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THE EFFECTIVENESS OF ADR MECHANISMS IN THE RESOLUTION OF DISPUTES IN THE UPSTREAM PETROLEUM SECTOR IN NIGERIA

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Abstract

The effectiveness of ADR mechanisms in the resolution of disputes in the upstream petroleum sector in Nigeria. These mechanisms include negotiation, mediation, conciliation, arbitration etc. However, alternative dispute resolution (ADR) is simply a process of initiating alternative methods and procedures in the resolution of disputes in the oil and gas industry without resorting to litigation, which is expensive, rigorous and time consuming. ADR provides a confidential and alternative way or method of tackling legal disputes without going through the litigation or court system. The term ADR is also generally used to describe the methods and procedures used in resolving disputes as an alternative to traditional dispute resolution system. The purpose or aim of the study is to show the effectiveness of ADR mechanisms in the resolution of oil and gas disputes in Nigeria and to achieve same, the following objectives will guide the study. They include the examination of the effectiveness of alternative dispute resolution mechanisms, to examine the various dispute resolution mechanisms, to examine the role of alternative dispute resolution mechanisms in the oil and gas industry. The article adopts a doctrinal research methodology, and the sources of authority and information are mainly from primary sources of data and they include statutes, case law and customs. Furthermore, secondary and tertiary sources of data were also used in the study and they include articles in journals, textbooks, indexes and internet sources. The findings of the article show that alternative dispute resolution mechanisms are relatively effective resolution of disputes in the oil and gas industry in Nigeria, that the alternative dispute resolution mechanisms used in the oil and gas industry are negotiation, mediation, conciliation, and arbitration. The recommendations of the article are that the Petroleum Industry Act 2021 has identified alternative dispute resolution mechanisms like negotiation, mediation, conciliation and arbitration as viable methods of dispute settlement in oil and gas related disputes in the oil and gas industry in Nigeria, all oil and gas disputes should be settled through alternative dispute resolution mechanisms to enable the smooth running of the oil and gas industry and that the power to make binding decisions is of fundamental importance, and Arbitration and Mediation Act 2023 distinguishes only arbitration and mediation as methods of resolving disputes from other alternative dispute resolution procedures in arriving at a negotiated settlement.

Keywords: ADR, Oil and Gas Dispute, Upstream petroleum sector, Arbitration, Mediation

I. Introduction

The history of alternative dispute resolution in the oil and gas industry in Nigeria goes far back as the discovery of crude oil in Oloibiri in Bayelsa State of Nigeria in 1954, and the study will be concentrated on the upstream sector of the oil and gas industry. Oil has always held a significant role in human civilization. Petroleum in an unrefined state has been utilized by humans for many years. Oil in general has been used since early human history to keep fires ablaze and also used in warfare.[1]In Nigeria the first record of active exploration was in 1908 by the Bitumen Company, a German company whose activities stopped hurriedly at the commencement of the first world in 1914.[2] Actual oil production and export from the Oloibiri field had commenced in 1958 with an initial production rate of 5,100 barrels of crude oil per day and by the late sixties and seventies

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[1] S Akiner and A Aldis, *The Caspian*: *Politics*, *Energy and Security* (Routledge, 2004) 5

[2] A Akinrele, *Nigeria and Oil and Gas Law* (OGEL-Oil, Gas and Energy Intelligence, 2005) 5 in Y Oke (ed) Nigerian Energy Resources Law and Practice, (Princeton and Associates Publishing Co Ltd 2019) 8

Nigeria had attained a production level of over 2 million barrels of crude oil per day.[3]Although production figures dropped in the eighties due to economic slump, 2004 saw a total rejuvenation of oil production to a record level of 2.5 million barrels per day. Current development strategies are aimed at increasing production to 4 million barrels per day by the year 2020.[4]In January of 2025 the production level got to 1.47 to 1.6 million barrels per day.[5]

The oil and gas industry is divided into upstream, downstream and midstream sectors and upstream petroleum operations[6] simply means the exploration for, appraisal of, development of, and winning or obtaining of petroleum in Nigeria by or on behalf of a company on its own account for commercial purposes, petroleum exploration operations, the drilling of exploration, appraisal and development wells, all activities upstream of the measurement points, related to the winning of petroleum through wells or mining from petroleum reservoirs, drilling, fracking, completing, treatment and operation of wells producing petroleum, construction and operation of wells producing petroleum, construction and operation of gathering lines and manifolds for crude oil, natural gas and water, construction and operation of crude oil and natural gas in reservoirs etc.[7]

