



PETROLEUM DISPUTES: AN ANALYSIS OF CURRENT AND EMERGING PATTERNS

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The complex nature of petroleum industry stakeholders' engagements and commercial agreements makes them susceptible to varying disputes. Right from the stages of exploration, drilling to refining and distribution of petroleum products, there are multifaceted contractual dynamics and huge cost implications that could generate potential disputes. This makes it mandatory for parties to envisage, negotiate and incorporate appropriate dispute resolution mechanisms in their agreements. Also, the number of parties involved in the oil and gas industry, along with the multi-party complexities of oil and gas exploration and production activities and agreements, may increase the potential for disagreement in the contracts signed between the parties. The paper discusses the nature and causes of petroleum disputes. It also reviews decided arbitral awards and judicial authorities relevant to the subject matter. This paper examines current and emerging patterns of dispute resolving the petroleum industry and the different dispute resolution mechanisms adopted to resolve them. Particularly, the paper examines the historic role of the conventional litigation approach in oil and gas dispute resolution. It also underscores the imperativeness of the innovative contributions of Alternative Dispute Resolution (ADR) options in determining oil and gas disputes faster while preserving the overall economic objectives of parties' contractual agreements. The paper employed a qualitative approach using different relevant materials to unravel and explain the nature of Petroleum disputes and mechanisms for resolving them. The paper concludes by making recommendations.

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1. INTRODUCTION

Disputes are natural phenomena inherent in every human interaction. Whether in socio-economic, political or commercial engagements, every human relationship attracts agreements and disagreements. It has been asserted that¹ disputes occur when individual or a group of individuals in a defined environment pursue divergent goals, interests, aspirations and ambitions. In some cases, interest and goals may be similar, however, disputes may still occur when parties differ or renege in either methodology or timing of compliance with obligations they voluntarily agreed upon in their agreements. The Petroleum industry is akin to disputes, like other large industries involving a variety of stakeholders, large and long-term investments. This is not surprising having regard to multifaceted contractual relationships and the huge costs of hydrocarbons exploration and exploitation involved in most oil and gas agreements. Also, the number of parties involved within the oil and gas industry, the complexity of drilling, exploring and production activities may increase the potential for disagreements, conflicts or different understanding upon the agreements signed between the parties which are likely to cause disputes.

Different types of disputes arise in oil and gas contracts starting from upstream activities by oil companies such as joint operating agreements, production sharing contracts, Joint ventures and mining partnership, balancing agreements, drilling contracts and service contracts to midstream disputes. Examples of service contracts to midstream disputes are gas gathering and production handling disputes, gas processing disputes and downstream activities including sales of oil and gas assets, oil and gas sales agreements, refineries and technologies.²

In all the above-mentioned stages of oil and gas transactions, disputes are invariable between the parties of the agreement.³ The specificity of the oil and gas industry creates a wide range of disputes, some of the most common are: inter-states or offshore construction disputes, quantity or quality disputes, disputes related to equipment, jurisdiction disputes, insurance disputes and maritime boundary disputes etc.⁴

This paper critically examines the diverse disputes that exist in the Petroleum industry such as contractual disputes, oil companies and community disputes, environmental dispute, and environmental disputes, among others and the trajectory for dispute resolution in the Nigerian oil and gas sector. The identified spectrum of dispute resolution mechanisms include the conventional litigation approach, various forms of alternative dispute resolutions, like negotiation, mediation, conciliation, arbitration and

¹ Otitie. O. & Albert. I.O. (Ed), 'Community Conflicts in Nigeria: Management, Resolution and Transformation' (spectrum books ltd; Ibadan 2001).

² James M Gaitis and others, *Oil and Gas Arbitration* (College of Commercial Arbitrators 2017).

³ Ibid.

⁴ CONNERTY 2002, pp 144-145.

expert determination mechanisms. This paper also climate litigation and sustainable development concepts in relation to petroleum disputes.

