

EFFECTIVE DISPUTE SETTLEMENT IN THE PETROLEUM INDUSTRY:
SELECTED NATIONAL AND INTERNATIONAL
LEGAL FRAMEWORK

By

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Abstract

In this era of commercial globalization, arbitration (ADR) in the petroleum energy industry has taken a preeminent importance in business relations due to socio-political vested interests. Europe has got fair share of contractual disputes with Russian gas supplies in the scramble for energy due to the war. This study highlights applicable international legal framework governing ADR in the industry and why parties should opt for it. The study considered the relevancy of Multi-Door Courthouses (MDCHs) in this regard. The doctrinal methodology was used to identify the role Courthouses and independent ADR institutions play. It was established that parties have reached dead ends and suffered reputational damage from protracted litigation, whereas ADR preserves parties' corporate reputation and business relationship. It was recommended that the relevant laws be reviewed to strengthen arbitration institutions, the Court of Appeal and the Supreme Court should have MDCHs to compliment their mediation centers, to empower judges to refer cases that require expert knowledge to specialized arbitration institutions and that enforcement of awards be made less cumbersome and without need for Court orders.

Key Words: Dispute, Petroleum Energy, Arbitration, Petroleum industry, Multi-Door Courthouse.

1. Introduction

The petroleum industry worldwide is grappling with conflicts of commercial, contractual, technical, host community, political, administrative and individual rights related issues which more often end in litigation with consequent disruptions and loss of value in various forms. Over these years from 1889,¹ the parties to petroleum contracts

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have had scores to settle both it is the International Oil Company (IOC) and their counterpart over trespass on the acreage apportioned to them or Host Communities (HC) and the IOC. At other degrees, it is the HC and the federal government at loggerheads or the host country versus IOC or companies versus companies entangled in endless litigation over contractual rights and obligations² which culminates in international arbitration commissions.

Unfortunately, the extant laws³ rather than providing for preventive measures that will disallow the exploitation and ravaging of the ecosystem of the HC tends to tacitly encourage the pollution by providing unscrupulous compensatory scheme which is often below standard, these laws relating to payment of compensation are loosely worded, fragmented and create loopholes in their implementation to the detriment of the HC and to the undue advantage of the federal government and their accomplice⁴ who take advantage of the status quo and their victims to shirk responsibility of maintenance of the environment⁵ from where they generate trillions of dollars. This sad reality is the recurrent cause of conflict and dispute in the petroleum industry.⁶

An in-depth analysis of the various petroleum laws in the country indicates that the only remedy known to have been provided by Legislation for damages is compensation. Regrettably, compensation is majorly through adjudication or litigation which is a complex process rife with delays, technicalities and exorbitant costs. From a review of cases⁷ decide on this point, it can be said that the Court decide the issue of

¹ C H Anekusa, *Nigerian Arbitration Principles and Practice* (2nd edn: Educomp 2002) 35-37.

² F F Ntido, 'Multi-National Oil Companies Relations in the Niger-Delta: A look at Dispute Resolution'
<www.geplaw.com/media/publications/multi.Pdf?phpmyadmin=17c4d67d23et186b573r72bc>
accessed 7 March 2022.

³ The enactment of the National Oil Spill Detection and Response Agency (NOSDRA) ACT, 2006 and the two Regulations to wit: Oil Spill and Oily Waters Management Regulations, 2011, and the Oil Spill, Recovery, Clean-up, Remediation and Damage Assessment Regulations 2011, can be regarded as the first major legislative attempt on oil-related environmental pollution prevention in Nigeria.

⁴ Section 20 of the 1999 Constitution as amended forms part of chapter II of the Constitution which was rendered non justiciable by the framers. It means that victims of oil pollution cannot enforce their right thereunder.

⁵ The NESDRA Act of 2007 was enacted to protect the environment specifically from oil pollution.
⁶(n 3).

