Oil and Gas-Related Disputes Resolution: Trajectory under the Nigerian Petroleum Industry Act 2021

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Abstract

Since the discovery of crude oil in Nigeria as far back as in 1956, the Nigerian petroleum industry has proved to be the mainstay of the economy and significant source of revenue generation for the country. Part of the aims for enacting the extant Petroleum Industry Act (PIA) 2021 was the necessity to promote a business environment conducive for petroleum operations as well as create an undisturbed and harmonious relationship between licensees or lessees and the host communities. In order to achieve such goals, it becomes imperative for effective dispute resolution mechanisms to be put in place to address possible oil and gas-allied disputes. Undeniably, the various petroleum operations going on in the oil and gas industry along with the need to enter into myriad contractual agreements make occurrences of disputes in the sector unavoidable. The central aim of this article therefore, was to evaluate issues relating to settlement of oil and gas-related disputes under the extant PIA 2021. The article adopted a doctrinal method by appraising some available literature in the area under investigation in addition to examining related statutes put in place to regulate the operation of the oil and gas industry in Nigeria. The article discovered that the PIA has identified litigation and alternative dispute resolution procedures like mediation, conciliation, arbitration and expert determination as viable methods to settle oil and gas-associated disputes. The article ended with recommendations towards efficient and more rewarding petroleum-connected dispute resolution mechanism in the Nigerian oil and gas sector.

Keywords: Alternative Dispute Resolution; Arbitration; Litigation; Nigerian Oil and Gas Industry; Petroleum Industry Act; Trajectory

Introduction

The pioneering work for the petroleum exploration and production activities in Nigeria dates back to 1908 when a German company, Nigerian Bitumen Company, commenced its drilling and exploration operations in Okitipupa area in the south-western part of Nigeria, though the attempt proved unproductive before the First World War truncated the search.[1] After the First World War, the search for oil continued with the next concession granted to an Anglo-Dutch consortium known as Shell D'Arcy Petroleum Company which started its oil operation from its base in Owerri in the present day Imo State. However, there are contradictory assertions regarding the precise year when Shell D'Arcy Company began its oil exploration activities in Nigeria.

[1] Lawrence Atsegbua, *Oil and Gas Law in Nigeria: Theory and Practice* (4th Edition, Benin City: Four Pillars Publishers, 2021), p. 8.

Ajomo,[2] Etikerentse,[3] Fagbohun,[4] Adeyemi and Chawi[5] and Gidado[6] maintain that the oil company began its oil exploration operations in 1937. On the other hand, Pearson,[7] Atsegbua,[8] Omoregbe,[9] and Ebeku[10] writing individually have postulated that oil exploration activities after the First World War recommenced in 1938. It appears acceptable to say that those who claim 1938 as being the year when oil exploration activities resumed in the country after the First World War are correct, as they have the backing of Shell Petroleum Development Company of Nigeria (SPDC), which asserts that it was granted oil exploration licence to prospect for oil throughout Nigeria in November 1938.[11]

As a result of the outbreak of the Second World War, SPDC temporarily suspended its oil exploration for six years. When the company resumed its oil operation in 1946, it had been joined by British Petroleum to become Shell-BP.[12] The company discovered the first commercial oil field in 1956 at Oloibiri village in the present day Bayelsa State, with Nigeria's first commercial oil exports being in 1958. Ever since then, the company and other operating oil companies in Nigeria have explored and discovered more oil fields that have greatly established Nigeria as one of the world's leading oil producers with considerable gas potentials[13] and correspondingly transformed the financial fortunes of the country. Most of the petroleum operations in Nigeria are conducted by multinational oil companies (MNOCs) while a few are by indigenous oil companies (IOCs) in the Niger Delta area of Nigeria.[14]

As a primary income earner for the Nigerian economy, petroleum products accounts for about 70% of the government's revenue and over 80% of the nation's total export earnings with about 35.2 billion barrels of crude oil reserves[15] and more than 5.8 billion cubic meters proven natural gas reserves according to OPEC's Annual Statistics Bulletin 2022.[16]

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[2]M. Ajomo, "Law and Changing Policy in Nigeria's Oil Industry," In: J. A. Omotola and A. A. Adeogun (eds.) *Law and Development* (Lagos: University of Lagos Press, 1987), p.85.

[3] G. Etikerentse, *Nigerian Petroleum Law* (Second Edition, Lagos: Dredew Publishers, 2004), p. 6.

[4]Olanrewaju Fagbohun, *The Law of Oil Pollution and Environmental Restoration: A Comparative Review* (Lagos: Odade Publishers, 2010), pp.153-154.

[5]Y. Adeyemi and E. Chawi, "Oil & Gas in 55 Years" (2011) 10(2) *NLNG: The Magazine*, p.4. These authors posit that in 1936, Shell D'Arcy was granted sole rights for exploration of hydrocarbons across the country though prospecting actually began in 1937.

[6]M. M. Gidado, *Petroleum Development Contracts with Multinational Oil Firms-The Nigeria Experience*. (Maiduguri: Ed-Linform Services (1999), p.117.

[7]S. R. Pearson, *Petroleum and the Nigerian Economy*. (Stanford, California: Stanford University Press, 1970), pp.18-20.

[8] The author claimed that Shell-BP received the oil exploration licence (OEL) covering the whole of Nigeria from the British colonial government in November 1938-See Lawrence Atsegbua, *Oil and Gas Law in Nigeria: Theory and Practice* (2nd Edition, Benin: New Era Publications, 2004), p.41.

[9]Yinka Omorogbe, *The Oil & Gas Industry: Exploration and Production Contracts* (Lagos: Florence & Lambard, 2008), p.4. See also Yinka Omorogbe, *Oil & Gas Law in Nigeria.* (Lagos: Malthouse Press Ltd, 2001), p.17.

[10]K. S. A. Ebeku, *Oil and the Niger Delta People in International Law: Resource Rights, Environmental and Equity Issues* (Germany: Rudiger Koppe Verlag, 2006), p.69.

[11]See, "The History of Shell in Nigeria." Retrieved from <https://www.shell.com,ng/about-us/shell-nigeria-history.html> (accessed on 20 October 2022). See also P. N. Oche, *Petroleum Law in Nigeria: Arrangement for Upstream Operations* (Jos: Jimmy Litho Press, 2004), pp.5-8.

[12] This was the position until the shares of British Petroleum was nationalised by the Nigerian government in 1979-see Acquisition of Assets of (British Petroleum Company Limited) Act No. 56 of 1979, Cap.3, Laws of the Federation of Nigeria, 1990. See G. Etikerentse, *Nigerian Petroleum Law* (2nd edition. Dredew Publishers, 2004), pp. 6-7.

[13] See "SPDC- The Shell Petroleum Development Company of Nigeria." Retrieved from <https://www.shell.com.ng/about-us/what-we-do/spdc.html> (accessed on 20 October 2022).

[14] Victor Chukwudi Odome, "Corporate Accountability in the Nigerian Oil and Gas Sector: Coping with Uncertainties" (2013) 39(4) *Commonwealth Law Review* 741-765 at p. 741.

[15] Kathleen Okafor, "Nigeria and the Petroleum Industry Act: The Role of the New NNPC Board," (11 March 2022) *This DayLive*. Retrieved from <https://www.thisdaylive.com/index.php/2022/03/11/nigeria-and-the-petroleum-industry-act-the-role-of-the-new-nnpc-board/> (accessed on 20 October 2022).

[16] OPEC, "Nigeria: Facts and Figures." Retrieved from <https://www.opec.org/opec_web/en/about_us/167.htm>(accessed on 20 October 2022).

The exploration, prospecting and mining activities in Nigeria covers a wide range of operations, such as, but not limited to, geological surveys, seismic operations, exploration, production, refining, transportation, and petroleum handling.[17] As a result of the nature of oil and gas operations that are being conducted in the upstream sector (i.e. exploration and production); midstream and downstream sectors (involving refining, transportation and marketing of petroleum products), coupled with the execution of numerous petroleum contractual agreements in the Nigerian oil and gas industry, occurrences of disputes from time to time are predictable.[18] The ensuing disagreements may happen among investors (domestic or foreign) or between operators and the host communities in the petroleum producing areas, contracting State governments, Federal government and the component States, among others.[19]

In order to resolve any possible ensuing disputes so as to "foster a business environment conducive for petroleum operations"[20] along with enhancing "peaceful and harmonious co-existence between licensees or lessees and host communities," [21] the new Petroleum Industry Act 2021, conscious of the dynamism and peculiarity of the Nigerian oil and gas sector, has stipulated certain dispute resolution mechanisms for settling oil and gas disputes. The identified spectrum of dispute resolution procedures include the conventional litigation approach, various forms of alternative dispute resolutions, like negotiation, mediation, conciliation, arbitration and expert determination mechanisms. The work would therefore, critically investigates the trajectory for dispute resolution in the Nigerian oil and gas sector under relevant extant normative framework regulating petroleum operations in Nigeria.

Litigation Mechanism in National Courts

This is also known as adjudicatory mechanism for resolving conflicts. It is perhaps the conventional means commonly adopted in resolving disputes by contending parties. This entails the institution of a lawsuit in the court by an aggrieved party against whom an injury or wrong has been done. Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999, which describes the scope of the judicial powers conferred on the court by the Constitution, states explicitly that the judicial powers extend to every matter between persons or between government or authority and to any individual (including a corporate entity) in Nigeria and to all actions and proceedings relating thereto in order to determine any question regarding the civil rights and obligations of that individual.