1.1 Climate Litigation

Petroleum exploration is one of the leading causes of climate change. Climate litigation involves the use of legal practice to mitigate climate change crisis caused by petroleum exploration among other causes of environmental degradation. Individuals, institutions and Non-governmental organisations often use the instrumentality of the law to tackle the problem of climate change. Over the years there has been increase in case laws relating to climate change. As at 2022, there has been 2,180 climate related cases filed in 65 different jurisdictions all over the world.⁵

One of such cases is *R (on the application of Finch on behalf of Weald Action Group) v. Surrey County Council and others*. In that case, in December 2018, a company known as Horse Hill Developments Ltd (“HHDL”) sought planning permission from the 1st Respondent, Surrey County Council (the “Council”) to retain and expand an existing onshore oil well site and to drill for new wells and the permission was granted by the Surrey County. The Appellant, Sarah Finch, who lives six miles from the Development site applied for judicial review of the Council’s decision (for herself and on behalf of Weald Action Group) on the ground that relevant environmental impact assessment (EIA) did not consider indirect (commonly referred to as ‘scope 3’ or ‘downstream’) emissions from the combustion of eventually refined hydrocarbons produced by the development. The Supreme Court held, upholding the judgement of the Court of Appeal, that the consideration of downstream greenhouse gas emissions is to form part of the assessment in the EIA process and the Surrey County Council having failed to do this, the approval granted to Horse Hill Development is unlawful and should be quashed.

1.2 Sustainable Development

Sustainable Development is a global commitment to put an end to poverty, ensure global peace and protect the environment. Sustainable Development in petroleum exploration is aimed at the fulfillment of the following obligations: environmental protection, energy security and economic growth.⁶ Although there is a challenge for

⁵ United Nations Environment Programme, *Global Climate Litigation Report: 2023 Status Review* (27 July 2023) <https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review> accessed 30 July 2024.

⁶ Onome Lisa Ejenavi, ‘Sustainable Development, Oil Exploitation & Prospects for Synergies Rather Than Trade-offs Across Divergent Goals’ (1 July 2022) <https://www.google.com/amp/s/pmnewsnigeria.com/2022/07/01/sustainable-development-oil-exploitation-prospects-for-synergies-rather-than-trade-offs-across-divergent-goals/%3famp=1> accessed 30 July 2024.

players in the petroleum industry to fulfill some of the Sustainable Development Goals especially as they relate to environmental protection because the industry is hydrocarbon reliant, yet the petroleum industry still play some key roles in achieving the Sustainable Development Goals. Some of the roles include poverty eradication via employment creation, energy security, economic growth via payment of taxes and levies, technological advancement and innovation.

The Petrol Industry has also contributed to the attainment of the Sustainable Development Goals by reducing greenhouse gas emissions in their operations, creating awareness on the need to reduce greenhouse gas emissions and contributing to local development. However, there are still more to be done by players in the petroleum industry towards the attainment of the Sustainable Development Goals.

The paper is divided into four (4) segments. The first segment introduces the paper. The second segment gives a detailed exposition on the nature of Petroleum disputes. The third segment examines litigation and alternative dispute resolution mechanisms in the Petroleum industry such as Litigation, Negotiation, Mediation, Conciliation, Arbitration and Expert determination dispute mechanism. The fourth segment ends the paper with conclusion.

2.0 UNDERSTANDING THE NATURE OF DISPUTE IN PETROLEUM INDUSTRY

Owing to numerous activities that go on in the Petroleum industry, there are various forms of disputes in the petroleum industry.