⁷*Gbemre v SPDC & Ors* (2005) A.H.R.L.R. 151; *HHR (Dr) Alferd Diете-Spiff & Ors v Mobil (Nig) Unltd* (2003) FHCLR 311; *Ipco v NNPC* (2005) 2 Lloyd's Report 326.

compensation as only pecuniary in nature and in most cases,⁸ monetary damages are awarded to the plaintiff. More so, the Courts may lack the expertise necessary to assess damages in a manner that would make compensation fair and equitable.⁹

However, in assessing the monetary compensation to be paid, the powers of the Courts have been so constrained that they often turn blind eyes to prayers to grant remedies outside the provisions of the laws where they are deserving. Court judgments do not adequately resolve disputes in a manner that is consistent with the regulatory and commercial interest of the industry.¹⁰ In as much as litigation fails to address these inherent inequalities, it compounds the funding risks, heightens uncertainties for foreign investment and create strain of business relationship among technical and commercial partners.

Judicial remedies for litigants in the industry have become more undesirable, the indices are: uncertainty of outcome, undue delay, vested political interests, cost of litigation and worse of all business reputational damage. To remedy this impasse, national and international laws now provide platforms where such disputes could be settled in a timely, cost-effective and mutually agreed manner. However, parties are at times unaware of such provisions to the application of arbitration in the event of disputes and the various agencies and institutions recently empowered by law to settle dispute which some authors have not given due publicity.

Therefore, there is the need for institutionalization and application of international laws towards the realization of effective dispute settlement in the petroleum industry.

2. Conceptual Review

For a proper appreciation of this paper, an explanation of key concepts becomes necessary.

2.1 Petroleum

The Petroleum Industry Act¹¹ of 2021 provides that Petroleum refers to hydrocarbons and related compounds found in their natural condition in strata, such as crude oil, natural gas, condensate, and mixes of these, but excludes bitumen and coal. Petroleum refers to mineral oil or any related

⁸ *Ibid.*

⁹ *Isaiah v SPDC* (2001) 11 NWLR (pt. 723) 168.

¹⁰ *Ipco v. NNPC* (2005) 2 Lloyd's Report 326.

¹¹ (n 1), s 318.

hydrocarbon or natural gas in its natural condition or strata, excluding bituminous shales or other layered formations out of which oil may be produced by destructive distillation.

Petroleum is a mixture of hydrocarbons which is found in rock strata and which can be extracted and refined to produce different kinds of fuel including petrol, diesel oil, aviation fuel and paraffin.¹² Although more often, the term is literally restricted to the liquid form otherwise known as crude oil, it also includes natural gas and viscous solid called bitumen found in tar sands.¹³

2.2. Petroleum Energy

Petroleum energy refers to refined petroleum products used as source of energy such as biofuels produced from biomass which when refined, are used as source of energy for transportation, electricity generation, heating and asphalt. Sources of petroleum energy include natural gas, oil, bitumen, biomass. Products of petroleum energy include propane, motor spirit, gas, waxes, lubrication oil, gasoline, grease, kerosene lubricants, jet fuel, bitumen, and plastics.¹⁴

2.3 Petroleum Industry

The Petroleum Industry Act¹⁵ provides that the petroleum industry in Nigeria includes industries involved in upstream, midstream, and downstream activities.¹⁶ The petroleum industry has been described by scholars as business which main focus involves any of the activities of exploration, extraction, conversion, exploitation, production, transportation, distribution processing and storing and sale of petroleum products and its derivatives.¹⁷

¹² N J Hyne, *Nontechnical Guide to Petroleum Geology, Exploration, Drilling, and Production* (3rd edn: Pennwell Books 2012) 166.

¹³ B P Tissot and D H Welte, *Petroleum Formation and Occurrences* (2nd edn: Springer Berlin Heidelberg 2014) 104.

¹⁴ 'Energy Education' <https://energyeducation.ca/encyclopedia/Petroleum#cite_ref-6> accessed 7 March 2022.

¹⁵ The Petroleum Industry Act 2021 is the extant legislation in Nigeria that provides legal, governance, regulatory and fiscal framework for the Nigerian petroleum industry, the development of host communities; and for related matters.

¹⁶ PIA 2021, s 318.

¹⁷ J G Frynas, *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities* (Munster: Verlag 1999) 67.