Disputes in the oil and gas sector may arise by reason of various factors such as maritime territory and land boundary disputes between States, and at times, involving the Federal government; environmental pollution matters, oil and gas contracts, disagreement relating to equipment, disputes regarding expert determination mechanism, among others.[22] It may at times happen that the only realistic option available to the parties to settle their differences is to resort to court litigation. For instance, disputes involving maritime or land boundaries may possibly be settled by means of litigation mechanism as were the situations regarding oil well disputes between Rivers and Bayelsa States[23] as well as similar conflicts between Akwa Ibom and Cross River States.[24]

[17] Victor Chukwudi Odome, "Corporate Accountability in the Nigerian Oil and Gas Sector: Coping with Uncertainties" (2013) 39(4) *Commonwealth Law Review* 741-765 at p. 741.

[18] Adesina Temitayo Bello, "Dispute Mechanism in Petroleum Industry: An Overview of Arbitration Frontiers," Retrieved from <https://papers.ssrn.com/sol3papers.cfm?abstract_id=2971020> (accessed on 4 November 2022).

[19] Peter Olaoye Olalere and Maryam Abdulsalam, "Dispute Resolution by Arbitration in the Nigerian Oil and Gas Industry under the Nigeria Petroleum Industry Act 2021." Retrieved from <https://www.mondaq.com/nigeria/oil-gas-electricity/1240900/dispute-resolution-by-arbitration-in-the-oil-and-gas-industry-under-the-nigeria-petroleum-industry-act-2021> (accessed on 4 November 2022).

[20] Petroleum Industry Act No. 6 of 2021, section 2(d).

[21] Petroleum Industry Act No. 6 of 2021, section 234(1)(c).

[22] Anthony Connerty, "Dispute Resolutions in the Oil and Gas Industries," (2002) 20 *Journal of Energy & Natural Resources Law* 144-171 at pp. 144-145.

[23] Ameh Ejekwonyilo, "Supreme Court grants ownership of 17 disputed oil wells to Rivers" *Premium Times* (6 May 2022). Retrieved from: <https://www.premiumtimesng.com/news/headlines/528084-supreme-court-grants-ownership-of-17-disputed-oil-wells-to-rivers.html> (accessed on 26 September 2022); see also *Attorney General, Rivers State v. Attorney-General, Bayelsa State* (2012) JELR 33983 SC decided by the Nigerian Supreme Court on 12 July 2012.

Resort to litigation to settle boundary disagreement may also involve the Nigerian Federal government and the component States as was exemplified in the well celebrated "Resource Control Case" of *Attorney- General of the Federation v. Attorney-General of Abia State & 35 Others*.[25]

In the *Resource Control case*, a dispute occurred between the Federal Government of Nigeria and eight littoral States (comprising Akwa Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers States) regarding ownership of the seaward boundary of each of these States for purposes of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State under section 162(2) of the 1999 CFRN. The Nigerian Supreme Court decided the matter in favour of the Federal Government and held that as a sovereign nation, Nigeria, as opposed to other political component units in the Federation, either collectively or individually, is by custom of international community to exercise jurisdiction beyond its seaward limit and accordingly has ownership of the petroleum resources found within the said maritime boundaries.[26]

It is pertinent to point out that the Nigerian apex court entertained the *Resource Control case* in its original jurisdiction. By section 232(1) of the 1999 CFRN, the Supreme Court "shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends." However, in addition to the jurisdiction conferred by the 1999 CFRN on the apex court to entertain oil and gas disputes involving the Federation and a State or between States, the extant PIA 2021 prescribes two lawsuit venues for resolving disputes arising from petroleum activities under the statute. One is by initiating an action at the Federal High Court while the other medium is through the Tax Appeal Tribunal.

a) *Litigation at the Federal High Court*

Section 251(1)(n) of the 1999 CFRN provides that the Federal High Court (FHC) has the exclusive jurisdiction to the exclusion of any other court in civil cases and matters to adjudicate on disputes relating to mines and mineral, inclusive of oilfields, oil mining, geological surveys and natural gas. This provision is further reinforced by section 217(8) of the PIA which posits that disputes between a licensee, lessee or permit holder against the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) shall be settled by the FHC.

By section 101 of the PIA, a licensee or lessee is not allowed to enter, occupy or exercise any right vested by its licence or lease over some sacred, protected or earlier privately owned or legally occupied land unless a written authorisation of the NUPRC has been obtained by the licence or lease holder. Thus, a licensee or lessee that has the intention of entering or occupying such land is required to write to the NUPRC indicating the land proposed to be occupied, the aim of such occupation and the amount of compensation paid or intended to be paid for the occupation.[27] However, in the event of any dispute arising from the legitimate occupation and/or there is disagreement regarding the amount of the compensation payable, the licensee or lessee, pending the determination of the dispute, is mandated to deposit with the FHC that has jurisdiction within the location of the land an amount of money to be decided by the court as a reasonable compensation payable to the rightful owner or occupier of the land.[28]

Again, in matters relating to licence applications in the midstream and downstream sector, the NMDPRA is empowered under the statute to grant, renew, modify or extend individual licences or permits.[29] In a situation where an applicant is dissatisfied with the reasons advanced by the NMDPRA for refusing the application, it may appeal to the FHC for judicial review.[30] A judicial review in this sense relates to a court's power to review the actions of other arms or levels of government to see if such actions were carried out in compliance with the law

[24] "Supreme Court cedes disputed 76 oil wells to Akwa Ibom State," *Channels Television* (11 July 2012). Available from: <https://www.channelstv.com/2012/07/11/supreme-court-cedes-disputed-76-oil-wells-to-akwa-ibom-state/> (accessed on 26 September 2022).
[25] (2002) FWLR (Pt. 102) 1.
[26] *Ibidem*, pp. 92-93
[27] PIA 2021, section 101(1)(a)-(c).
[28] PIA 2021, section 101(1)(d).
[29] PIA 2021, section 111(1).
[30] PIA 2021, section 111(9) and (12).

and procedure. The court's responsibility is to review the procedure, rather than the decision itself with a view to determining whether that decision was wrong by some flaws.
Certainly, the court will not impose what it considers as the "accurate" decision.[31] While there is no corresponding judicial review clause in relation to applications of upstream licences and leases by the NUPRC, it has been argued that such statutory powers may also be liable to judicial reviews on the application of an aggrieved applicant.[32]

Another issue that often causes dispute, particularly between a host community and a licensee or lessee, is in connection with environmental pollution matters. A licensee or lessee who engages in the upstream and midstream petroleum operations is required to make adequate environment control plan to prevent pollution as well as rehabilitate and manage negative impacts on the environment.[33] Financial contribution for remediation of environmental harm as a pre-condition for the grant of licence or lease and before the endorsement of the environmental management programme is prescribed under the statute.[34] Gas flaring is also outlawed under the Nigerian law, except in circumstances permitted under the law; a licensee or lessee that flares or vents natural gas is required to pay fine as prescribed under the Flare Gas (Prevention of Waste and Pollution) Regulations 2018.[35]

Conversely, where a licensee or lessee causes an environmental pollution or damage, it might lead to a litigation against the licence, lease or permit holder. In *Shell Petroleum Development Company (Nigeria) Limited v. Abel Isaiah*,[36] the plaintiffs/respondents instituted the action against the oil company claiming compensation and damages for extensive oil spillage and pollution caused by the oil company. The respondents' claim was upheld by the trial court and affirmed by the Court of Appeal.[37] But on a further appeal to the Supreme Court,[38] the issue of the jurisdiction of the trial State High Court to entertain the matter was raised. The Supreme Court held that oil spillage from the appellant's dented oil pipeline which caused the pollution was a thing associated with or arising from oil mining, geological surveys and natural gas which are constitutionally vested exclusively on the FHC and not on a State High Court.[39] The appeal was therefore, allowed on jurisdictional grounds. Similarly, a Nigerian FHC in an unprecedented manner has held that gas flaring was a gross infringement of the constitutionally protected rights to life and dignity which included the right to a clean poison- free, pollution-free healthy environment.[40]

b) *Litigation in Taxation Disputes*

It has been statutorily and judicially[41] maintained that tax disputes are not subject of arbitration unless such disputes primarily has some contractual undertones.[42] Taxation disputes that cannot be amicably settled would