2.1 Forms of Disputes in the Petroleum Industry

2.1.1 Petroleum Tax dispute

Petroleum Tax Dispute is also referred to as Tax Dispute. This form of dispute occurs between companies involved in petroleum operations and tax authorities. There are several cases that discuss tax disputes. According to **Niger Delta Development Commission v. Nigeria Liquefied Natural Gas Limited**⁷, the Court held that NLNG is not liable to pay NDDC levy because **paragraph 3 of the 2nd schedule to the Nigeria LNG Act** exempts it from the applicability of such laws, taxes, etc. More so, in the case of **Shell v. Burutu LG**⁸, item 1(j) of the fourth schedule to the constitution limits the functions and duties of the local government to the assessment of privately owned tenements. An LG cannot levy tenement regarding tank farms, oil storage tanks and oil pipeline that is not privately owned. In the case of **Federal Inland Revenue**

⁷ (suit No: CA/PH/520/2007)

⁸ (2000) 1 NRLR 1

Service v. Nigerian National Petroleum Corporation & ors,⁹ the Court held that there is no provision in the PPTA under which the parties to PSC can refer tax disputes to arbitration. **Section 304 of the PIA** provides for the administration of matters that border on Hydrocarbon tax and Companies tax.

2.1.2 Oil Companies and Host Communities Disputes

This is another type of dispute in the Petroleum industry. Anikpo M. observes that¹⁰ the key feature of the dispute between the petroleum companies and the community (oil-rich areas) can be traced to oil exploration and unequal appropriation of what accrues from oil. More so, it includes the acquisition of vast acreage, clearing of sites, and introduction of new cultural patterns into the host communities, which are against the traditions and culture of the community. He further observes that¹¹, there are several forms in which this dispute occurs and they are:

Road block/protest demonstration; vandalism/destruction of facilities; disruption/stoppage of operations; piracy/seizure of vehicles or boats; closure of flow station and rig/molestation of petroleum company staff; hostage taking.

State legislation on the oil industry and manipulations of the revenue allocation system have made the conflicting relationship between oil companies and oil-producing communities possible. Although the causes of the conflicts are complex and interrelated, material deprivation is central to the conflicts.

Causes of this conflicting relationship range from oil-based environmental degradation-induced productivity losses and occupational disorientation, inadequate compensation for damages caused by oil industry activities, poor channels of communication by the oil companies, and failed community development programmes of the oil companies, among others¹².

Frequent occurrences of conflict between oil companies and host communities have been described as having a detrimental effect on the reputation, image, and promotion of goodwill of the oil companies in their host communities. Most multinational companies are often involved in one form of conflict or the other with their host

⁹ (2014) LPELR-23144(CA)

¹⁰ Anikpo M, 'Communal Conflicts in the East Niger Delta: A Cultural Matrix' (1998) 3 Pan African Social Science Review 1-12 <kms1.isn.ethz.ch/serviceengine/Files/ISN/98433/.../Chapter2.pdf> accessed 12 September 2016.

¹¹ *ibid*

¹² Ibaba Samuel Ibaba, 'Understanding Oil Company – Community Conflicts in the Niger Delta (Nigeria)' (2007) 14(1) Peace and Conflict Studies Article 1.

communities, especially in the oil-producing communities in the riverine areas of Delta State, Nigeria¹³.

One of the criticisms leveled against the Nigeria's PIA is the meager 3% allocation to the host communities, rather than the 10% that was demanded by the communities. This refers to the agitation of the Pan Niger Delta Forum (PANDEF) regarding the meager 3% provision for the Host Communities Development Trust (HCDDT) Fund and the allocation of 30% of Nigerian National Petroleum Corporation Limited (NNPC Ltd.) profit for the Frontier Oil Exploration Fund. This 3% allocation to the host community has been condemned by activists, civil society organisations, and host communities for failing to adequately cater to the host communities¹⁴.