2.4 Dispute

According to the Black Laws definition,¹⁸ a dispute is a conflict or controversy which gives giving rise to a specific litigation. In the Palestine Concessions case, the Permanent Court of Justice (PCIJ) and the International Court of Justice (ICJ) characterized a dispute as an agreement on a matter of law or fact, a clash of legal perspectives, or a conflict of interests involving two or more people. In the Advisory Opinion case, the ICJ defined a dispute as a scenario in which the two parties had obviously opposing opinions on the subject of whether or not particular duties should be performed.

2.5 Multi-Door Courthouse

Multi-Door Courthouse is an ADR Centre established in connection with a Court to offer ADR processes such as Arbitration, Conciliation, Meditation, Early Neutral Evaluation, Negotiation and Hybrid Process as Alternative or Supplement to Litigation, for amicable, timeous, cost-effective access to justice.

2.6 Arbitration

Arbitration is a procedure wherein disputants willingly submit their disagreements to a neutral third-party arbitrator whom they choose for a ruling based on the facts and arguments brought before the arbitrator or arbitral tribunal.¹⁹ In arbitration, disputes are settled between two or more parties through voluntary terms mutually agreed by parties when they signed the contract in question. Arbitration is conducted by an impartial third party with parties' consent as prerequisite.²⁰

3. National Legal Framework for Arbitration in the Petroleum Energy Industry

There are various legislations which provides for the use of arbitration in settlement of disputes in the industry. Some of the laws allow the parties to choose among the options while others make it compulsory. These statutes include: The Petroleum Industry Act,²¹ Arbitration and

¹⁸ B A Garner (ed.), *Black's Law Dictionary* (West Publishing Co Ltd, 1999).

¹⁹(n 17), 34.

²⁰C A Obiozor, *Courts and The Framework for Domestic Arbitration Under the Act in Nigeria* (Onitsha: Allied press & Co. 2010) 38.

²¹PIA 2021, s 163.

Conciliation Act,²² Nigeria Investment Promotion Commission Act,²³ Nigeria Liquefied Natural Gas (Fiscal Incentives Guarantees and Assurance) Act,²⁴ The Public Enterprise Privatization and Commercialization Act,²⁵ Petroleum (Drilling and Production) Regulation,²⁶ Environmental Protection and Management Act,²⁷ Public Enterprise (Privatization and Commercialization) Act,

3.1 Petroleum Industry Act, 2021

The Petroleum Industry Act²⁸ provides for the submission to mediation and arbitration any disputes arising from the administration or in relation to operations in the petroleum industry. Section 163 of the Act provides that “the authority may mediate in disputes in respect of third parties access”. The ‘authority’ that is referred to in this section is the Nigerian Midstream and Downstream Petroleum Regulatory Authority.

A novel provision of the PIA is the establishment of two regulatory agencies namely: Nigerian Upstream Petroleum Regulatory Commission and Nigerian Midstream and Downstream Petroleum Regulatory Authority, for the effective administration of the Act and incidental matters including resolution of disputes arising therefrom.

3.2 Arbitration and Conciliation Act, 1996

The Act covers the whole federation. It is the primary arbitration law, and it acknowledges the legality of other laws that provide conditions for the referral of issues to arbitration, as several other laws may provide.²⁹ The legislation creates a consistent legal framework for fair and efficient conflict resolution through arbitration and conciliation, as well as to ensure that the Convention on the Recognition and Enforcement of Arbitral Awards is upheld (New York Convention).³⁰

²² Cap A18, LFN 2004.

²³ Cap N117 LFN, 2004.

²⁴ Cap N34, LFN 2004.

²⁵ Cap P. 38 LFN, 2004.

²⁶ Regulation 23 of the Petroleum Regulation.

²⁷ EPMA, 2019.

²⁸ (n 23).

²⁹ Section 34 of the Act provides that the Act does not affect other laws that make provision for settlement of disputes or arbitration. This means that the Act saves the validity of any law providing for arbitration.

3.3 Nigeria Investment Promotion Commission Act, 1995

The Act recommends settlement of disputes in industrial sectors involving investment and commerce which generally applies to the petroleum industry. Section 26 (3) of the Act provides:³¹ 'Where in respect of any dispute, there is disagreement between the investor and federal government as to the method of dispute settlement to be adopted, the international center for settlement of investment dispute rules shall apply'.

The Act³² also provides the framework for resolution of dispute through ADR.³³ The provision of the Act,³⁴ is an assurance of fairness and security for IOCs as well as different levels of government.