[31] Taiwo Oyedele, Chijoke Uwaegbute and Folajimi Akinla, "Resolving Dispute under the Petroleum Industry Act 2021." A Publication of Price Water House Coopers Nigeria Ltd. Retrieved from: <https://www.pwc.com/ng/en/assets/pdf/resolving-disputes-under-the-petroleum-industry-act%202021.pdf>. (accessed on 26 September 2022).
[32] *Ibidem*.
[33] PIA 2021, section 102.
[34] PIA 2021, section 103.
[35] PIA 2021, sections 104-105.
[36] (1997) 6 NWLR (Pt. 508) 236.
[37] *Ibidem*.
[38] *Shell Petroleum Development Company (Nigeria) Limited v. Abel Isaiah & 2 others* (2001) FWLR (Pt. 56) 608; (2001`) 11 NWLR (Pt. 723) 168 at 179-180. See also *The Shell Petroleum Development Company of Nigeria Limited v. Helleluja Bukuma Fishermen Multi-Purpose Co-Operative Society Limited (*2002) 4 NWLR (Pt. 758) 505 at 517-519.
[39] *Ibidem* at pp. 621-624. See also *Shell Petroleum Development Company Limited v. Maxon* (2001) FWLR (Pt. 47) 1030.
[40] *Jonah Gbemre v. Shell Petroleum Development Company Nigeria Limited* (2005) AHRLR 151.
[41] *Esso Exploration and Production Nigeria Limited & Anor v. NNPC*, Appeal No. CA/A/507/2012 (Unreported), decided on 22 July 2016. See also *Shell Nigeria Exploration and Production Ltd & Others v. Federal Inland Revenue Service*, Appeal No. CA/A/208/2012 (Unreported), decided on 31 August 2016. See Lawrence Ochulor, "The Dialectics of the Court of Appeal Pronouncements on Non-Arbitrability of Tax Disputes in Nigeria: Drawing a Distinction between Tax and Contractual Disputes in Nigeria." Retrieved from: <http://financedocbox.com/Tax_Planning/87676062-Lawrence-ochulor-1-introduction.html> (accessed on 14 November 2022). See also Sharon Juwah and Ibukunoluwa Adebara, "Nigeria: Resolving Tax Disputes via Arbitration: An Opinion on the Judgment of the Court of Appeal in Esso Petroleum and Production Nigeria Ltd &SNEPCO v. NNPC." Retrieved from: <https://www.mondaq.com/nigeria/arbitration-dispute-

pragmatically be resolved through litigation. Section 285(1) of PIA empowers the Federal Inland Revenue Service (FIRS) to serve notice of tax assessment on a company that is liable to hydrocarbon tax under the statute. Where the assessment is disputed by the company or taxpayer, the person has discretion within a stipulated period of objecting to the assessment and request that same should be reviewed and revised by FIRS.[43] Any company or tax payer who still disputes the revised assessment may appeal against it to the Tax Appeal Tribunal (TAT) created under the provisions of section 59(1) of the Federal Inland Revenue Service (Establishment) Act (FIRSEA) 2007.[44] Appeals from the decisions reached by TAT lie directly to the FHC.[45]

Prior to the enactment of the PIA 2021, disputes relating to the petroleum profit tax regulated under the PPTA was first resolved by the Board of Appeal Commissioners (BAC) established under section 38 of the Petroleum Profit Tax Act (PPTA) 2004 as an administrative panel.[46] Appeals against the decision of the BAC went straight to the FHC upon the aggrieved person giving due notice to the Board.[47] But in *Cadbury Nig. Plc v. Federal Board of Internal Revenue*,[48] it was held that BAC was unconstitutional as it appropriated to itself the jurisdiction conferred on the FHC under section 251(1)(b) of the 1999 CFRN.

Contending Issues Relating to Litigation Mechanism

There are a considerable range of challenges confronting parties who may desire to adopt the litigation method in resolving their oil and gas disputes, especially in claims relating to environmental pollution cases.[49] This is by no means to say that the identified challenges are limited to environmental matters alone. Some of the challenges include:

1. *Locus Standi*

It is an acknowledged fact that in an adjectival jurisprudence, as is in operation in Nigeria, a party who institutes an action in the court of law must establish that he has sufficient interest in the matter. The concept of *locus standi* operates a gate-keeping function to prevent the litigation floodgates from opening whereby every Tom and Dick, or "busybodies, cranks and other mischief makers"[50] could flood the courts regardless of their interest in the matter or the result. *Locus standi* has been recognised as one of the vital requirements that must be established by a party initiating litigation in the court. Apparently, in cases associated with environmental degradation, establishing the legal standing to sue seems to be the most critical obstacle for public interest litigants.[51]

resolution/969576/resolving-tax-disputes-via-arbitration-an-opinion-on-the-judgment-of-the-court-of-appeal-in-esso-petroleum-and-production-nigeria-ltd-snepco-v-nnpc> (accessed on 14 November 2022).

[42] In the later case of *Esso Petroleum and Production Nigeria Limited & Shell Nigeria Exploration and Production Company Limited v. Federal Inland Revenue Service*, Appeal No. CA/A/402/2012 (Unreported), decided on 10 March 2017, the Court of Appeal departed from its earlier cases and held that disputes arising out of the rights and duties of parties relating to preparation of petroleum profit tax returns in order to determine the quantity of tax oil to be allocated for distribution in compliance with a production sharing contract was primarily a contractual dispute and not a tax matter and consequently, the arbitral tribunal has jurisdiction to entertain the dispute.

[43] PIA 2021, section 285(2).

[44] Act No. 57 of 2007 (now Cap. F36, Laws of the Federation of Nigeria 2004); see also PIA 2021, section 288. It is worth noting that TAT is statutorily empowered to adjudicate on disputes and controversies arising from a number of tax statutes, including the PPTA- see Fifth Schedule to the FIRSEA, para. 11

[45] Fifth Schedule to the FIRSEA 2007, para. 17.

[46] Petroleum Profit Tax Act Cap. P13, Laws of the Federation of Nigeria 2004, section 41.

[47] *Ibidem*, section 42.

[48] (2010) 1 CLRN 215.

[49] For detailed discussion on this subject, see Enobong Mbang Akpambang, "Legal Analysis of Environmental Oil Pollution and Remedies in Nigeria," Unpublished Doctoral Thesis Submitted to the Faculty of Law, Ekiti State University, Ado Ekiti, Nigeria, 2016, pp. 363-370.

[50] *R v. Inland Revenue Commissioners: Ex parte National Federation of Self-Employed and Small Businesses Ltd*, (1982) A.C. 617 at p.653; (1981) 2 W.L.R.722 at p. 740.

[51] Taofeeq N. Alatise, "The Future of 'Standing to Sue' in Environment and Climate Litigations in Nigeria," (2022) 13(1) *Nnamdi Azikiwe University Journal of International Law of Jurisprudence*, pp. 28-39 at p. 33.

This procedural impediment hinders access to justice of aggrieved parties on mere pretext that such an individual has not suffered any direct injury to give him/her a legal standing to complain.[52] A number of oil and gas pollution related disputes as clearly illustrated in *Shell Petroleum Development Company of Nigeria Limited v. Chief Graham Otoko & 5 others*;[53] *Oronto Douglas v. Shell Petroleum Development Company Limited*;[54] *Seismograph Service v. Robinson Kwavbe Ogbeni*;[55] and *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*,[56] among many others, were dismissed because the claimants were alleged to have lacked the *locus standi* to institute the respective actions.[57]

But recently, the Nigerian Supreme Court had an opportunity to revisit the conservative approach to *locus standi* in environmental litigations and took the stand that the technical rules of standing to sue should not be allowed to prevent a person or group of public spirited individuals from bringing an issue of illegal conduct that contravenes the rule of law to draw the attention of the court. The apex court rather adopted a liberal or relaxed approach to the concept of *locus standi* in *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*[58] when that case went on a further appeal to the Supreme Court.

Briefly, the appellant was a non-governmental organisation (NGO) and had commenced an action in the Federal High Court, Lagos State, contending, *inter alia*, that the oil spillage occasioned by the respondent polluted the sources of water in some named communities in Rivers State thereby rendering the waters unsuitable for human consumption and destroying the economic activities of the host communities. It was also alleged that the environmental pollution resulted in devastating effects as it caused numerous diseases and negative psychological impact on the community people. The respondent raised an objection challenging the *locus standi* of the appellant. The trial court sustained the objection and struck out the case. Appeal against the ruling of the trial court was dismissed by the Court of Appeal.

On a further appeal to the Supreme Court, in answering the question whether an NGO has *locus standi* to institute an action on environmental issues that have occasioned public outcry, the apex court responded in the following words:

The lower courts are in error in holding that appellant has no locus standi in instituting the present action which is aimed at saving the environment and lives of the people. The plaintiff cannot, in anyway, be described as a busy body or interloper. This is a public interest litigation in which the chambers of the Honourable Attorney-General of the Federation traditionally holds sway but the law on locus standi in that regard has grown beyond that and now encompasses public spirited individuals and NGOs. The issue in this case, from the facts disclosed in the pleadings is not whether the coast of locus standi should be broadened or expanded but whether appellant can be said to have disclosed sufficient interest in the subject matter to be accorded a standing to initiate the proceedings to remedy the wrongs caused by the action/inaction of the defendant.[59]

By liberalising the concept of *locus standi* as the Nigerian Supreme Court did in the instant case, it is crystal clear that an NGO has a "place to stand" or "standing to sue" in relation to environmental matters that have caused public condemnation, or injury to public interest or public injury. But this does not necessarily mean that in other aspects of court disputes in the oil and gas industry, the requirement for *locus standi* would absolutely be jettisoned or dispensed with. In such circumstances, a person aggrieved must be able to establish sufficient

[52] Emeka Polycarp Amechi, "Litigating Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009, in Ensuring Access to Justice for Victims of Environmental Degradation" (2010) 6(3) *Law, Environment and Development Journal*, 320-336

[53](1990) 6 NWLR (Pt. 159) 693 at p.726. See also *Ogamioba v. Oghene* (1961) 1 SCNLR 115. See also *Oragbade v. Onitiju* (1962) 1 All NLR 32; (1962) 1 SCNLR 70.

[54](1999) 2 NWLR (Pt. 591) 466.

[55] (1976) All NLR (1976) 4 S.C.85

[56] (2013) 15 NWLR (Pt. 1378) 556 (CA).