The host communities are disgruntled with Nigeria's PIA requirement that petroleum corporations allocate 3% of their annual operational expenditure in the immediately preceding calendar year to the HCDDT when they had requested at least 10%. Moreover, because indigenous oil firms hold the majority of onshore oil wells, host communities are unsure if this contribution will be given at all. The prior owners of the oil wells were foreign corporations, which meant there were two sets of laws to ensure legal compliance in Nigeria and those of the home country. With internal ownership of the majority of onshore oil wells, the risk of non-compliance with the host community contributions is high, particularly in Nigeria, where the judiciary is seen as weak, court judgments are rarely upheld, and political control of the industry is pertinent because indigenous corporations dominate the onshore oil industry¹⁵.

2.1.3 Ownership of Land Dispute

Ownership of Land is another paramount form of petroleum dispute. This begs the question of the ownership of the territory where oil is found. **Section 1 of the Land Use Act, 1978**¹⁶ provides: 'subject to the provisions of this act, all lands comprised in the territory of each state in the federation are hereby vested in the governor of that state, and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this act'. The issue of ownership of territories cannot be overemphasised as it is a key factor in the maintenance of peace and stability. Several states claim ownership of either an oil well or a defined territory where a lot of oil in strata has become a prevailing issue in the Nigerian Petroleum industry. The nub of these disputes is that under Nigeria's oil

¹³ Harvey G.O. Igben, 'Community Relations Strategies of Oil Companies for Conflict Management in Host Communities in Delta State, Nigeria' (2022) 10(1) International Journal of Community and Cooperative Studies 44-62.

¹⁴ Union of Concerned Scientists, *Environmental Impacts of Natural Gas* (2014) <https://www.ucsusa.org/resources/environmental-impacts-natural-gas> accessed 14 March 2024.

¹⁵ National Center for Biotechnology Information, 'PMC10468656' <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10468656/#ref32> accessed 14 March 2024.

¹⁶ Laws of the Federation of Nigeria 2004, CAP L5.

derivation laws, each oil-producing state retains 13% of taxes on any oil produced inside its territory¹⁷. Thus, this has made states, with the prospect of becoming oil-producing states, very watchful. **Section 235-257 of the PIA** makes provision for the development of the host communities.

One of the most recent cases on land ownership is that of **Anambra basin** in Nigeria, which involved Anambra, Enugu and Kogi States. This dispute is centered on the ownership of land and oil located in Aguleri Otu Community, Anambra state.¹⁸ The dispute resulted in the killing and abduction of innocent people, burning of houses, farmlands, livestock and properties worth millions of Naira in these areas.¹⁹

2.1.4 Environmental Dispute

This is the most dreaded type of dispute in the Petroleum industry. It is no longer strange that the issue of environmental degradation has been interminable in Nigeria, especially in the Niger Delta region. However, this has resulted in serious disputes and tension in that region. It was reported that from 1976 to 2010, a total of 13,030 oil spills had occurred in the territory, thereby resulting in the discharge of 3,257,362.44 barrels of oil into the terrestrial, coastal and marine environment in the Niger Delta region. This spill causes damage to farmlands, soil infertility and even damage to the waters to be by the region.²⁰

A pendant in environmental degradation is gas flaring. Aside from the huge economic loss caused by this act, its attendant effect on the environment and health of the people therein is not palatable. Gas is flared in Nigeria than anywhere else in the world. Reports are notoriously unreliable, but about 2.5 billion ft of gas associated with crude oil is wasted in this way every day. This is equivalent to 40% of all Africa's natural gas consumption in 2001, while the annual financial loss to Nigeria is about US\$2.5 billion. The gas flares have contributed more greenhouse gases than all of sub-Saharan Africa combined. The flares contain a cocktail of toxins that affect the livelihood of local communities and health, exposing Niger Delta residents to an increased risk of premature deaths, asthma, child respiratory illnesses and cancer²¹. One of the major cases highlighting the challenge of IOCs and host governments for environmental degradation is the case of **Gbemre v. Shell Petroleum Development Company of**

¹⁷ *Local Politics, Oil, and a Land Dispute in Nigeria's Anambra Basin* <http://globaltorchlight.com/2013/04/10/localpolitics-oil-and-a-land-dispute-in-nigerias-anambra-basin> accessed 12 September 2016.