3.4 Nigeria LNG (Fiscal Incentives Guarantees and Assurance) Act, 1989

The government of Nigeria by this Act³⁵ showed its desire to ensure stability and a predictable legal framework for investment to attract foreign investment for development of the petroleum energy Industry,³⁶ that in the event of dispute between shareholders, it should be settled amicably, that recourse shall be made to ICSID arbitration 90 days after parties have failed to reach amicable settlement of dispute.³⁷ The clauses are self-executing arbitration which suffices for the government's consent to ICSID arbitration.

3.5 Public Enterprise (Privatization and Commercialization) Act, 1999

The Public Enterprise (Privatization and Commercialization) Act established the Public Enterprise Panel³⁸ empowered to resolve disputes between any enterprise or bodies and the commission. The ad-hoc arbitration is regulated by standing orders and pursuant to the provisions of the Arbitration and Conciliation Act.³⁹

³¹(n 26).

³² *Ibid.*

³³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10th June 1958, 330 U.N.T. S. 38 No. 4739 entered into force on 7th June 1959.

³⁴ NIPC Act, s 26 (3).

³⁵ 1993 No. 113.

³⁶ *Ibid.*

³⁷ *Ibid.*, s 22.

³⁸ Public Enterprise (Privatization and Commercialization) Act, s 27.

³⁹ *Ibid.*, s 22.

3.6. Environmental Protection and Management Act, 2019

The Act provides for the establishment of the Environment Department charged with the responsibility to:

*Facilitate cooperation among persons, government agencies and any other entity, and manage the environment in a manner which fosters participation and promote consensus, including the encouragement and use of appropriate means to avoid or expeditiously resolve disputes through mechanisms for alternative dispute resolution.*⁴⁰

The Environmental Protection and Management Act make explicit provision for alternative dispute resolution to promote consensus among parties to disputes arising from activities of government or its agencies or corporate bodies.

3.7.1 Supreme Court (Mediation) Rules

The rules established the Supreme Court Mediation Center to promote mediation and other ADR mechanisms towards enhancing administration of justice and speedy resolution of disputes,⁴¹ to:

- (1) Assist the parties in reaching an expeditious resolution of their disputes in all good faith in a fair and efficient manner;⁴²
- (2) Encourage disputing parties and their Counsel to strive towards reducing the cost of litigation and associated delays thereby facilitating a fair and just resolution of disputes with limited animosity amongst parties;⁴³
- (3) Promote mediation and other ADR mechanisms as veritable tools of dispute resolution in the Court and the judiciary as a whole.⁴⁴

3.8 Court of Appeal (Civil Procedure) Rules, 2018

The rules established the Court of Appeal Mediation Center⁴⁵ to promote speedy resolution of disputes and other ADR mechanisms in matters involving civil appeals and matters related to breach of contract, liquidated money demand, matrimonial causes, child custody and

⁴⁰ *Ibid.*, s 17.

⁴¹ The rules were made by Justice Walter S.N Onnoghen, GCON, former Chief Justice of Nigeria in the exercise of his power as conferred under Section 236 of the CFRN, 1999.

⁴² Supreme Court (Mediation) Rules, r 1 (2).

⁴³ *Ibid.*, r 1 (3).

⁴⁴ *Ibid.*, r 1 (4).

⁴⁵ CAMR 2018, r 1.

parental actions in tort, chieftaincy and inheritance.⁴⁶The rule provides that cases must be resolved within three months from the date of submission to mediation.⁴⁷Parties are required to execute a confidentiality agreement,⁴⁸ and all mediation sessions are strictly confidential.⁴⁹

3.9 Federal High Court (Civil Procedure), 2019

The rules provide for the Court to by order under its seal refer to the arbitrator nominated by the disputing parties in the suit, and shall fix a time for the delivery of the award, and the time fixed shall be stated in the order.⁵⁰It is at the discretion of the parties to nominate the arbitrator as may be agreed upon between them according to the provisions of the Arbitration and Conciliation Act.⁵¹

3.7 International Legal Framework

The Treaties and Conventions are as follows:

3.7.1 New York Convention, 1958

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Judgements is the primary legal instrument for recognizing, enforcing, and challenging international arbitral awards. This Convention presently has 144 signatories. This statute stipulates that the arbitration shall take place in a state that is a signatory to the Convention, and that the counter-party must also be from a signatory country,⁵² this is a prerequisite in order to benefit from its provisions.