[57] Taofeeq N. Alatise, "The Future of 'Standing to Sue' in Environment and Climate Litigations in Nigeria," (2022) 13(1) *Nnamdi Azikiwe University Journal of International Law of Jurisprudence*, pp. 28-39 at p. 34.

[58] (2019) All FWLR (Pt. 1003) 54 (SC).

[59] *Ibidem* at p. 138.

interest in the subject matter of the suit, which interest would be affected by the action or the damage or injury he would suffer by reason of the action complained of.[60]

2. Delay in Pursuing Court Litigation

This is another challenge confronting litigants seeking remedy through the court system as issues relating to speed and flexibility may not be within their control.[61]

Reasons for the slow process in litigations ranges from frequent adjournment of cases, absence of parties, counsel or Judge from court on days the matter comes up, industrial actions by court officials, to filing of unnecessary interlocutory applications, etc.

Some excellent examples of delays encountered by litigants who approached the court to settle petroleum-related disputes are worth mentioned. In *Elf Nigeria Ltd v. Opere Sillo*,[62] the plaintiff complained of an alleged damage he sustained in 1967. The matter was instituted in 1983; and the journey from the trial court till final judgment by the Supreme Court in 1994 took a period of about 27 years after the cause of action arose. Again, in *Shell Petroleum Development Company v. Uzoaru*,[63] the cause of action arose in 1972; the case was heard in the High Court in 1985 while the Court of Appeal heard it in 1994. Similarly, in *Eboigbe v. NNPC,*[64] the plaintiff sustained damage in 1979; filed the case in 1984 and the matter was heard by the trial court in 1987. It was eventually heard by the Supreme Court in 1994.

Moreover, in *Shell Petroleum Development Company of Nigeria Limited v. Tiebo VII*,[65] the plaintiff sued the defendant in the High Court of Rivers State, Yenagoa Judicial Division (now in Bayelsa State) in 1988. Judgment was delivered by the trial court on 27 February, 1991. The defendant proceeded to the Court of Appeal in 1994 and the appeal judgment was delivered on 27th March 1996. A further appeal was lodged at the Supreme Court in 1999 and judgement delivered on 8 April, 2005. The case had altogether 17 years journey from the trial court to the highest court. Given the above scenarios, litigation procedure may not always be suitable for the oil and gas sector, which is a highly capital intensive venture and needs expeditious dispensation and cost-saving dispute resolution mechanism.[66]

3. Lack of Confidentiality

One of the vital requirements of a fair trial under the 1999 CFRN is that such a trial must be held in public.[67] Aside from breach of confidentiality between contending parties in their respective filed and exchanged pleadings plus evidence adduced in court, which litigation process entails unlike in mediation[68] or other ADR mechanisms, publicity of trial may force the public disclosure of some sensitive company information[69] as well as results of experimental developments.[70] Absence of confidentiality will also negatively impact on the fortunes and reputation of an oil company as was, for instance, the situation with the British Petroleum (BP) during the Gulf of Mexico deepwater horizon disaster that resulted in the oil company being blacklisted by the United States of

[60] *Ibidem* at pp. 115-116 & 153. See also *Inakoju v. Adeleke* (2007) All FWLR (Pt. 353) 3.

[61] Jamilu Ibn Mohammed, "Dispute Resolution in the Oil and Gas Industry: An Appraisal of Mediation and Litigation Procedure ," (2017) 2(1) *Journal of Private and Business Law*, 115-126 at p. 118.

[62] (1994) 6 NWLR (Pt. 350) 258.

[63] (1994) 9 NWLR (Pt. 366) 51.

[64] (1994) 5 NWLR (Pt. 347) 649.

[65] (2005) All FWLR (Pt. 265) 990.

[66] Jamilu Ibn Mohammed, "Dispute Resolution in the Oil and Gas Industry: An Appraisal of Mediation and Litigation Procedure," *op. cit*., at p. 118.

[67] CFRN 1999, section 36(3).

[68] Susan Corbett, "Mediation of Intellectual Property Disputes: A Critical Analysis" (2011) 17 *New Zealand Business Law Quarterly* 51 at 62.

[69] Jennifer Mills, "Alternative Dispute Resolution in International Intellectual Property Disputes" (1996) 11 *Ohio State Journal on Resolution* 227 at 231.

[70] Jesse S. Bennett, "Saving Time and Money by Using Alternative Dispute Resolution for Intellectual Property Disputes-WIPO to the Rescue" (2010) 79 *Revista Juridica de la Universidad de Puerto Rico* (*Revisita Juridica UPR*) 289 at 396.

America's government.[71] Thus, depending on the nature of the dispute, many litigants, especially oil companies and other corporate entities in the oil and gas sector, may not like negative publicities that could undermine their business integrity or cause potential damaging effect to the company's public image and thereby affecting their investor relations and market share.[72]

4. High Litigation Expenses

As the authors had previously revealed, in an industry such as the petroleum industry which is highly technical and scientific in nature, contending parties would certainly require expert witnesses to establish their respective claims, failing which they may likely lose the case.[73] Thus, litigation at the end of the day may prove to be cost-ineffective, particularly where it involves appeals and foreign litigations. Where legal proceedings' expenses are too exorbitant, some individuals and small business, mostly victims of environmental harms in the host communities, may out of impecuniosities and frustration abandon litigation process and resort to self-help options, like open protest,[74] abduction and kidnapping of oil workers.[75]

5. Proof of Causation

Establishing causation is a vital requirement in most environmental associated litigations. The claimant must be able to establish his/her case on the balance of probabilities that the defendant's act complained of caused the environmental harm. However, causation may be problematic in situations where the defendant's conduct or action, which caused the claimant's injury, equally competes with an "innocent" or "non-negligent" cause of the loss.[76] The failure of the plaintiff in *Seismograph Services (Nigeria) Ltd. v. Robinson Kwavbe Ogbeni*[77] to establish that the explosive noise and vibrations from the seismic activities conducted in the vicinity caused the damage to the plaintiff's building proved fatal to the success of the plaintiff's case on an appeal to the Supreme Court.[78]

In practice, to assist the court in ascertaining whether the claimant has successfully established the causation of his or her harm, the court would employ either the "but for"[79] or "reasonable foreseeability" tests to solve the problem. The House of Lords adopted the "reasonable foreseeability" test in determining the liability of the defendant in *Cambridge Water Co v. Eastern Counties Leather Plc*.[80] In that case, solvents from a close tannery operated by the defendant had leaked into the plaintiff's aquifer and contaminated it thereby rendering the water unfit for human consumption. It was held that the damage caused to the aquifer by the solvents was not reasonably foreseeable at the relevant time the pollution occurred.

6. Limitation of Action

The rationale for limitation of action is founded on public policy that there should be an end to litigation and that "stale demands" should be suppressed for it would be unfair to a person to permit claims to be made upon him after a long period during which he may have lost the evidence formerly available to him essential to refute the

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[71] Tim Webb and David Robertson "BP blacklisted by America over disaster in the Gulf of Mexico," *The Times* (Thursday, 29 November 2012). Retrieved from < https://www.thetimes.co.uk/article/bp-blacklisted-by-america-over-disaster-in-the-gulf-of-mexico-7drlbxskmp2> (accessed on 4 October 2022).

[72] Mohammad Alramahi, "Dispute Resolution in Oil and Gas Contracts," (2012) *I. E. L. R*. 78-85.

[73] *Seismograph Service (Nigeria) Ltd. v. Robinson Kwavbe Ogbeni*(1976) All NLR 163. See also *Seismograph Service Limited v. Benedict Onokpasa* (1972) All NLR 347 at p. 352. See also *Seismograph Service (Nigeria) Limited v. Esiso Akporuovo (*1974) 6 S.C.119 at p.136.

[74] Daniels Igoni, "Ondo Community accuses oil firm of shunning negotiations," (30 August 2022) *The Punch*, retrieved from: <https://punchng.com/ondo-community-accuses-oil-firm-of-shunning-negotiations/> (accessed 7 November 2022).

[75] Abby Kalio Amabipi, "Understanding Host Community Distrust and Violence Against Oil Companies," Doctoral Dissertation submitted to Walden University, 2016. Retrieved from <https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3094&content=dissertations> (accessed on 18 October 2022).

[76] S. Wolf & N. Stanley, *Environmental Law* (4th ed., Great Britain: Cavendish Publishing, 2003), p. 435.

[77] (1976) All NLR 163.

[78] *Ibidem* at pp. 173-174. See also See also *Seismograph Service Limited v. Benedict Onokpasa* (1972) All NLR 347.

[79] *Fairchild v. Glenhaven Funeral Services Limited* (2002) 3 All ER 305; (2002) UKHL 22; (2003) 1 A.C. 32.

