must be noted that the arbitration and conciliation act make available a solid legal platform for the settlement of commercial disputes by arbitration. The arbitration and conciliation, however applicable to the 36 States of the federation including the federal Capital territory Abuja. It is important to note that Section 34 of the Act[36] stresses the fact that the act does not affect other laws which provides for the settlement of dispute by arbitration. In essence, the Act recognizes validity of other laws relating to the settlement of dispute by use of arbitration. The Arbitration and Conciliation Act is modelled in line with the UNCITRAL model on arbitration though with minor adjustments.

[15] J I Mohammed, 'Dispute resolution in the Oil and Gas Industry: An Appraisal of Mediation and Litigation Procedures' [2020] (2)(1) Journal of Private and Business Law; 115-126

[16] ss. 272 (1), 232 (1) of the 1999 Constitution

3.3 The Nigerian Investment Promotion Act 2004

This legislation governs all forms of foreign investments. Section 26 of the Act provides that in the event of a dispute between an investor and any government of Nigeria to which this law applies, shall be settled via mutual understanding. By Section 26(1) where the mutual discussion fails, the matter then can be tendered for arbitration. Section 26 (3) on the other hand encourages the settlement of disputes in the field of oil and gas in Nigeria by arbitration. The section provides that where a dispute or disagreement arises between an investor and the federal government in respect to mechanism of settlement to used, in that case, the international Centre for the settlement of investment disputes rules shall be applicable.

3.4 International Centre for Settlement of Industrial Disputes (Institutional Framework)

This international organization was established to regulate foreign investment, particularly dispute resolution. It is important to note that Nigeria is one of the first countries to sign up this agreement and has gone further to adopt ICSID investment code into the nation's Investment Promotion Commission Act. A look at Section 26 (3) of the Investment Promotion Commission Act show that the ICSID rules shall be applied in the case of dispute between foreign investor (s) and the federal government. The reason for this is to provide an alternative method of dispute settlement outside of the Nigerian laws. The government submitting to the ICSID gives some form of confidence to the international investors in having dealings with the national government. It assures the international investors that there is in place a recognized dispute settlement mechanism which would be the same with the legal rules that they are used to.

3.5 The Oil Pipelines Act 2004

The Act provides that where there is a dispute between the minister of petroleum licensee and such dispute can not be settled by mutual agreement the dispute can be referred to arbitration, this is pursuant to Section 17 (5) of the Act. The Act did not in any away consider litigation as an option in the settlement of dispute in the oil and gas industry.

3.6 The Nigeria Liquified Natural Gas (Fiscal Incentives, Guarantees and Assurances) Act 2004

With the enactment of this Act, the Nigerian government showed it readiness to attract foreign investors in the oil and gas industry for its overall development. By Section 22 of the Act, where there is a dispute foreign investor (s) and the Nigerian government, such dispute is expected to be settled amicably, if settlement fails, it shall be submitted to ICSID arbitration within 90 days in which the parties failed to have an amicable settlement of the dispute.[45] This provision as it where clearly recognizes the place of arbitration in the Nigerian oil industry.

Having examined some of the laws regulating arbitration in Nigeria it is important to note that some of the legislations like the Arbitration and Conciliation Act need to be amended. The (ACA) being the major legislation on arbitration in the country need to be amended to meet the present-day reality. Section 4 and 5of the Act for example provides that courts can grant injunctions in respect of arbitration agreement on the grounds perceived "misconduct" of the arbitrator (s)[46] as a result however, parties involved in arbitration matters now use the phrase misconduct of the arbitrator as enacted in the act to either stop or slow down arbitral process.

Again, the Arbitration and Conciliation Act of 2004 did not make provision for the immunity of arbitrators. This deficiency in the act as a matter of urgency need to be attended to through an amendment. In this respect, the Lagos State Arbitration Law 2009[47] has been applauded for introducing and incorporating Arbitration methods which are present the Arbitration and Conciliation Act. Aside from providing for the immunity of arbitrators,[48] the Lagos State Arbitration Law also provides for the joinder of parties and consolidation of parties[49]. It is important to note that Lagos State Arbitration Law applies to all arbitration issues within the State of Lagos.