It is pertinent to note that the upstream oil and gas operations refers to all activities entered into for the purpose of finding and developing crude oil or natural gas and includes all activities involved in exploration up to production and transportation of crude oil and natural gas from the area of production. The Nigerian upstream regulatory commission is in charge or responsible for technical and commercial regulation of upstream petroleum operations.[8] The major key players in the oil and gas upstream market are Chevron Corporation, Exxon Mobil Corporation whose onshore assets in Nigeria Mobil producing Nigeria unlimited was sold to Seplat Energy Plc a Nigeria company on December 2024,[9] The Shell Petroleum Development Company of Nigeria Limited (SPDC) which was sold to Renaissance Africa Energy Holding (Renaissance) a Nigerian company on the 13th march 2025,[10] The Nigerian Agip Oil Company (NAOC) which was sold to Oando PLC a Nigerian company on the 22 August 2024 for a total consideration of $783 million by Eni the original owner of the Italian multinational company to Jubril Adewale Tinubu CON,[11]Nigerian National Petroleum Company Limited and Total Energies SE. They are involved in exploration activities which include creating geological surveys and obtaining land rights, and production activities, including onshore and offshore drilling.

The midstream and downstream petroleum operations simply mean midstream petroleum liquids operations and midstream and downstream gas operations. Midstream petroleum liquids operations simply means downstream of the measurement point of petroleum mining leases, whether or not related to the petroleum mining lease, with respect to the construction and operation of facilities for upgrading of heavy oil, construction and operation of petroleum lubricant, petrochemical and fertilizer plants[12] etc. On the other hand, midstream and downstream gas operations simply means activities downstream of the measurement points of petroleum mining leases, whether or not related to the petroleum mining lease, with respect to the construction and operation of natural gas transport or transmission pipelines, including the related compressor stations, construction and operations of facilities to compress, transport and deliver compressed natural gas (CNG)[13] etc.

[3] L Atsegbua, Oil and Gas Law in Nigeria, Theory and Practice (2nd edition, New Era Publication, Benin City, 2004) 42
[4] MM Gidado, *Petroleum Development Contracts with Multinational Oil Firms* (Ed-Linform Services, 1999) 56
[5] Punch Newspaper online <https://punchng.com/nigerias.oil-production-falls-to-1.47m-barrels-per-day/
[6]Section 318 Petroleum Industry Act 2021
[7] Section 8 Petroleum Industry Act 2021
[8]Section 4 (1) Petroleum Industry Act 2021
[9]<https://www.offshore-energy.biz> Sold at $1.28bn accessed 18 April 2025
[10]<https:www.aradel.com> accessed 18 April 2025
[11]<https:www.oandoplc.com> accessed 18 April 2025
[12] Section 318 Petroleum Industry Act 2021
[13] Section 111-173 Petroleum Industry Act 2021

2. Overview of the New Petroleum Industry Act

An overview of the petroleum industry Act can be relatively put together starting with the idea that the petroleum industry Act brought some innovative changes like ensuring good governance and accountability through the creation of a commercially oriented national petroleum company in the NNPCL and fostering a conducive business environment for petroleum operations. It also created two principal regulatory bodies in the Nigerian upstream regulatory commission which is referred to as the commission responsible for the technical and commercial regulation of the upstream petroleum operations, including implementing environmental laws and policies for the upstream and the Nigerian midstream and downstream petroleum regulatory authority referred to as the authority which is responsible for the technical and commercial regulation of the midstream and downstream operations in Nigeria as well as licensing of the players in that sector. Other innovations include the imposition of up 1% levy on the wholesale price of petroleum products sold in the country, incorporation of a commercial and profit focused NNPC limited under CAMA[14] within 6 months from commencement of the PIA, with its shares vested in the ministry of finance incorporated and the ministry of petroleum incorporated on behalf of the Federation to take over assets, interests and liabilities of NNPC limited for possible sale of shares to Nigerians. NNPC limited will earn 10% of proceeds of the sale of profit oil and profit gas as management fee while 30% will remain remitted to Frontier Exploration Fund for the development of frontier acreages in addition to 10% of rents on petroleum prospecting licences and mining leases. The PIA now requires companies intending to engage in upstream, midstream and downstream operations to register and use a separate company for each stream. Also the Nigerian Upstream Regulatory Commission is required to develop a licence and model lease to include a carried interest provision giving NNPC limited the right to participate up to 60% in a contract.[15]Any company granted an oil prospecting licence or mining lease or an operating company on behalf of joint venture partners (settlor) is required to contribute 3% of its actual operating expenditure in the immediately preceding calendar year to the host Communities development trust fund. The fund is tax exempt and any contribution by a settlor is tax deductible etc.[16]