3.7.2 The Panama Convention, 1975

There are numerous regional Conventions that provide exactly for the benefits as the New York Convention. An example is The Inter-American Convention on International Commercial Arbitration. This is an agreement between the United States and Latin America. This treaty is also known as the Panama Convention, and it was signed in 1975. A total of 19 countries including the United States and other Latin American Countries are signatories to the agreement. Citizens of states that ratified the Panama Convention are members of the Organization of American States.

⁴⁶*Ibid*, r 4.

⁴⁷*Ibid*, r 5.

⁴⁸*Ibid*, r 5 (5)

⁴⁹*Ibid*, r 14.

⁵⁰ FHCR, r 52 (3).

⁵¹*Ibid*, r 1.

⁵² (n 45).

3.7.3 Arab Convention on Commercial Arbitration, 1987

The Arab Convention on Commercial Arbitration was signed by 14 Arab States.⁵³ The aim of the Convention is to develop a unified Arab system for commercial arbitration.⁵⁴ The Convention appears to be modelled after the Convention of the International Center for Settlement of Investment Disputes (ICSID) but it is not confined to the resolution of investment disputes.

3.7.4 The European Convention on International Commercial Arbitration, 1961⁵⁵

The scope of the Convention is to arbitration agreements concluded for the purpose of settling disputes arising from international trade between physical or legal persons having, when concluding the agreement, their habitual place of residence or their seat in different contracting states. The Convention applies to arbitral procedures and awards based on agreements therefrom.

3.7.5 The International Convention for Settlement of Investment Dispute, 1966⁵⁶

The Convention on the Settlement of Investment Disputes Between and Foreign Nationals entered into force in 1966. It establishes a mechanism for resolving disputes amongst host countries and international investors. The treaty is administered by the ICSID, a World Bank subsidiary. The pact has been signed by 157 nations and ratified by 144 countries. The Convention refers to those that have ratified it as 'contracting states.' The States benefit from the ICSID's services, which include arbitration and conciliation, where international investors can have opportunity of being heard and a self-enforcing mechanism for judgements given under the Convention.

3.7.6 The Energy Charter Treaty, 1991

In April 1998, the Energy Charter Treaty (ECT) came into effect. The Treaty focuses on energy investments in Eastern and Western Europe, particularly upstream and downstream projects. It promotes and protects investments, particularly prohibiting expropriation and providing dispute settlement channels for those assets.

⁵³ Algeria, Djibouti, Iraq, Lebanon, Libya, Mauritania, Morocco, Palestine, Syria, Tunisia, Northern Yemen and Southern Yemen.

⁵⁴ This is as provided in the preamble of the Convention.

⁵⁵ European Convention on International Commercial Arbitration of 1961 did at Geneva, April 21, 1961 United Nations, Treaty Series, Vol. 484, 364 No.7041 (1963-1964).

⁵⁶ Established in the United States and administered by the World Bank through the ICSID.

The European Union and 51 member states have signed the pact, with 47 of them ratifying it. The treaty has mechanisms for resolving disputes between contracting parties who are signatories of which the subject matter includes, trade disputes, environmental and competition disputes, host government and investor dispute.

4. National Institutional Framework

Institutional framework for alternative dispute settlement in the petroleum energy industry is generally corporate organizations, chartered institutions and associations that specialize in arbitration, conciliation, mediation, negotiation, expert determination. Recently, High Courts have established arbitration and mediation centers known as Multi-Door Courthouses, the Supreme Court and the Court of Appeal operate mediation centers, however ADR institutions that have expertise in the petroleum industry are yet to be fully operational. There are functioning arbitration institutions that handle petroleum related disputes.

4.1 Nigeria Upstream Petroleum Regulatory Commission (NUPRC)

The NUPRC is established in line the Petroleum Industry Act regulations and ministerial guidelines that govern the petroleum industry. The NUPRC utilizes the recently established dispute resolution mechanisms of its predecessor namely, the Alternative Dispute Resolution Center (ADRC)⁵⁷ of the DPR to resolve disputes in the industry.