3.7 Petroleum Industry Act (PIA) 2021

Under the Nigerian legal system, arbitration is recognized as an effective means of dispute resolution. National laws (and in recent times, some sub-national laws e.g., Arbitration Law of Lagos State) have been enacted to incorporate arbitration in the country's legal system. The statutes enacted give recognition to arbitration as a prominent mechanism for the settlement of disputes in the Oil and Gas industry in Nigeria. Some of the national laws generally give room for voluntary arbitration by parties whilst some other statutes mandate compulsory arbitration.

Prior to the signing of the PIA bill into law, Section 11 of the now repealed PA stipulated that "(1) Where by any provision of this Act or any regulations made thereunder a question or dispute is to be settled by arbitration, the question or dispute shall be settled in accordance with the law relating to arbitration in the appropriate State and the provision shall be treated as a submission to arbitration for the purposes of that law." (2) In this section "the appropriate State" means the State agreed by all parties to a question or dispute to be appropriate in the circumstances or, if there is no such agreement, the Federal Capital Territory, Abuja." The above provision is an indication that arbitration is legally permissible in the settlement of disputes arising from transactions in the Oil and Gas sector. However, the PA did not lay down the procedure or rules to be followed in the conduct of arbitration of this nature.

The PIA was enacted, and it repealed the existing PA 2004. The PIA stipulates an array of provisions and innovations that influence the status of the private, and public sectors, as well as stakeholders in the oil and gas industry. The PIA was enacted after several attempts of the Nigerian government at developing a new legal, governance, regulatory, and fiscal framework for the Nigerian Petroleum Industry. Significantly, the new Act does not provide an equivalent provision to section 11 of the repealed PA. However, there are provisions in relation to arbitration in the PIA. We highlight below most of the provisions setting the background for arbitration or relating to arbitration or the consequences of arbitration or its awards on stakeholders in the Oil and Gas industry below.

a. Under the PIA, the Nigerian Midstream and Downstream Petroleum Regulatory Authority is charged with the duty of making regulations concerning dispute resolution. This is provided for in Section **33 (t)** of the Act as follows "subject to section 216, the Authority shall make regulations concerning **dispute resolution and customer protection"**[17]

b. Alongside the description of the acreage and the term and conditions of the licence and lease, section **76(1)(f)** of the PIA mandates that the model licence or model lease for each bid round should include a clause containing the rules for the resolution of

[17] PIA 2021

disputes including arbitration, mediation, conciliation or expert determination. The provision states thus; "The model licence or model lease for each bid round shall reflect the conditions of the licensing round guidelines for the bid round and shall in all circumstances include the following clauses: **rules for the resolution of disputes including arbitration, mediation, conciliation, or expert determination"**.[18]

c. Section **96** of the PIA provides for the revocation of a license or lease where the licensee or lessee fails to abide by an arbitration award set forth in the licence, lease or the Act. **Section 96** stipulates that "...upon receipt of the written recommendation of the Commission for revocation, the minister may revoke a petroleum prospecting license or petroleum mining lease, where the applicable licensee or lessee;[19] fails to abide by any expert determination, **arbitration award or judgment arising from the dispute resolution** provisions set forth in a licence, lease or this Act."[20]

d. Similarly, Section **120** of the PIA provides for the revocation of a licence or permit in midstream and downstream petroleum operations where the holder does not abide by an arbitration award set forth in the licence or the Act. The section states thus "Notwithstanding the provisions of Chapter 2 of this Act related to midstream and downstream petroleum operations, a licence or permit may be revoked[21] where the holder **fails to abide by any expert determination, arbitration award, or judgment** arising from the dispute resolution provisions set forth in a licence or this Act".[22]

e. Section **4** of the First Schedule to the PIA made pursuant to section **3(3)** of the PIA also provides that: "Any disputes as to whether a delay was due to causes beyond the control of licensee/lessee shall be settled by agreement between the Minister and the licensee/lessee or in default of agreement by **arbitration**"