3. Types of Disputes in the Petroleum Upstream Sector

Upstream sector disputes include joint operating agreements, balancing agreements, joint venture and mining partnerships, farm out agreements and area of mutual interest agreements, drilling and service contracts. Joint operating agreements are simply a form of contract used universally in the upstream sector and it covers the rights and duties of operators and non-operating working interest owners with respect to the drilling, completion, operation, plugging and abandonment of oil and gas wells and these contracts all mandate arbitration in settling their disputes.

Balancing agreements is when various companies negotiate agreements that supply oil or natural gas by exchanging production in different parts of the country. This will mean that parties in such agreement can exchange oil and natural gas in volumetric basis or price adjustment if the product is worth more in one location than another. Different owners in producing fields may also have balancing agreements with each other because they know that some owners will likely have more demand than others for production at various times due to the differences in their sales agreement. Joint venture and mining agreement are contracts used to facilitate the involvement of multiple investors in one or more oil field projects.[17]

The joint operating agreement lends itself to an investment format with an active producer who operates the investment and handles the physical aspects of the project whereas the non-operators

[14] Companies and Allied Matters Act, 2004
[15]Section 68 and 70 PIA 2021
[16] Section 234 Petroleum Industry Act 2021
[17]G Erikerentse Nigerian Petroleum Law, (2nd Edition, Drewdew Lagoa 2004) 88

are more passive and are primarily involved in funding their share of the project. Although joint venture venture and partnership agreements can accommodate a wide variety of parties, these agreements are particularly useful for projects among industry participants when non-operating parties want to play a more active role than envisioned under standard joint operating agreements. Issues that tend to be disputed under this agreement is the disagreement over the scope and purpose of the venture or partnership or whether property acquired by a partner must be shared with the joint venture, any alleged negligence and misunderstanding, any alleged underpayment or overbilling for costs, any dispute over the nature of the party's relationship and misrepresentations allegedly inducing one or more of the parties to enter into the agreement.[18]

Unitisation or unit agreement is an agreement by the owners of the field which extends into more than one license area to develop that field as a single unit.[19]These unit disputes combine individual leases into a larger area operated under a single management structure with the agreement appointing a single operator to develop the unitized property. The owners of any of the portions share revenue on a geographical or reserve estimated basis. Drilling and service contracts are sophisticated instruments that delineate the rights and duties of drilling contractors and well operators relating to the drilling, completion, equipping and plugging and abandonment of oil and gas wells. Unitisation or unit operating agreements aims to protect the interests of all parties involved while also avoiding some legal pitfalls and it is a contract between the companies operating the different unit wells.[20]

Farm out agreement is where a third party agrees to acquire from one or more existing licenses, an interest in a production license for a consideration which in oil industry practice normally consist of the carrying out of a special work obligation called earning obligation which is used in the drilling of one or more wells.