4.2 Nigeria Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)

The NMDPRA was created in August 2021 in line with the PIA which mandates the Authority to mediate⁵⁸ in disputes between parties engaged in technical, operational and commercial activities governed by the Act.

4.3 The Maritime Arbitration Association of Nigeria

The maritime arbitration association of Nigeria is an institution made up of industry practitioners, service providers, members of the academia, the Nigerian Bar Association and individual experts who show interest, intention and preparedness to offer their services for effective resolution of dispute in the maritime and petroleum industry as alternative resource and venue following recent developments in the growing cost of arbitration in foreign jurisdictions.

⁵⁷The ADRC was the last agency established by the Department of Petroleum Resources before the commencement of the Petroleum Industry Act that established two commissions to replace the DPR.

⁵⁸ PIA 2021, s 163.

4.4 The Lagos Court of Arbitration (LCA)

The LCA is an independent, private-sector driven, international center for commercial disputes via Arbitration and other forms of ADR. The Court was established under the Lagos Court of Arbitration Law⁵⁹ and officially launched on 2012.⁶⁰ The proceedings under the 2018 LCA Arbitration rules provides: that to conduct arbitration under the rules, parties are expected to incorporate the LCA's arbitration clause into their contract thus: "all disputes arising out of or in connection with this agreement shall be finally settled under the Lagos Court of Arbitration rules, by one or more arbitrators appointed in accordance with the said rules."

4.4 The Lagos Chamber of Commerce International Arbitration Centre (LACIAC)

The LCCIAC⁶¹ is an independent dispute resolution center as alternative for litigation. The Center is supervised Lagos Chamber of Commerce and Industry (LCCI). It is optional to submit arbitral tribunal that resolves dispute, but it administers the resolution of disputes by arbitral tribunals, mediators, and other ADR practitioners. The proceedings under the LACIAC are conducted pursuant to the rules of Arbitration.⁶²

4.5 The Multi-Door Courthouse Initiative

The Multi-Door Courthouse (MDCH) is an initiative of the international Negotiation and Conflict Management Group (NCMG) that is established with the aim of replicating and developing court-connected MDCH anchored on ADR. Through its activities, the NCMG has established MDCH in states of the federal republic of Nigeria including Rivers State, Kano, Enugu, Lagos and Abuja.⁶³ The NCMG advocates for establishing MDCH at the Court of Appeal and Supreme Court.

The overall advantage⁶⁴ of the MDCHs is that they provide seamless services to intending parties the party who desires to have its arbitration administered by LMDC only needs to walk in and submit a proof of delivery of the notice of arbitration to the other party or submit the arbitration agreement to the LMDC.

⁵⁹No 17, 2009.

⁶⁰The LCA was established on the 9th of November 2012.

⁶¹LACIAC offers dispute settlement both in person and remotely.

⁶²Arbitration rules of 2016.

⁶³It is expected that Multi-Door Courthouse will be established in all the states of the federation by 2025.

⁶⁴The MDCHs also serve as an advocacy group for the objectives of MDCs.

4.5.1 The Rivers State Multi-Door Courthouse

The Rivers State Multi-Door Court house Law⁶⁵ paved the way for the establishment of the RSMDH in 2021. The introduction of the MDCHs has been revolutionary for ADR to become integrated into the regular Court system. In this system, any settlement agreement reached through mediation and conciliation mechanisms are enforceable as judgments of the High Court once they become endorsed by the ADR judge. The MDCH is fully funded by the State Government. This is essential because public funding gives full access to citizens to obtain, less expensive and more expeditious methods of settlement as different from the traditional litigation.⁶⁶

4.5.2 The Abuja Multi-Door Courthouse

The Abuja Multi-Door Court house⁶⁷The AMDC Mediation and Arbitration Rules 2003 provide the legal foundation for the process. The rule was enacted under Section 259 of the Federal Republic of Nigeria's Constitution.

The aims and objectives of the AMDC are:

1. To improve timely and cost-effective access to justice and reduce public dissatisfaction.
2. To provide opportunities for conflict resolution in addition to the existing routes for justice.
3. To establish the notion of "Managerial Judges" and to plan how the best resolution may be reached among litigants.