f. **Section 5 (b)** of the First Schedule to the PIA made pursuant to section **3(3)** of the PIA also provides that "Dispute as to price of petroleum products taken by the Minister at port of delivery pursuant to his pre-emptive right is to be settled by agreement between the Minister and the licensee/lessee or in default of agreement by **arbitration.**"

g. **Section 7** of the First Schedule to the PIA made pursuant to section **3(3)** of the PIA also stipulates that "Any **arbitration** under the First Schedule shall take place after the petroleum or petroleum products have been delivered."

h. Section **16** (Grievance Mechanism) of the **Petroleum Host Community (Commission) Regulations** made pursuant to Section 235 PIA provides that grievances should be referred to the National Oil and Gas Excellence Centre (NOGEC) – the **Alternative Dispute Resolution Centre** (ADRC) established for the resolution of disputes through mediation, reconciliation and arbitration **by the Department of Petroleum Resources (DPR) now (the Nigerian Upstream Regulatory Commission). The ADRC was established and inaugurated in April 2021**.[12]The section provides for grievances to be resolved by arbitration after the host

[18] PIA 2021
[19] s. 96 (1) PIA 2021
[20] s.96 (i) PIA 2021
[21] S.120 (1) PIA 2021
[22] s.120 (1) (j) PIA 2021

community and the settlor (and failing that, the mediator), have failed to resolve the dispute.

It should be noted that some of the disputes in the industry can still be referred to the local courts without exploring ADR first. For instance, Section **101 (d)** provides that disputes between a licensee/lessee and owner of privately owned or legally occupied land as to compensation payment should be decided by the **Federal High Court** while section **163** provides that the Authority may **mediate disputes** in relation to third party access to gas transportation pipeline and networks. Section 179 (2) provides that the Authority may **mediate disputes** in relation to third party access to mid-stream petroleum liquid operations. Section 180 (2) provides that the Authority may **mediate disputes** in relation to open access in relation to petroleum liquids operation.

Further, sections **307, 308** and **309** are in relation to the 3 months Public Officers Protection limitation, 1-month pre-action notice and consequential amendment of certain provisions of any other enactments to the extent of their inconsistency with the Constitution and the PIA, respectively.

Saving/Transition Provisions of the PIA Preserving Arbitration as a means of Dispute Resolution in the Oil and Gas Sector.

The above highlighted provisions in, or made pursuant to, the PIA provide context for arbitration in the Nigerian oil and gas industry. Although, arbitration is not directly provided for in the same manner as under section 11 of the repealed PA, the sections highlighted above show that the provisions of paragraph 42 of the First Schedule to the PA made pursuant to section 2(3) of the PA, paragraph 5 of the Pre-emptive rights in the Second Schedule made pursuant to section 7(2) of the PA are all saved and become part of the extant law by the PIA given that paragraph 42 of the First Schedule to the PA is not inconsistent with the provisions of the PIA.

Section **309 of the PIA** (**Consequential Amendments)** provides that subject to the provisions of the Constitution, upon the coming into force of this Act, where the provisions of any other enactment or law are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other enactment or law shall, to the extent of that inconsistency, be void in relation to matters provided for in this Act.[23]

The PA is not expressly repealed but some of its provisions are impliedly modified by the PIA. The PA itself, and particularly its First Schedule, is not listed in section 310 of the PIA (**Repeals**) as one of the laws and regulations repealed.