4. Objectives of the New Arbitration and Mediation Act

The new Arbitration and Mediation Act 2023 brought significant innovations and set out specific objectives to which are the enforcement of arbitration agreements, making mediation a legitimate dispute resolution mechanism, consolidation of arbitral proceedings, joinder of parties, arbitrator's immunity, award review tribunal, third party funding, the award tribunal (ART), recognition and enforcement in interim measures, statute of limitation for arbitration proceedings, default number of arbitrators, emergency arbitrators and the use of accessible electronic communication. The Arbitration and Mediation Act reinforces the status of the Nigerian arbitration and mediation as a prominent commercial centre and demonstrates the nations unwavering commitment to creating a conducive environment for alternative dispute resolution in accordance with contemporary global norms and international best practices. The old Act was silent on the objectives which led to ambiguity in interpretation but the arbitration and mediation act sets out legislative objective.[21] The enforcement of arbitration agreements is another innovation which resulted from the ambiguity in section 4 and 5 of the old act[22] with respect to whether granting an order for stay of proceedings pending arbitration was a mandatory or discretionary function of the court was resolved. This implies that the court under the old act had discretion to allow or reject an application for a stay of proceedings depending on the ability of the Applicant to show sufficient reason or willingness to proceed with arbitration due to the arbitration agreement[23] as seen in the case of *Enylike v Ogoloma*[24] where it was held by the court that an application seeking a stay of proceedings to enable

[18] OM Oladunjoye, 'Incorporated Joint Ventures in the Nigerian Petroleum Industry: Examining the legal implications and Regulatory Risk', (OGEL Vol 11 Issue 2 OGEL 2013) 2
[19] Section 80 (3), (4) and (5) Petroleum Industry Act 2021
[20] Guidelines for unitization of oil and gas fields <https:www.nuprc.gov.ng> accessed 18 April 2025.
[21] Section 1 Arbitration and Mediation Act 2023
[22] Section 4 and 5 Arbitration and Conciliation Act, LFN, 2004
[23]ibid 26, section 5 ACA LFN, 2004
[24](2008) 14 NWLR (Pt.1107) 247

parties refer to arbitration is not granted as a matter of course. However, for such an application to be granted, the applicant must have taken no step in the proceedings.

The arbitration and mediation Act[25] gives a mandatory obligation that has been placed on the court to refer parties to arbitration and stay of proceedings unless the arbitration agreement is void, inoperative or incapable of being performed. The provision[26] of emergency arbitrator proceedings enables parties to seek interim relief before the formation of the Arbitral Tribunal by applying to other arbitral institutions of court for the appointment of an emergency arbitrator and if the application is approved, the arbitral institution or the court is required to designate the emergency arbitrator within two business days of receiving the application.[27] The ruling issued through these emergency proceedings are binding on the parties while awaiting the final decision from the arbitral tribunal and the tribunal can modify or suspend emergency decisions reached at the emergency proceedings and sometimes these decisions can cease to be binding. This provision aligns with arbitration procedure rules of leading global arbitral institutions such as the London Centre of International Arbitration (LCIA)[28] and the international chamber of commerce (LCC).[29] Consolidation of arbitral proceedings was lacking in the old act but the new act introduced the possibility of consolidating ongoing arbitral proceedings even though the parties are different.[30]

The new Act allows for concurrent hearings where the decision to do lies with the parties and the arbitral tribunal are prohibited from ordering consolidated hearings except the parties agree.[31] The adoption of consolidation and concurrent hearing has the potential to yield significant advantages including cost effectiveness, time saving and reduction in the duplication of arbitral proceedings. Joinder of parties in the new act makes provision and confers arbitral tribunals with discretionary authority to include an additional party in the arbitration, provided that there is prima facie evidence showing that the party asking to be joined is bound by the arbitration agreement giving rise to the arbitration.[32] The inclusion of the prima facie connotes the need for reasonable belief or facts evidencing the party's obligation under the agreement. The provision is in tandem with the principles outlined in the UNCITRAL arbitration rules, which empowers an arbitral tribunal to join a third party after considering various factors such as the legal interests of the parties, the potential conflict of interests and the timing of the request.[33]

Another innovation is third party funding which allows third party funder as an entity or person not involved in the dispute but who financially supports part or all of the proceedings, costs in various ways.[34] The Act abolishes the prohibitive torts of maintenance and champerty concerning arbitration and related court proceeding thus permitting third party funding arrangements.[35] It also introduces regulations for disclosing third party funding and security for costs related to third party funders.[36] The new arbitration and mediation act also mandates disclosure of the funder's identity to counterparties, the arbitral tribunal and when applicable to the arbitral institution. Arbitral immunity acknowledges and grants immunity to arbitrators, appointing authorities and arbitral institutions, executing their duties, except in cases of proven bad faith.[37] The provision aims to protect arbitrators while carrying out their responsibilities so arbitrators can focus on the merit of