[80] (1994) 2 AC 264; (1994) 2 WLR 53; (1994) 1 All ER 53.

claim.[81] In most oil and gas litigations relating to environmental harm, establishing when a claim is time barred depends on when the cause of action actually arose in the case.[82] The usual rule in tort cases is that the applicable limitation period commences from the occurrence of the last element vital to the cause of action. Where the cause of the environmental injury is a consequence of a series of tortious acts by the defendant, the general rule is that the limitation period begins to run from the date of the last acts.[83]

In the above mentioned case of *The Shell Petroleum Development Company Limited v. Councillor F. B. Farah & Others*,[84] the defendant's/appellant's counsel argued that the plaintiffs'/respondents' case was statute-barred. The learned counsel based his submission on the fact that the environmental pollution complained of occurred in 1970; the rehabilitation processes had been completed between 1973 and 1974, while the action was instituted in 1989; several years after the end of the limitation period.[85] In reply, the plaintiffs'/respondents' counsel contended that the plaintiffs only became aware that the defendant had failed to rehabilitate their contaminated land in 1988 and further that since the tortious act of the defendant was a "continuing damage," time cannot accrue until "cessation of damage and/or abandonment of remedial responsibility" by the defendant/respondent.[86] The plaintiffs' counsel's submission was upheld both by the trial court and the appellate court. The Court of Appeal further specifically noted that the plaintiffs predicated their claim on the Petroleum Act 1969, which did not prescribe any period of limitation for instituting an action under it.[87]

In *Gulf Oil (Nig.) Ltd. v. Oluba*,[88] the oil company began oil exploration activities on the plaintiffs'/respondents' land sometime in 1973 and continued until 1989; causing injury to swamps, channels and lakes and resulted in loss of income from fishing, farming and exploitation of economic trees and raffia palms. However, the action which was commenced in 1986 was held to be statute-barred by the Court of Appeal since the plaintiffs/respondent instituted it thirteen years after the cause of action had accrued.[89]

The significant difference between *Farah's* case and the *Oluba's* case was that regarding the former, the plaintiffs only became aware of the cause of action a year prior to the institution of their action, and consequently, was still within the legally acceptable period. With respect to the latter case, it was a common ground that the wrong or "permanent damage" complained of by the plaintiff/respondent began in 1973 and continued till the filing of pleadings in the case. Naturally, therefore, the harm will remain the same as when it was caused since it is "permanent." It seems from the reasoning of the plaintiffs'/respondents' counsel that since the tort committed was a continuing one, it is bereft of the date of accrual. The appellate court in *Oluba's* case rightly noted that

"[i]n an action in tort, the limitation of the action runs from the date of its commission. It is immaterial to the date when the cause of action accrued that the effect of the complainant's injury or wrong continues ad infinitum. Such continuation will only enhance the quantum of damages."[90] In addition, it is worthy of note that in dealing with limitation of action, it is the defendant or the party opposing a cause of action that will specifically plead it as a bar.

[81] *The Shell Petroleum Development Company Limited v. Councillor F. B. Farah & Others* (1995) 3 NWLR (Pt. 382) 148 at p. 185.

[82] It is pertinent to state that once the cause of action accrues, time begins to run except when parties to the dispute are engaged in negotiation for purposes of settling the dispute or liability is admitted by the defendant. See *Eboigbe v. NNPC* (1994) 5 NWLR (Pt. 347) 649 at p.660. See *Nwadioro v. Shell Petroleum Development Company Limited* (1990) 5 NWLR (Pt. 150) 322 at p.338.

[83] G. Nelson Smith, "Nuisance and Trespass Claims in Environmental Litigation: Legislative Inaction and Common Law Confusion," (1995) 36(1) *Santa Clara Law Review* 39-71 at pp. 58-59.

[84] (1995) 3 NWLR (Pt. 382) 148.

[85] *Ibidem* at p.184.

[86] *Ibidem* at p.185.

[87] *Ibidem* at pp.186-187.

[88] (2003) FWLR (Pt. 145) 712; (2002) 12 NWLR (Pt. 780) 92.

[89] *Ibidem* at p.726.

[90] *Ibidem* per Ibiyeye, J.C.A. See also *Sanda v. Kukawa Local Government* (1991) 2 NWLR (Pt. 174) 379 at p. 391.

Alternative Dispute Resolution Mechanisms

One of the requirements for a peaceful society is that disagreement should be resolved by a mechanism that is non-violent in nature.[91] Alternative dispute resolution relates to the varied ways disputes could be resolved by disputing parties without either resorting to violence or a conventional trial in the court.[92] The 1999 CFRN and a number of other normative frameworks regulating the oil and gas operations in Nigeria have made provisions encouraging the use of ADR mechanisms to resolve conflicts in the petroleum industry. With respect to the 1999 CFRN, the foreign policy objectives of the Nigerian government prescribe that aside from adopting the adjudicatory mechanism, the government should also seek for settlement of global disputes through negotiation, mediation, conciliation and arbitration.[93] These constitutionally recommended modes of dispute settlements also encompass the resolution of disputes in the Nigerian oil and gas sector. Though the said provision of section 19(d) comes within the unenforceable clauses of chapter 2 of the 1999 CFRN which stipulates the fundamental objectives and directive principles of state policy of the Nigerian government,[94] yet it could be clothed with potency and justiciability as some statutory provisions recognising ADR mechanisms as methods of dispute settlements in the oil and gas industry have been made by the relevant Nigerian legislative houses as required by law[95] and sanctioned by the court.[96]

Similarly, the recently enacted Nigeria Upstream Petroleum Host Communities Regulations (NPHCD Regulations) 2022,[97] made pursuant to the combined effect of sections 10(f), 234(2)(3) and 235(6)(a) of the PIA 2021, provides for grievance mechanism and conflict resolution procedure.[98] Where disputing parties are unable to settle their differences within 30 days after service of the dispute notice, any of the contending parties may refer the dispute to the Alternative Dispute Resolution Center (ADRC) established under the National Oil and Gas Excellence Centre (NOGEC) for mediation.[99] The ADRC, which was inaugurated by the President Muhammadu Buhari in 2021, offers a platform where dispute in the industry could be resolved in a timely, cost-effective and mutually acceptable way through the mechanism of ADR[100] and so far, many oil and gas-related disputes are being handled by it through this mechanism.[101] This section of the work seeks to examine common forms of ADR mechanisms like negotiation, mediation, conciliation, arbitration and expert determination.

Negotiation

Negotiation is a form of an ADR mechanism that is adopted to resolve conflicts in the Nigerian oil and gas sector. Negotiation is any kind of intentional communication between two or more individuals or entities with the aim of

[91] Lawrence Atsegbua, *Oil and Gas Law in Nigeria: Theory and Practice* (4th Edition, Lagos: Four Pillars Publishers, 2021) pp. 327-328; J. G. Wetter, *The International Arbitral Process, Public and Private*, Vol. IV (Dobbs Ferry, New York: Oceana Publications Inc., 1979), p. 3.

[92] Scott Brown, Christine Cervenak and David Fairman, Alternative Dispute Resolution: Practitioners Guide (Washington, D.C.: Center for Democracy and Government, 1998), p. 4. Retrieved from:
< https://www.usaid.gov/sites/default/files/documents/1868/200sbe.pdf> (accessed on 4 November 2022).

[93] 1999 CFRN, section 19(d).

[94] 1999 CFRN, section 6(6)(c).

[95] Section 4 and Item 60(a) under the Exclusive Legislative List of the 1999 CFRN, Second Schedule (Part 1) for example, authorises the National Assembly to make laws for the promotion, enforcement and observance of the Items set out in Chapter II of the Constitution.

[96] See for instance, *Re-Olafisoye* (2004) All FWLR (Pt. 198)1106 at 1154; *Attorney- General, Ondo State v. Attorney-General, Federation & 35 Ors*, (2002) FWLR (Pt. 111) 1972.

[97] S. I. No. 45 of 2022. The Regulations came into force on 23 June 2022.

[98] NPHCD Regulations 2022, Regulation 39(1) and (2).

[99] NPHCD Regulations 2022, Regulation 39(4).

[100] See Nigerian Upstream Petroleum Regulatory Commission, "Department of Petroleum Resources Flags-off of Alternative Dispute Resolution Centre (ADRC)." Retrieved from <https://www.nuprc.gov.ng/department-of-petroleum-resources-flags-off-of-alternative-dispute-resolution-centre-adrc/ > (accessed on 4 November 2022).

[101] Femi Asu, "Over 43 oil, gas cases waiting to be resolved-DPR" (16 April 2021) *The Punch*. Retrieved from <https://punchng.com/over-43-oil-gas-cases-waiting-to-be-resolved-dpr/> (accessed on 4 November 2022).

reaching a reciprocally acceptable agreement.[102] The procedure may entail a situation where the parties involved make negotiating offers, counter-offers and concessions so as to reach a consensus.[103] This mode of ADR has been applied towards the settlement of most disputes either justiciable or non-justiciable. In some instances, resolving disagreements by negotiation may be motivated directly or indirectly by the evaluation of the affected parties' available options to a negotiated agreement. The better the available options, the greater a party will push for a more favourable settlement.