4.5.3 Lagos Multi-Door Courthouse (LMDC)

The LMDC was established in 2002⁶⁸, as a public-private partnership between the High Court of justice, Lagos state and the Negotiation and Conflict Management Group (NCMG), a non-profit private organization. It was the first court-connected ADR institution in Africa.

The LMDC's stated objectives are to:

1. Improve access to justice by making ADR procedures available to augment litigation.
2. Provide a uniform legislative framework for the fair and efficient resolution of disputes through ADR to reduce public dissatisfaction and delays in receiving justice.
3. Act as a centerpiece for ADR advocacy in Lagos.

4.5.4 The Kano Multi-Door Courthouse

⁶⁵ RSMDCL was enacted in 2019.

⁶⁶ The formation network of MDCH which will serve to regulate 'best practice of the MDCHs within Nigeria who wish to establish MDCHs.

⁶⁷ The AMDC was established in 2003.

⁶⁸The LMDC was established on 11 June 2002.

In 2009, the KMDC was founded. It is a court-affiliated alternative dispute resolution facility located on the grounds of the Kano High Court of Justice. The KMDC was established with N100 million from Kano State and N100 million from the security, justice, and initiative. The Kano State Justice Sector Reform Team outlined a number of initiatives that needed to be implemented inside the state's judicial services, including the creation of the KMDC. The KMDC's mission is to alleviate court congestion, and foster friendly connections among its participants.

4.6 The International Institutional Framework

The International Center for the Dispute Resolution (ICDR) is a non-profit AAA-administrative ICDR's structure headed by a Council. The Council members are experts and opinion makers in their professions, encompassing a diverse variety of international expertise based on their work with businesses, law firms, academia, and government agencies.

4.6.1 International Chamber of Commerce (ICC)

The International Court of Arbitration is the most powerful arbitral tribunal in the world. It have been resolving international business disputes since 1923 to boost commerce and investment. The ICC's mission is to guarantee that the ICC Rules are properly applied and to help parties and arbitrators in overcoming procedural impediments. The Court's secretariat, which consists of about 80 attorneys and other staff, assists in these endeavors.

4.6.2 London Court of International Arbitration (LCIA)

The London Court of International Arbitration is a global leader in international institutions for commercial disputes settlement which provides flexible, efficient, impartial and timeous independent administration of arbitration and ADR proceedings under any country's legal system.

4.6.3 The International Center for Settlement of Investment Dispute (ICSID)

The ICSID is one of the World Bank Group's five organizations, its primary mission as World Bank branch is to offer facilities for the settlement of international investment disputes through arbitration and conciliation. The ICSID has vast experience in international settlement of commercial dispute involving national and multinational companies. There is a good record of cases that the ICSID has successfully resolved involving international petroleum companies.⁶⁹

⁶⁹ ICSID, 'World Bank' <www.icsid.worldbank.org/cases> accessed 7 March 2022.

4.6.4 Other International ADR Institutions for Petroleum Related Disputes

Arbitration institute of the Stockholm Chamber of Commerce (SCCI), Swiss Chambers Arbitration, Netherlands Arbitration Institute.

Asia

Singapore International Arbitration Centre, Hong Kong International Arbitration Center, China International Economic and Trade Arbitration Commission, LCIA India.

Americas

Inter- American Commercial Arbitration, Mediation and Arbitration Commission of the Mexico City National Chamber of Commerce.

Africa

Ghana Arbitration Center, Mauritius International Arbitration Center, Cairo Regional Center for International Commercial Arbitration.

4.7 Benefits and Challenges of Litigation, Arbitration and Conciliation

It is established that the petroleum industry's usual inclination is to avoid litigation as much as possible, resulting in a dearth of case law on the subject matter. Indeed, such disputes are increasingly being settled through domestic or international arbitration rather than through traditional courts. ADR on the other hand involves resolution schemes agreed to by the parties voluntarily in an effort to resolve their differences amicably, the advantages include but not limited to the fact that parties can maintain their cordial relationship, it is least expensive, it saves time so companies do not ground their activities, the entire process except the outcome is determined by the parties themselves, it is most commercially viable. There are thus several grounds for the petroleum industry's purposeful minimization of litigation.