[25] Section 5 Arbitration and Mediation Act 2023
[26] Ibid Section 16 AMA 2023
[27] Section 16 (5) Arbitration and Mediation Act 2023
[28] Article 9 (c) LCIA Arbitration Rules
[29] Article 29 ICC Rules of Arbitration
[30] Section 39 (1) (a) Arbitration and Mediation Act 2023
[31] ibid section 39 (2) AMA 2023
[32] Section 40 AMA 2023
[33] Article 17 (5) UNCITRAL Arbitration Rules 2021
[34] Section 91 Arbitration and Mediation Act 2023
[35] Section 61 Arbitration and Mediation 2023
[36] ibid section 62 (1) and (2) AMA 2023
[37] Section 13 (1) AMA 2023

the lawsuit and exercise independent judgment without fear of legal consequences for their decisions.

The award review tribunal (ART) introduced a unique provision allowing parties to opt for a review of their arbitral award by an award review tribunal.[38] This mechanism falls within the parties jurisdiction and permits a second tribunal to assess challenges to an arbitral award, showing the grounds considered by a court for setting aside an award. Similar to the courts authority the award review tribunal can either partially or fully set aside the award or uphold same entirely and the tribunal is expected to decide within 60 days of its establishment. However, in cases where the award review tribunals decision is deemed unsound the court possesses the authority to reinstate the award that was initially set aside. The court can also set aside an award upheld by the award review tribunal on the grounds of not being arbitrable and due to public policy.

The statute of limitation for arbitral proceedings emphasizes the issue of computation of time and laid to rest in the new act within arbitral proceedings in the case of *City Engineering Nig Ltd* v *Federal Housing Authority*[39] where the Supreme court held that the statutory period of limitation starts to count for the purpose of the enforcement of an arbitral award at the date of the accrual of the original cause of action.[40] The section extends the application of the limitation statute to arbitral proceedings, aligning them with rules governing judicial proceedings. This new provision offers added protection to arbitration and mediation proceedings by excluding the commencement of arbitration and the date of the award, especially in cases involving disputes related to the award. This measure enhances the safeguarding of the arbitral and mediation process.[41]

5. The Role of Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is simply a process of commencing alternative methods and procedures of resolving civil or commercial disputes without resorting to litigation, which can be expensive, cumbersome and time consuming. Arbitration is a type of alternative dispute settlement mechanism, which requires that disputes in the oil and gas industry are resolved harmoniously without meddling with the day to day administration of the oil and gas industry. ADR is an acronym for alternative dispute resolution and provides a confidential and alternative method of confronting legal disputes which eschews going to court. The term is commonly used to describe the methods and procedures used in resolving disputes as an alternative to conventional dispute resolution mechanism. In other words, alternative dispute resolution is simply a process of commencing alternative means and procedures of resolving domestic or commercial disputes without resorting to a lawsuit, which can be expensive, burdensome and overwhelming. Arbitration is a kind of alternative dispute settlement mechanism which requires that disputes in the oil and gas industry are resolved cordially without obstructing the day to day management of the oil and gas industry.

According to Derri,[42] the term alternative dispute resolution is used to describe dispute resolution mechanisms that are an alternative to the normal court process. He went further to state that it can refer to everything from facilitated settlement, negotiation in which disputants are encouraged to negotiate directly with each other prior to some other legal process to arbitration systems or mini trials that look very much like a courtroom process, and that processes designed to manage community tension or facilitate community development issues can also be included within the fabric of alternative dispute resolution. ADR provides a dependable and alternate method of tackling legal disputes in the oil and gas industry which prevents the process of the parties going to court and the term is commonly used to describe the methods and procedures used in resolving

[38] Section 56 AMA 2023
[39](1997) 9 NWLR (Pt. 520) 224
[40] Section 34 Arbitration Mediation Act 2023
[41] Ibid section 34 (4) AMA 2023
[42] DK Derri, *Alternative Disputes Resolution* (*ADR*) *in Nigeria*: *A Functional Approach* (2nd edition, Lagos University Law Publication CO. Ltd, 2019) 5

disputes as an alternative to conventional dispute resolution mechanisms.