Section 311 of the PIA (**Saving provisions**) provide that " Any Act, subsidiary legislation or regulation, guideline, directive and order made pursuant to any principal legislation repealed or amended by this Act, shall, **in so far as it is not inconsistent with this Act, continue in force mutatis mutandis as if they had been issued by the Commission or Authority under this Act until revoked or replaced by an amendment to this Act or by subsidiary legislation made under this Act and shall be deemed for all purposes to have been made under this Act.**[24] Any oil prospecting licence or oil mining lease granted under the

[23] s.309 PIA 2021
[24] s.311 (1) PIA 2021

Petroleum Act, 1969 that is subsisting as at the effective date of this Act shall continue to have effect, subject **to the following terms and conditions**...."[25]

The 'terms and conditions' referred to above relate to when the licenses and leases terminate and how to renegotiate renewals in conformity with the PIA, while the conditions of issuance of the licenses and leases continue to be applicable until converted or made to be in conformity with the PIA, as long as their provisions do not conflict with the PIA. With regard to existing licenses and leases, Section 311 (9) of the PIA specifically saves the provisions of the PA and only makes them renewable or renegotiable in accordance with the PIA. Although it is not explicitly stated that the PA is repealed, any of its provisions that clash with those of the PIA are invalid to the degree of the disagreement.

In the light of the above, it is pertinent to state that the PIA has preserved the provisions of Section 11 of the PA, notably with regard to disputes involving licenses, leases, and other documents granted under the PA. These provisions are now relevant to arbitrations conducted under the existing system. This also applies to the Alternative Dispute Resolution Centre ("ADRC") set up by the erstwhile Department of Petroleum Resources ("DPR") now Nigerian Upstream Petroleum Regulatory Commission ("NUPRC"), in consonance with the provisions of the PA, as it aligns with the provisions of the PIA highlighted above for dispute resolution via ADR means. The ADRC emphasizes the settlement of disputes through ADR mechanisms (mediation, conciliation and arbitration) without recourse to litigation. With a six-member Advisory Council and a 20-member Body of Neutrals to mediate on disputes between players in the oil and gas value chain, the ADRC has recorded significant successes via mediation of disputes within its short existence.

3.8 Arbitration as a Dispute Mechanism in Oil and Gas Industry

The highly technical nature of the oil and gas industry, the professional and sophisticated character of oil and gas agreements, as well as other business interests together with the age long business relationship between the international oil companies and the host countries, are factors that contributes to the wide use of arbitration in the oil and gas industry.[26] Courts are open to extensive publicity hence jeopardizing the parties' business reputation. For instance, one classical example of negative publicity is the one suffered by BP in deep water horizon disaster that led it being blacklisted by the United State government.[27] The International oil companies include arbitration agreements in their contractual dealings with host oil governments. Oil and gas contracts frequently involve parties from different national jurisdictions. A party to an oil and gas contract may not be willing to be subject to the national jurisdiction of another party which would be the case if the parties were to submit a dispute to the courts of a host country.[28] In order to avoid a 'home country advantage' of the other party, it is common for parties to choose arbitration for the neutrality of the forum. Under arbitration, parties agree in the contract or after the dispute have arisen for neutral arbitrators, neutral arbitral institution, neutral rules and neutral seat of arbitration. But with

[25] s. 311 (2) PIA 2021

[26] C.N Dandy and others, 'An Examination of the Legal framework on arbitration in Nigeria oil and gas industry' (2021) (9) (3) International Journal of Business Law and Research.

[27] J Russell, BP Banned for new UB business over "lack of business integrity" (28 November 2012) the Telegraph Oil and Gas News.

[28] R W Bentham, 'Arbitration and Litigation in the Oil and Gas Industry' [1986] (5) (2) International Energy Law and Taxation Review; 35.

the Washington Convention of 1965 providing for the International Centre for the Settlement of Investment Dispute (ICSID) this fear is laid to rest. It must be noted that the ICSID as an international organization provides services for the arbitration and settlement of investment disputes between international investors and host national governments. The parities to the dispute must unanimously consent in writing to surrender dispute to the ICSID. Consent may be evidenced in a treaty or in the contract itself. As a result of the general acceptance of the ICSID within the international community, Host Countries intending to receive foreign investors usually make public their willingness to settle foreign investment disputes through the engagement of the ICSID. On the other hand, international oil companies are attracted to put in investment knowing that it shall not be subjected to surrender dispute to an unpopular tribunal. Nigeria's example of this sort of willingness clearly seen in the Nigeria LNG Fiscal Incentives' Guaranties and Assurances Decree No. 39 of 1990, paragraph 22 of the decree states that in case of inability or failure to successfully settle any dispute within 90 days of the issuance of the letter of notification of the dispute to the government, such a dispute may be submitted for arbitration to the ICSID. Arbitration agreements are also present in many joint venture and production sharing contracts between international oil companies and state-owned oil companies, consent to arbitrate can as well be found in contracts between Oil and Gas Operators and Service Contractors.