On the other hand, the less favourable the substitutes, the more supportive a party may be in the settlement negotiation. Thus, knowing the existing options and the strength or weaknesses of a party's position will always assist parties in making appropriate decisions on the negotiation table and what they want from the other party.[104] However, to a certain extent, settlement through negotiation may be determined by the comparative strength or influence of the parties involved.[105] It is not in doubt that due to the financial strength and the country's dependence on oil and gas to fund its budget, operating oil companies tend to relatively exert bargaining influence and power during negotiations than the host communities. Nonetheless, strategic negotiation is fast becoming a significant means of dispute resolution in Nigeria with vast theoretical underpinning.[106]

Mediation

Mediation is another commonly utilised method of ADR in commercial businesses, including in the oil and gas sector. It involves an independent, optional dispute resolution mechanism whereby an impartial third party is invited by the disputing parties to help them in identifying the contending issues, fashion out options for settling those mutually concerned matters and finding resolutions acceptable to all the parties.[107] Mediation is an informal process whereby a neutral intermediary aids the parties in reaching a resolution of their dispute based on the parties' respective interests.[108] Mediation is therefore, a "voluntary and confidential process in which a neutral person, the mediator, assists disputing parties to clarify issues, develop options and work towards a mutually beneficial resolution."[109] The benefits of using a mediation procedure are many, including the fact that it is inexpensive, simple and flexible, confidential, quick, and can often lead to a complete settlement of the disputants' differences without necessarily resorting to complicated legal rules, unless lawyers or legally trained individuals are retained as mediators.[110] Other possible reasons why parties should always endeavour to resolve their differences in the oil and gas industry through the process of mediation were well explained by Jamilu Mohammed in the following words:

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[102] Law Reform Commission, *Alternative Dispute Resolution* (Dublin: Law Reform Commission, 2008), p. 42; Roger Fisher, "Negotiating Power: Getting and Using Influence" in J. W. Breslin & J. Z. Rubin (eds.) *Negotiation Theory and Practice, The Program on Negotiation at Harvard Law School* (Cambridge, Massachusetts), pp. 127-128.

[103] Peter Wallensteen, *Understanding Conflict Resolution, War, Peace and the Global System* (London: Sage Publishing, 2002), p. 16.

[104] Roger Fisher, William Ury and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (Second Edition, New York: Houghton Mifflin Company, 1991), pp. xvii, 95-144.

[105] Jerome T. Barrett and Joseph P. Barrett, *A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement* (San Francisco: Jossey-Bass, 2004), p. 205.

[106] Akin Ibidapo-Obe and F. Abayomi Williams, *Arbitration in Lagos State: A Synoptic Guide* (Lagos: Concept Publications, 2010), p. 26; O. Ojielo, "Spectrum of ADR Options," (2008) 3(1) *Journal of Arbitration*, p. 49.

[107] William F. Fox, "The Wisdom of International Commercial Mediation and Conciliation" in Jacques Werner and Arif Hyder Ali (eds.) *A Liber Amicorum: Thomas Walde- Law Beyond Conventional Thought* (London: CMP Publishing Ltd., 2009), p. 45.

[108] Joyce A. Tan, *WIPO Guide on Alternative Dispute Resolution (ADR) Options for Intellectual Property Offices and Courts* (World Intellectual Property Organization Arbitration and Mediation Centre, 2018), p. 7. Retrieved from :< https://www.wipo.int/amc/en/docs/adrguidejuly2018.pdf> (accessed on 7 November 2022).

[109] United Nations Office on Drugs and Crime, *Training Manual on Alternative Dispute Resolution and Restorative Justice* (October 2007), p. 17. Retrieved from: <https://www.unodc.org/documents/nigeria//publications/Otherpublications/Training_manual_on_alternative_dispute_resolution_and_restorative_justice.pdf> (accessed on 7 November 2022).

[110] William F. Fox, "The Wisdom of International Commercial Mediation and Conciliation," *op. cit*., at p.47. See also Joyce A. Tan, *WIPO Guide on Alternative Dispute Resolution (ADR) Options for Intellectual Property Offices and Courts*, *op. cit*., pp. 15-20.

Moreover, oil and gas industry is an interdependent community where its members significantly value the relationships they have gradually been building all along, hence, adjudicating their disputes in an adversarial style is certainly not the most favoured approach. Therefore, when relationships are important to disputing parties, mediating their conflicts is a favoured approach to the resolution of their disputes. In comparison to litigation, the mediation forum is not adversarial in nature as there is no casting of blame or apportionment of faults; it is voluntary and non-binding, involving decisions made only by the parties themselves, not by the mediator and is more confidential in nature. The mediation outcome is consensual and reflects a mutual ground between the parties thereby reducing the chances of future disputes. This approach is in anyway welcome in the industry where a certainty and long-term partnership is a key.[111]

The prevalent usage of mediation and its continuing development as a tool for dispute resolution[112] has endeared the process to stakeholders in the Nigerian oil and gas sector as it is a speedy and cost-effective dispute resolution mechanism. It has even been suggested that in the oil and gas industry where disagreement takes a "vertical structure, for example, between a powerful entity like a MNCO and a relatively less influential individuals, it is best to adopt mediation process in resolving disputes between the operating oil companies and the local communities;[113] even in disputes concerning environmental impact assessment of some petroleum-related projects with immitigable substantial negative environment consequences.[114] The reason why mediation procedure is desirable is that unlike a situation with legal action where there is always the "victor-and vanquished" attitude, the likelihood of sustaining ongoing relationships is paramount in a mediation process.[115]

Actually, due to its advantages, mediation procedure is often encouraged by some legislation regulating contractual relationships in the oil and gas industry, and at times, even made obligatory. For instance, under the PIA 2021, model licences or leases are required to contain clauses regarding rules for settlement of disputes by means of mediation.[116] Both in the upstream and midstream/downstream petroleum sectors, a licence, lease or permit is liable to be revoked by the Minister of Petroleum Resources or any person designated by the President as having task of supervising the petroleum industry if the holder refuses to abide by a decision that arises from the dispute resolution clauses stipulated in a licence, lease or relevant provisions of the PIA.[117]

Moreover, the extant PIA 2021 empowers the NMDPRA to mediate over disputes pertaining to third party access concerning midstream and downstream gas operations, midstream and downstream petroleum liquids activities as well as open access.[118] Besides, section 234(2) and (3) of the PIA 2021 authorise the NUPRC and the NMDPRA to make regulations including a grievance method on how to resolve disagreements between licensees or lessees and host communities in order to enhance their "peaceful and harmonious co-existence."[119] A vital question that needs further examination, if the development of the mediation procedure is to be encouraged, is whether and how

[111] Jamilu Ibn Mohammed, "Dispute Resolution in the Oil and Gas Industry: An Appraisal of Mediation and Litigation Procedures, " (2017) 2(1) *Journal of Private and Business Law*, pp. 115-126 at p. 119. See also Jean Francois Guillemin, "Reasons for Choosing Alternative Resolution" in Arnold Ingen-Housz (ed.) *ADR in Business: Practice and Issues across Countries and Cultures* Volume II (The Netherlands: Kluwer Law International, 2011), pp. 13-48.

[112] Edna Sussman, "Combination and Permutations of Arbitration and Mediation: Issues and Solutions" in Arnold Ingen-Housz (ed.) *ADR in Business: Practice and Issues across Countries and Cultures* Volume II (The Netherlands: Kluwer Law International, 2011), pp. 381-398 at p. 382.

[113] Ugo C. Ilegbune, "Mediating Community/Company Environmental Disputes in the Oil and Gas Industry: A Guide for Promoting Environmental Mediation in Emerging Economies- Focus on Nigeria," Unpublished Dissertation submitted to the Centre for Energy, Petroleum and Mineral Law and Policy, University of Dundee, March 2004, pp. 15-25. Retrieved from <https://static1.squarespace.com/staric/5bb24d3c9b8421e87bbb6t/5c2a846d70a6ae0b32f3d8/1546290287882/Ilegbune-mediating-Ugo99.pdf> (accessed 7 November 2022).

[114] Environmental Impact Assessment Act, Cap. E12, Laws of the Federation of Nigeria 2004, sections 29-33.

[115] J. G. Martin and M. S. Anshan, *Alternative Dispute Resolution for Oil and Gas Practitioners* (Chicago Illinois: American Bar Association, 2001), p. 5.

[116] PIA 2021, section 76(f).

[117] PIA 2021, sections 96(1)(l); 120(1)(j).

[118] PIA 2021, sections 163, 179(c) and 180(2)

[119] PIA 2021, section 234(1)(c).

a consensus reached through mediation can be enforced by the parties.[120] This is significant as regulation 39(9) of the NPHCD Regulations 2022 requires that any settlement arrived at by the disputing parties under mediation and appropriately signed by the disputing parties or their representatives shall be final and binding on the parties.[121]

Conciliation

The terms, conciliation and mediation, have often been used interchangeably in some jurisdictions, while in others, the two terms are distinguishable.[122] Conciliation involves the appointment of a neutral third party who is more of an adviser or bridge-builder between the two contending parties. The PIA 2021 and the Arbitration and Conciliation Act (ACA) 1988[123] provide for the right of parties to settle their disagreements through the procedure of conciliation. With respect to the ACA 1988, section 37 specifically states that parties to any agreement may seek peaceful settlement of any dispute relating to their agreement by conciliation under the provisions of the statute. Under the PIA 2021, mediation process is to be incorporated into rules governing resolution of disputes in a model licence and a model lease[124] and failure to comply with judgment reached from the dispute settlement provisions stated in a licence, lease or the extant legislation may constitute a valid reason for its annulment.[125]

Similarly, parties to an international commercial agreement may decide in writing that a dispute arising out of the agreement may be resolved by conciliation under the Conciliation Rules stipulated in the Third Schedule to the legislation.[126] Under the Nigerian law, any party desiring to initiate conciliation procedure is required to notify the other party in writing stating a brief statement setting out the subject of dispute and the conciliation proceedings is deemed to commence on the date the conciliation request is accepted by the other party.[127] A conciliator after examining the case and hearing the parties would draw up and propose the terms of settlement, which in his opinion, represents a fair compromise for the parties.[128] Where the submitted terms of settlement is rejected by the parties, they may submit the dispute to arbitration in accordance with any agreement between them or institute a legal action in court as they may consider appropriate.[129]

Arbitration

Arbitration is a legally effective adjudication of a dispute, otherwise than by the ordinary procedure of regular courts.[130] Under dispute resolution through arbitration, the parties submit their dispute to a neutral party of their choice or as stipulated in their agreement, the decision of which becomes enforceable on the parties. In order to attract judicial recognition, the decision or award of the arbitration must be established to be certain, final, reasonable, legal, possible and must settle all the disagreements submitted by the parties to the arbitration. A decision of arbitration is legally binding on the disputants and is conclusive as any decision of a legally constituted national court.[131]

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[120] Edna Sussman, "Combination and Permutations of Arbitration and Mediation: Issues and Solutions" in Arnold Ingen-Housz (ed.) *ADR in Business: Practice and Issues across Countries and Cultures* Volume II (The Netherlands: Kluwer Law International, 2011), p. 392.