Delay is Commercially Detrimental

For emerging economies' commercial efficiency, time is a critical component. Litigation takes a long time. This predicament is partly caused by Nigeria's current judicial system, which includes a fully unrestricted right of appeal that allows for lengthy delays in case resolution. The petroleum business sector entails massive investments, and any stifling of

production due to court delays frequently results in significant financial losses.

Technical Limitations

It is often believed that the traditional legal system lacks the technological competence to comprehend and interpret the abstract topics and arrangements that define the petroleum energy business. Practitioners in this sector typically get extensive post-graduate training and are hesitant to present issues to judges who lack competence or experience in the subject. Disputing parties frequently choose international specialists to serve as arbitrators in their cases.

Absence of Confidentiality

The specifics and complexities of deals in the sector are normally kept very private. As a result, it is considered unproductive to jeopardize this anonymity by bringing conflicts before public tribunals, which might quickly reveal sensitive papers and information to the general public.

Cost

Litigation is also commonly seen as being more expensive than ADR. The appellate system, which enables final and interlocutory appeals from the Court of first instance to an intermediate Court of Appeal, and further appeal to the Supreme Court, makes the legal sojourn financially unbearable.

Concerns about Neutrality

There is widespread concern that when deciding disputes between foreign-owned oil companies and government agencies, judges may lean toward defending national economic interests instead of the IOCs' corporate objectives; in other words, there seems to be a potential concern that cases will be decided on patriotic feelings instead of legal merits.

Conclusion

The traditional Courts are the least solution to petroleum disputes. The federal government has provided specific laws guaranteeing the resolution of such disputes by way of various legislations providing for ADR, it is evident that most IOCs are unaware of such laws. It is the finding of this study that the needed publicity has not been given to these laws and little effort is made for their enforcement. From the foregoing, it

is observed that despite the numerous benefits non-adjudicatory method of dispute settlement presents it is far from been a one size fits all, there are inherent challenges of arbitration as the panacea for effective dispute settlement in the industry.

Commercial arbitration is undeniably effective in resolving conflicts in the international commercial arena, and it will continue to be so for the long term. As a result, emerging economies are expected to overcome their indifference. It is thought that a more enthusiastic involvement of all countries in arbitration will help the international industry players, and that developing economies will profit if they engage and apply commercial dispute settlement, they should adopt ADR as indispensable element in commercial contracts.

6. Recommendations

In view of the above research, the following recommendations are hereby made:

1. Arbitration laws and procedures should accommodate not just the parties directly involved in the deal resulting in the dispute, but also their representatives, privies, parent companies, subsidiaries, assignees. This will help resolve all issues through arbitration once and for all, and the award shall be binding to all directly or indirectly involved.
2. Arbitration should be an exception to the laws of limitation as before now parties are skeptical that they are not out of time. Arbitration should by law be made a stop to the time running against parties and such time will only start running after the award has been made. This will assure parties that their cause of action in the event of failure to agree will not be time barred.
3. The various arbitration laws must be reviewed with a view to make arbitration award enforceable without the order of a Court so that parties may not unfairly prolong enforcement by Court process thereby making nonsense of the arbitration awards.
4. The laws should make certain transactions to be arbitrable only in Nigeria so that upcoming companies may not be unduly influenced by insistence of IOCs to arbitrate in London or Paris thus frustrating parties whose finance capacity cannot afford the additional costs.

5. There should be a wider scope of ADR subject matters involving petroleum companies, that is, the jurisdiction of arbitration should become broader to accommodate more issues.
6. Foreign companies should take cognizance of the fact that submission to ADR is not compulsory and should be more willing to submit to the arbitral institutions of the host state where they carry out their operations rather than insisting to proceed to their home state or another third country to the detriment of local companies.
7. The expert determination method of ADR is recommended in the petroleum industry for basically two reasons: it is cheaper and experts are more knowledgeable in the technical nature of petroleum disputes so parties will have more confidence in the entire process.
8. Multi-Door Court houses should be established both at the Court of Appeal and the Supreme Court. These Courts are overwhelmed with appeals they may not have the capacity to hear for years, so it is beneficial to supplement the mediation centers of these appellate Courts with Multi-Door Courthouses for effective administration of justice.