Petroleum Tax Dispute is also referred to as Tax Dispute. This type of dispute occurs between companies engaged in petroleum operations and tax authorities. There are cases that discuss tax disputes. According to Niger Delta Development Commission v. Nigeria Liquefied Natural Gas Limited[29], NLNG is not liable to pay NDDC levy because paragraph 3 of the 2nd schedule to the Nigeria LNG Act exempts it from the applicability of such laws, taxes, etc. more so, in the case of Shell v. Burutu LG[30], item 1(j) of the fourth schedule to the constitution limits the functions of the local government to assessment of privately owned tenements, A LG cannot levy tenement in respect of oil storage tanks, tanks farms, and oil pipeline not being privately owned. Federal Inland Revenue Service v. Nigerian National Petroleum Corporation & ors[31]., in this case, it was established that there is no provision in the PPTA under which the parties to PSC can refer tax disputes to arbitration. The mechanism provided for resolution of such disputes under Section 41 is an appeal to Tax Arbitration Tribunal. Furthermore, another type of petroleum dispute is the Illegal Oil Bunkering. Bunkering is a term used to describe the process of filling a ship with oil[32]. Although bunkering is legal, illegal bunkering on the other hand used in respect to oil is a euphemism for oil theft.

4.1 Intervention of Court in Petroleum Arbitration in Nigeria

The court has no right to set aside the awards of arbitration. By the provision of section 34 ACA "a court shall not intervene in any matter governed by this Act, except, where so provided in this Act". However, by virtue of section 29(2) ACA, the court may set aside an arbitral award, if the award contains decisions on matters which are beyond the scope of the submission for arbitration. Also by provision of section 30, the court can set aside an arbitral award where the arbitral proceedings award has been improperly procured. All of these are subject to the application of one of the parties to the arbitral proceeding.

[29] (n 29) 20.
[30] (suit No: CA/PH/520/2007)
[31] (2000) 1 NRLR 1
[32] (2014) LPELR-23144(CA)

The Nigerian courts have at some point supported arbitration in relation to the enforcement of arbitration agreement and arbitral awards. In **Onward enterprises LTD V. MV Matrix** the court of appeal held that "Once an arbitration clause is retained in a contract which is valid and the dispute is within the contemplation of the clause, the court will give regards to the contract by enforcing the arbitration clause. It is therefore the general policy of the court to hold parties to the bargain which they freely entered." [33]

4.2 Types of Disputes in the Oil & Gas Industry

There are essentially four types of disputes found in the Oil and Gas Sector, namely:

4.2.1 State versus State Disputes

These are primarily boundary disputes concerning oil and gas fields that cross international borders, most of which are located in maritime waters. Strictly speaking, they only involve governments since only they are able to claim sovereign title and resolve boundaries with their neighouring States. However, oil and gas companies get indirectly involved in these disputes when they are granted concessions that straddle disputed boundary lines. Companies are sometimes asked by developing nations to fund the dispute costs, and provide data and legal expertise to aid in resolving the boundary dispute.