Disagreement is a predictable part of engaging in commercial activities in the oil and gas industry and with this understanding in mind, this dissertation sought to study the countless means through which oil and gas disputes can be resolved between or among disputing parties under the petroleum industry act and other relevant statutes, which is laid out in the Petroleum Industry Act[43] must not be incompatible with the clauses of the Petroleum Industry Act or risk being a nullity to the extent of such inconsistency.

Disputes in the oil and gas industry take almost an infinite variety of forms, while some disputes will be more amenable for resolution through a particular process or form than others. Disputes can be vertical or horizontal in its resolution. Vertical disputes occur between parties in different industry segments or tiers as the case may be. The tiers consist of the host government as the owners of the resources, the second tier consists of the oil and gas companies like Chevron Corporation, Oando Plc, Seplat Energy Plc and Renaissance Africa Energy the third tier consists of service providers like Haliburton and Schlumberger while the fourth tier consists of equipment providers. Disputes between the first and second tier protagonist normally concern host government contracts such as concession, production sharing contracts, risk service contracts. Disputes between the oil companies and service providers often concern master service agreements. To make for more understanding horizontal disputes occur between the parties of the same tier, that is between states. For example, boarder disputes between oil companies in co-venture relationships, joint operating agreements, farm out agreements, asset sale and service and equipment providers like deep water horizon disaster. Construction disputes often involve owners, contractors, subcontractors and equipment suppliers. Disputes can also be categorized based on where they occur in the oil and gas industry value chain like the upstream, midstream or downstream sectors.

The disputes can also be classified based on when they occur during the project life cycle in the oil and gas industry and an example is the upstream sector which occurs during exploration, appraisal, development, production and decommissioning. The complex nature of the legal framework and commercial matrix in which these disputes arise almost guarantees the impossibility of any possible solution or resolution. However, the oil and gas industry has long been a leader in promoting the resolution of industry disputes through the use of binding alternative disputes resolution mechanisms like arbitration, conciliation and mediation. The issue is whether resolutions arising from international petroleum transactions pose a difficult task to the oil and gas industry or whether there is a problem of settlement of international petroleum transactions.[44]Disputes in the oil and gas upstream sector mainly revolve around all steps involved from preliminary exploration through the extraction of resources and companies can be involved in all steps of this phase of the life cycle of the oil and gas industry. Another name for the upstream sector is the exploration and production sector and is the earliest part or stage of the oil and gas production process.

5.1 Arbitration

Arbitration is a method of dispute resolution involving one or more neutral arbitrators who are usually appointed by the disputing parties and whose award is binding on the parties.[45] The new Arbitration and Mediation Act 2023[46] defines arbitration as commercial arbitration whether or not administered by a permanent arbitral institution. And therefore means that the Act applies to commercial disputes and commercial disputes can be subjected to the process of arbitration and mediation. According to Stewarts, arbitration is a contract based form of binding dispute

[43] Section 309 Petroleum Industry Act 2021

[44]T Walde, 'Negotiating for Dispute Settlement in Transnational Mineral Contract: Current practice, Trends and an Evaluation from the Host Country's Perspective, (*JournalofInternationalLawandPolicy,* Vol 1, Issue 33) 49.

[45] Section 1 (3) Arbitration and Mediation Act 2023

[46] The Arbitration and Mediation Act, (AMA) 2023

resolution.[47] In other words, a party's right to refer a dispute to arbitration depends on the existence of an arbitration agreement between them and the other parties to the dispute, that the dispute be referred to arbitration. Arbitration is a method of dispute settlement using private entities known as arbitral tribunals.[48] Arbitration is also the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction.[49]

Bernstein on the other hand sees arbitration from the point of agreement when he suggested that when two or more agree that a dispute or potential dispute between them shall be decided in a legally binding way by one or more impartial persons in a judicial manner, that is, upon evidence before them, the agreement is called an arbitration agreement. When, after a dispute has arisen, it is put before such person or persons for decision, the procedure is called arbitration and the decision is called an award.[50] The above definition captures the true meaning of the term arbitration as a mechanism for the resolution of disputes between two or more persons under the agreement to be bound by the decision of the arbitral tribunal or neutral third arbitrator. In other words, it is the private and judicial determination of a dispute by an independent third party or a circumstance of an arbitral tribunal were one or more arbitrators are appointed to resolve a dispute.