[121] NPHCD Regulations 2022, Regulation 39(9).

[122] J. Olakunle Orojo and M. Ayodele Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Lagos: Mbeyi & Associates (Nigeria) Limited, 1999), p. 9. For detailed distinction between conciliation and mediation, see Alan Redfern and Martin Hunter, *Law and Practice of International Commercial Arbitration* (Fourth Edition, London: Sweet & Maxwell, 2004), pp. 26-27.

[123] Act No. 11 of 1998 (now Cap. A18, Laws of the Federation of Nigeria 2004).

[124] PIA 2021, section 76(f).

[125] PIA 2021, section 96(1)(l).

[126] ACA 1988, section 55.

[127] *Ibidem*, sections 38 and 39.

[128] Greg C. Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria* (Second Edition, Enugu: Snaap Press Nigeria Ltd., 2004), p. 8.

[129] ACA 1988, section 42(3).

[130] *N. N. P. C. v. Lutin Investments Ltd* (2006) 2 NWLR (Pt. 965) 506 at 542.

[131] *Clement Ezeanoikwa v. Nwankwo Muoneke* (2005) All FWLR (Pt. 256) 1327 at p. 1340. See also Greg C. Nwakoby, p. 3.

The existence of an arbitration clause in a contract or agreement of parties does not exclude or limit their rights or remedies but simply set out a procedure through which the parties may settle their differences.[132] The courts would readily enforce an arbitral award and would be unwilling to set it aside where the parties have agreed to abide by the decision of a tribunal of their own choice except there has been something fundamentally wrong and vicious in the proceedings.[133] Thus, where for instance, the arbitrator acted beyond his powers, has committed misconduct or the award or proceeding was improperly procured, the court can set aside the arbitral award and remit to the arbitrator for reconsideration,[134] though the arbitrator liable for misconduct may, on application of any party, be removed by the court.[135]

Prior to the enactment of the PIA 2021, a number of national laws such the Oil Pipelines Act 1956 (OPA),[136] Petroleum Act 1969 (PA),[137] Nigerian Investment and Promotion Commission Act (NIPCA),[138] and the Nigerian Liquefied Natural Gas (Fiscal Incentives, Guarantees and Assurances) Act,[139] among others, made provisions recognising the use of arbitration procedure to resolve conflicts between parties in the Nigerian oil and gas sector. For instance, section 17(6) of the OPA provided that every oil pipeline licence would be deemed to include a clause stating that where any question or disagreement occurs between the Nigerian President or the Minister in charge of petroleum resources and the licensee in respect of the licence or "any matter connected therewith shall if it cannot be resolved by agreement be referred to arbitration."

With respect to the PA, section 11(1) explicitly provides that dispute which occurs from the provisions of the statute should be resolved by arbitration in accordance with the arbitration law of the State in Nigeria as jointly agreed by the parties. In a situation where the parties fail to reach a consensus, the arbitration law of the Federal Capital Territory, Abuja would become applicable.[140] Some of these statutory clauses, such as the OPA and the PA, have been saved under the extant PIA 2021 until the termination or expiration of their current licence or lease.[141] It is vital to add that though section 311(9) of the PIA 2021 saves some of the earlier statutes like the PA and the OPA, among others, any of the provisions under these saved statutes that are in conflict or inconsistent with the provisions of the PIA shall be null and void to the extent of the conflict or inconsistency.[142]

Under the extant PIA 2021, disputes involving licences, leases and permits in the oil and gas industry are to be referred to arbitration. Illustratively, standard petroleum prospecting licences and petroleum mining leases in all cases are required to contain clauses relating to dispute resolution through arbitration procedure.[143] It is noteworthy that where a licensee or lessee neglects to comply with arbitral award decision arising from oil and gas dispute resolution provisions stated in a licence, lease or the PIA, it may constitute a good reason for the abrogation of such a licence or lease.[144]

In the same vein, a licence or permit for midstream and downstream petroleum activities may be rescinded where the licence or lease holder refuses to abide by arbitration award or judgment.[145] Section 4 of the First Schedule to

[132] *Onward Enterprises Ltd v. MV Matrix* (2010) 2 NWLR (Pt. 1179) 530 at pp. 551-552.
[133] *Baker Marine (Nig.) Ltd v. Chevron (Nig.) Ltd* (2000) 12 NWLR (Pt. 681) 393 at p. 407.
[134] *Total Engineering Services Team Inc v. Chevron* (2017) 11 NWLR (Pt. 1576) 187 at 210.
[135] Arbitration and Conciliation Act 1988, sections 29- 30.
[136] Act No. 31 of 1956 (now Cap. 07 Laws of the Federation of Nigeria 2004).
[137] Cap. P10 Laws of the Federation of Nigeria 2004, section 11(1).
[138] Act No. 16 of 1995 (now Cap. N117, Laws of the Federation of Nigeria 2004), section 26.
[139] Act No. 39 of 1990 (now Cap. N87, Laws of the Federation of Nigeria 2004). Paragraph 22 of the Second Schedule to the Nigeria LNG (Fiscal Incentives, Guarantees and Assurances Act) requires that where parties fail to reach an amicable settlement concerning a substantial issue arising from the clauses of the statute within a limited period, the dispute may be submitted to arbitration before the International Centre for the Settlement of Investment Disputes (ICSID).
[140] Petroleum Act, section 11(2).
[141] PIA 2021, section 311(2)(c) and (9). For a detailed list of the repealed laws and saving provisions, see Enobong Mbang Akpambang, "An Appraisal of Upstream Petroleum Licensing Regime in Nigeria under the Petroleum Industry Act 2021" (2022) 89 *The Juridical Current*, 30-50 at p. 33.
[142] PIA 2021, sections 309 & 311(9)(c) of the PIA 2021.
[143] PIA 2021, section 76(f).
[144] PIA 2021, section 96(1)(l).
[145] PIA 2021, section 120(1)(j).

the PIA 2021 made under section 3(3) of the PIA involving pre-emption rights mandates that any argument regarding a delay due to causes beyond the control of a licensee or lessee shall be resolved by agreement between the Minister of Petroleum Resources and the licence or lease holder or in the absence of such agreement by arbitration. Similarly, disputes as to price of petroleum products taken by the Minister in the exercise of pre-emption rights is to be resolved by agreement between the holder of the licence or lease and in default of parties' agreement by arbitration.[146] The arbitration shall only take place after the delivery of the petroleum products.[147]

With respect to host communities' development, the PHCCR 2022 requires that where mediation referred to the ADRC of the NOGEC cannot be resolved within a stipulated period after issuance of the mediation notice, an aggrieved party may refer the dispute to the NUPRC for resolution in good faith. However, where the NUPRC is still unable to resolve the dispute within a period of 45 days of the dispute being referred to it, the disagreeing parties may further refer the dispute to an arbitrator under the Arbitration and Conciliation Act.[148]

One of the most significant requirements under the PIA is that pre-2021 holders of oil prospecting licences (OPL) or oil mining leases (OML) has a free choice of remaining under that regime or convert to the fiscal regime under the PIA through a voluntary conversion contract. Though such voluntary conversion entitles the licensee or lessees to benefit from the PIA's favourable fiscal regime but the conversion contract must contain a termination clause of all outstanding arbitration or court cases relative to the relevant OPL or OML.[149] The implication of this statutory stance under section 92(3) of the PIA is that no provision of these contractual agreements, inclusive of the clauses dealing with arbitration shall stop or restrict the Nigerian government from exercising its right to alter or invalidate its contract with the multinational oil companies (MNOCs), though liability for breach of contract would occur, for which monetary damages may be awarded in appropriate situation.[150] The likely reason for the inclusion of such "termination clause" is to eradicate certain investor guarantees and protections that currently exist and protect the Nigerian government from potential liabilities.[151]

Expert Determination Mechanism

The use of independent specialist or individual with wide-ranging experience or knowledge in the field of the disputes in order to determine technical or evaluation issues has been known to have existed under English rule for several years.[152] Expert determination is a mechanism whereby disagreement between parties is submitted by consent of the disputants to one or more experts to determine for them. The contending issue may involve a procedure in the contractual execution before any disagreement occurs or an aspect of conformity with contractual terms. It can also be an acceptable means of dispute resolution or an ADR mechanism.[153]