4.2.1 Company versus State disputes

These are often called investor–state or state investment disputes. They occur when governments significantly change the terms of the original deal or nationalize or expropriate an investment. The investor (in this case, an oil and gas company or a consortium of oil and gas companies) can base its claim on its investment contract (eg a production sharing contract (PSC) or risk service agreement (RSA)). Most treaty claims are made under bilateral investment treaties (BITs), which are negotiated and ratified by two sovereign states. One significant multilateral investment treaty in the oil and gas industry is the Energy Charter Treaty.[34]

4.2.3 Individual versus company Disputes

There are a number of situations where individuals initiate claims against oil and gas companies. The first is when an individual suffers a personal injury and begins a tort claim against a company. This is common in US jurisdictions but is increasingly happening in other countries as well as Nigeria. Foreign claims are usually started in local courts but can sometimes be filed in US courts using the Alien Tort Statute.[35] Also another group of claims by individuals arise when promoters of oil and gas deals allege they have an interest in a host government contract and the accompanying joint operating agreement, sometimes in the context of a claim of tortious interference by a third party.

4.2.4 Petroleum Operators and Service Contractors

The number of services that contractors offer to operators in the petroleum industry is infinite and includes anything from significant construction and rig lease contracts to smaller supply contracts. Contracts in this category frequently contain arbitration clauses, and the operator frequently makes available pre-written forms of agreement. Nonetheless, where the contractor is providing highly specialized services or plant and equipment, there is likely to

[33] (2010) 2 NWLR (Part 1179) at 530.
[34] 12 December 1994,
[35] J Drimmer, 'Human Rights and the Extractive Industries: Litigation and Compliance Trends' (2010) 3 Journal of World Energy Law & Business, where the full details of the claim are contained

be intense negotiation between the parties on the content of the arbitration agreement. For example, in mobile production unit agreements, mobile production units (MPUs), i.e., jack up rigs, semisubmersible drilling rig and floating, production, storage and offtake facilities, are facilities which can be rapidly mobilized and demobilized at a low cost. An arbitral process is frequently carefully designed to settle any disagreement that arises throughout the term of the contract because the parties are expected to do business together for a long time and because of the significant amounts at stake.

5. Conclusion

Timely settlement of disputes among the partners/operators of an oil and gas project is very key to stability, sustenance of commercial harmony, and to keeping the oil and gas fields in operation and ultimately securing the rents, royalties and taxes to government while helping asset holders to fulfil the conditions of their licenses. It is evident that arbitration is recognized, incorporated and in use in the oil and gas industry in Nigeria and the law continues to be fine-tuned to meet the current realities based on the legal regime of the PIA and regulations made pursuant to, or saved by, the PIA. The Nigerian Petroleum industry is an area of the economy that has been faced with various disputes arising from the inability of a party to fulfil his contractual obligation at the detriment of the other party. Environmental dispute, fiscal (tax) disputes, ownership, ownership of land where there is oil, etc., and a wide range of areas bothering on dispute resolution in the Nigerian Petroleum industry have been treated, giving us a bird's eye view of the dynamics of the industry with dispute resolution. It can then be said that arbitration should be used in settling Petroleum disputes on the basis that such disputes are commercial or investment disputes. Where the disputes are not of a commercial nature, other disputes settlement mechanisms can be utilized. However, the practice of Petroleum arbitration has not received a light of the day as compared with other jurisdictions owing to the inability of Nigeria to develop a strong base of arbitration practice as a lot of disputes are most times referred to other jurisdiction as the lex arbitri of the arbitration panel. Once Nigeria can develop its arbitration institution and adopt the model arbitration clause, the practice of Petroleum arbitration would be well practised in Nigeria.

6. Recommendations

These papers having discussed the various mechanism of resolving dispute in the petroleum industry make the following recommendations

a. Arbitration should be encouraged; considering the long term bottleneck that parties faced in litigation process; arbitration which today has gained global acceptance should be the first point of call in dispute resolution.
b. National Centre for arbitration should be established and well equipped. There is a need to improve the arbitration institutes. The importance of institutional arbitration centres cannot be overemphasized as it is the most used form of arbitration for example ICSID, LCIA, etc. Once Nigeria can have well established institutional arbitration centre it would help in boosting the economy of the nation, and different persons from various parts of the world would subject their resolution of disputes to the Nigerian institutional arbitration centres.
c. That all statutes relating to the petroleum industry should include provisions on Arbitration as a mechanism for dispute resolution.