Arbitration is a form of alternation dispute resolution and way to resolve disputes outside the court system devoid of lawsuits. The dispute will be decided by one or more persons which renders the arbitration award a legally binding award on both parties and it is enforceable in a court of law.[51] The features of arbitration are that it is voluntary, flexible, binding, private, saves time, confidentiality is guaranteed, cheaper in terms of financial cost, arbitrators are appointed based on the expertise of field of dispute settlement, presided over by an impartial party, parties can apply to court to set aside the award and by the New York Convention arbitral awards are given more recognition at international level, especially in the United Kingdom than Court judgments.

5.2 Mediation

Mediation is an alternative dispute resolution mechanism commonly used in commercial arbitration in the oil and gas industry and it involves an independent, optional dispute resolution mechanism whereby an impartial third party is invited by the disputing parties to help in identifying the contending issues and bring out options for settling those issues as well as finding resolutions acceptable to all the parties.[52] Mediation is an informal process where a neutral intermediary helps the parties in reaching a resolution to their dispute based on the parties respective interests. Mediation is also a voluntary and confidential process in which a neutral person referred to as the mediator, helps the disputing parties to clarify issues, develop options and work towards a mutually beneficial resolution.[53] Mediation is inexpensive, simple, flexible, confidential, quick, and can lead to the complete settlement of the dispute, without necessarily resorting to complicated legal rules, unless lawyers or legally trained individuals are retained as mediators.[54]

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[47]<https://www.stewartslaw.com/expertise/divorce-and-family/arbitration> accessed 18th November 2023

[48]www.dispute-resolution-hamburg.com accessed 18 November 2023.

[49] Halsbury's Laws of England, (3rd ed. Vol 2) 2.

[50] R Bernstein (ed.) *The Handbook of Arbitration* (London: Sweet and Maxwell, 1998) quoted by MM Stanley-Idum and JA Agaba: *Civil Litigation in Nigeria* (Nelag & Company Limited, 2015) 63.

[51]Section 3 Arbitration and Mediation Act. 2023

[52]WF Fox, *The Wisdom of International Commercial Mediation and Conciliation,* in Jacques Werner and AH Ali (eds.) A Liber Amicorum: T Walde- Law Beyond Conventional Thought (London: CMP Publishing Ltd., 2009) 45.

[53] United Nations Office on Drugs and Crime, Training Manual on Alternative Dispute Resolution and Restorative Justice, 2007
<https://www.unodc.org/documents/nigeria//publications/Otherpublications/Training_manual_on_alternative_dispute_resolution_and_restorative_justice.pdf> accessed on 18th November 2023.

[54] JA Tan, WIPO Guide on Alternative Dispute Resolution (ADR) Options for Intellectual Property Offices and Courts, 15

Under the Petroleum Industry Act 2021, model licences or leases are required to contain clauses regarding rules for settlement of disputes by means of mediation[55]and in the upstream, midstream and 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 Petroleum Industry Act.[56] The Petroleum Industry Act also empowers the NMDPRA[57] 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[58] and also authorizes the Nigerian Upstream Petroleum Regulatory Commission[59] and the Nigerian Midstream and Downstream Petroleum Regulatory Authority 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.

6. Conclusion

In a nutshell, the bringing together of all other dispute resolution mechanisms into arbitration and mediation alone has made the dispute resolution process more effective and efficient in the upstream oil and gas sector. In other words, the fussion of the other mechanisms into arbitration and mediation has relatively allowed for the effectiveness of dispute resolution system in the oil and gas industry as participants in the petroleum industry can now easily use any of the two to resolve their disputes instead of a array of mechanisms.

[55]Section 76(f) Petroleum Industry Act 2021.
[56]Section 96(1) and section 120(1)(j) Petroleum Industry Act 2021
[57] The Nigerian Midstream and Downstream Petroleum Regulatory Authority
[58] Section 163, section 179(e) and section 180(2) Petroleum Industry Act 2021
[59]Section 234(2) and (3) of the Petroleum Industry Act 2021