Expert determination is fast and time saving, comparatively inexpensive, informal, confidential and non-adversarial resolution by experts, for which parties may agree that it becomes conclusive and binding unless they decide otherwise.[154] Unlike the situation with arbitration, an expert is appointed so as to apply his expertise in proffering expert judgment or opinion towards the determination of the dispute between the parties.[155] In the oil and gas ventures, expert determinations have been resorted to in a number of situations. A case in point was in

[146] First Schedule to the PIA 2021, section 5(b).
[147] First Schedule to the PIA 2021, section 7.
[148] NPHCD Regulations 2022, Regulation 39(11).
[149] PIA 2021, section 92(1)-(3).
[150] Lawrence Atsegbua, *Oil and Gas Law in Nigeria: Theory and Practice* (Fourth Edition, Benin City: Four Pillars Publishers, 2021), pp. 181-182
[151] Deloitte, "Petroleum Industry Act, 2021: Administrative Framework." Retrieved from <https:www2.deloitte.com/content/dam/Deloitte/ng/Documents/energyresources/PIA_Tax_Administrative%20Framework.pdf> (accessed on 26 September 2022).
[152] Anthony Connerty, "Dispute Resolution in the Oil and Gas Industries", (2002) 20 *Journal of Energy and Natural Resources Law*, 144-171 at p. 156.
[153] Djakhongir Saidov, "An International Convention on Expert Determination and Dispute Boards?" (2022) *International and Comparative Law Quarterly*, 697-726 at p. 699.
[154] *Ibidem*.
[155] Andrew Judkins, "Use of experts determination mechanisms," Norton Rose Fulbright (March 2022). Retrieved from: <https://www.nortonrosefulbright.com/en/knowledge/publications/470a3448/use-of-expert-determination-mechanisms> (accessed on 26 September 2022).

*Total Gas Marketing Limited v. ARCO British Limited & Other*s,[156] where the plaintiff was engaged in the business of buying and reselling gas for industrial and domestic purposes in the United Kingdom while the defendants were licensees of the Trent Gas Field in the southern North Sea. Each of the defendants was required to enter into an allocation agreement with the plaintiff. The contract lacked an arbitration clause but did recognise the resolution of disagreement by a duly appointed expert. However, no such allocation agreement was entered into as at the date chosen by the ARCO British Limited, though it had started delivering gas to Total Gas Marketing Limited a week later. It was held that the plaintiff was not bound by the agreement since the necessary conditions were not met by the defendants by the first delivery date stipulated by ARCO British Limited itself.

In a second case, *Shell (UK) Limited & Anor v. Enterprise Oil Plc & Others*,[157] the parties were licensees for oil blocks exploration and production operations in the North Sea. It was part of their agreement that failure to agree on specific element within a given period will result in referring the matter to an agreed expert for determination. Apparently, certain issues could not be resolved by the parties and were accordingly referred to the agreed expert. It was contended by the defendant that the expert determination was of no contractual importance and that the parties were therefore, not bound by the subsequent determination. Defendant's argument was anchored on the fact that the expert had applied a different computer package for mapping the contours of strata of rock beneath the seabed contrary to what was agreed upon. It was held that if a mistake was made by an expert who, in all material respect, had acted beyond the agreed obligations or instructions of the parties, the conclusions of that expert opinion would be unbinding on the parties.

The court noted that Enterprise Oil Plc had been treated unfairly by the independent expert utilising the substitute computer package which was not compatible with the defendant's own. Thus it was held that the expert's error was fundamental and the expert's decision cannot be binding on both parties.[158] It is worthy of note that what constitutes material departure from the instructions of expert to render his opinion unenforceable would be determined on a case-by-case basis. Such materiality may be seen by reference to the possible result that the expert's error would have on the outcome or the procedure, inclusive of the capacity of the parties to administer the process in accordance with the contract.[159]

The use of expert determination in resolving oil and gas disagreement is also recognised in Nigeria. Pursuant to the provisions of the PIA, upstream licences and leases are required in all cases to contain clauses relating to dispute resolutions through the procedure of expert determination[160] and failure to adhere to any expert determination relating to dispute resolution provision set forth in the licence or lease or the Act could provide a potential justification for the nullification of the licence or lease by the Minister of Petroleum Resources.[161] In the same manner, a licence or permit granted for midstream and downstream petroleum operations may be withdrawn where the licensee or holder of the permit falls short of complying by any expert determination towards dispute resolution as recognised under the licence or the Act.[162]

Conclusion

Conflict is a predictable part of engaging in business activities, including in the Nigerian oil and gas industry. With this understanding in mind, this article sought to examine the various ways through which oil and gas-linked disputes could be resolved between and/or among disputing parties under the Petroleum Industry Act 2021 and some relevant statutes, which, as enjoined by section 309 of the PIA 2021, must not be incompatible with the clauses of the extant PIA or risk being a nullity to the extent of such inconsistency.

While the traditional manner of dispute resolution is through court litigations, it was discovered in the article that court cases usually take a significant amount of time and costs to settle, especially where it involves appeals and foreign litigations. At times, even the final determination of the case may not always be to the satisfaction of the feuding parties or sufficiently settle the disputes in a way that is concordant with governance and business-related

[156] (1998) 2 Lloyd's Rep 209 HL
[157] (1999) 2 All ER 87; (1999) 2 Lloyd's Rep. 456.
[158] See also *Jones v. Sherwood Computer Services Plc* (1992) 1 WLR 277 at 278.
[159] *Veba Oil Supply & Trading GmbH v. Petrotrade Inc* (2001) EWCA Civ 1832; (2001) 2 Lloyd's Rep 731.
[160] PIA 2021, section 76(f).
[161] PIA 2021, section 96(1)(l)
[162] PIA 2021, section 120(1)(j)

interest of the petroleum industry. Besides, the finality of lawsuits may be uncertain as legal decisions/rulings may be overruled on subsequent appeals. This is apart from other contending issues like the problems of establishing *locus standi*, burden of proof, lack of confidentiality and ensuring that the action brought is not statute-barred.

However, litigation may at times still be the only pragmatic means to resolve some oil and gas allied-disputes. For an example, subjecting a purely oil and gas tax-related dispute to arbitration is seriously in doubt in view of the unsettled stance of some court's decisions in Nigeria. In the earlier cited case of *Esso Exploration and Production Nigeria Limited & Anor v. NNPC*, for instance, the appellate court reasoned that taxation matters was constitutionally within the exclusivity of the FHC and as a result could not be a subject of ADR procedure like arbitration.[163] The other alternative is that where contractual matters are interwoven with tax-allied disputes, it is better to separate the contractual matters from the tax related dispute and subject the contractual relationship emanating from such transactions to an ADR process while the pure tax-related matter is challenged in the appropriate court.

Perhaps in recognition of the possible challenges which disputing parties may face while adopting the litigation option, the PIA equally encourages parties to insert in licences, leases or agreements rules for the determination of disputes through the use of alternative dispute resolution mechanisms like arbitration, mediation, conciliation and expert determination. Adopting the mechanism of ADR would assist in ensuring that oil and gas-related disputes are settled in a promptly, cost-effective and collectively satisfying manner. As a matter of fact, the newly created ADRC may likely use industry experts with wealth of experiences in related areas of disputes. In such situations, settlement of disputes will be quicker, cost-saving and in the general interests of the parties, relevant stakeholders and the country at large. This will also boost the confidence of oil and gas investors in doing business in Nigeria as less money may be spent in pursuing litigations and/or out of court settlements.

The gravitational attraction of ADR can be ascribed to the fact that it takes care of the interests of all the parties in a mutually agreeable manner. ADR procedure is conceivably fast, inexpensive and promotes confidentiality, as to a greater extent, it permits parties to efficiently regulate disclosures and access to classified or confidential data. Moreover, as opposed to litigation, ADR process and the resultant agreement reached by parties can be kept confidentially to the advantage of disputing parties who may be desirous of protecting their enterprises' reputations and relationships. Also, unlike litigation which cannot absolutely guarantee conclusiveness of legal decision, ADR procedures can promote finality of the verdicts reached or arbitral awards. For example adopting a hybrid ADR mechanism like a Med-Arb or by appointing a mediator as an arbitrator can help in the documentations of mediation resolutions for consent awards. Employing such a hybrid approach to a mediation process, which is often by contractual agreements, for instance, can help the parties in the long run from resorting to litigation in the future.

Given the fact that ADR programmes or processes like mediation, conciliation and multi-door courthouses etc, have been developed and recognised under a number of court statutes and rules in Nigeria,[164] to complement and support quick and cost-saving dispensation of justice, the authors strongly recommend that in view of the barriers often encountered by litigants in settling oil and gas-related disputes through regular courts, there is need for a paradigm shift by disputing parties to adopt appropriate ADR procedures in settling conflicts in the petroleum sector instead of resorting to the conventional litigation approach. Such a positive shift will aid in resolving amicably disputes that are inappropriate for adversarial legal actions as well as curtail financial and procedural impediments to settlement of oil and gas-associated disputes in Nigeria.

[163] See also 1999 CFRN, section 251(1)(b); ACA, section 35, 48(b)(ii) and 52(2)(b)(ii).

[164] See for instance, Federal High Court Act, Cap. F12, Laws of the Federation of Nigeria 2004, section 17; National Industrial Court of Nigeria (Civil Procedure) Rules 2017, Order 42; and Court of Appeal Rules 2021, Order 16- on Court of Appeal alternative dispute resolution programme (CAADRP) and the attendant Rules, among others.