¹⁸ *Reps Intervene in Kogi-Anambra Oil Well Dispute* <http://www.informationng.com/2013/04/reps-intervene-in-kogi-anambra-oil-well-dispute.html>.

¹⁹ Ibid.

²⁰ Chizoba C, Abiola-Oloke G, Ijeoma O, Kennedy-Echetebe C and Chike J, 'Oil and Gas Activities and the Nigerian Environment' <http://conferences.iaia.org/2012/pdf/uploadpapers/Final%20papers%20review%20process/CHINWEZE,%20CHIZ>.

²¹ Ibid.

Nigeria Ltd. and Others²². In that case, the applicant, Gbemre, a representative of the Niger Delta Iwherekhan community sued the Nigerian government for its failure to stop Shell, a major player in the Nigerian oil and gas industry in gas flaring for several years. (ii) in this joint action, Shell was sued for engaging in massive and unceasingly harmful gas flaring in the entire community, while carrying out its exploration and production operations. The applicant grievance was that Shell failed in carrying out necessary environmental impact assessments and did not consider the lively impact of its unsustainable method of petroleum exploration. This led to harmful impact of human lives, agriculture and destruction of the ecosystem. The Court held that these constitutionally guaranteed rights inevitably include the rights to a clean, poison and pollution free environment.

Similarly, in the case of **Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria**, the communication alleged that the government of Nigeria had been directly involved in oil production and exploration through the State oil company known as the Nigerian National Petroleum Company (NNPC) which has the majority shareholder in a consortium with Shell Petroleum Development Corporation (SPDC), and that these operations have caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni People. The African Commission appealed to the government of the Federal Republic of Nigeria to ensure the protection of the environment, health and livelihood of the people of Ogoniland. One would have thought that such weighty environmental degradation should have been decided by the regional courts, where punitive measures should have been pronounced against both the Nigerian government and Shell for the overwhelming degradation of the community by its attendant harmful impact.

2.1.5 Petroleum Contract Disputes

Different types of contracts exist in oil and gas and business in general. These contracts determine the rights and duties of both sides. Each specific type of contract regulates the risks and expenses for the contractor. These types of contracts are necessitated by the diversity of ownership of oil and gas interests and/or the need to share economic risks.

Contractual disputes occur as a result of the numerous activities that go on in the Petroleum industry. There are several contractual agreements for the exploitation and production of Petroleum. For instance, a production contract where the exploration and Production Company carries the whole cost of exploration in respect of the contract area and is rewarded if a commercial discovery is made and development

²² *Gbemre v Shell Petroleum Development Company of Nigeria Ltd and Others* (2005) FHC/B/CS/53/05 Nigeria Federal Court of Nigeria <https://climatecasechart.com/non-us-case/gbemre-v-shell-petroleum-development-company-of-nigeria-ltd-et-al/>.

follows often causes disputes among contracting parties. Disputes are highly inevitable. Nonetheless, this does not entail that a deliberate attempt cannot be made to avoid certain disputes by identifying their causes. Hence, there are several causes of disputes which often occur at either upstream or downstream sectors. Regardless of the sector that may be possibly involved dispute can be caused by the following:

Economic change, infrastructural needs, economic crises, technical assumptions, political expectations and attitudinal change, government change, foreign investors caught up with domestic disputes, , economically or politically unviable projects.

In the case of **Taurus Petroleum Limited v State Oil Marketing Company of the Ministry of Oil, Republic of Iraq**, the Court held that the debts were situated in London rather than New York and that SOMO was a separate entity from the state of Iraq and did not contract as its agent. As a result, if the debts under the letters of credit had been owed to SOMO alone, they would not have been immune from execution. Also, in the case of **F-W Oil Interests, Inc. v. Republic of Trinidad & Tobago**, claims arose out of Claimant's alleged investment in the Soldado Fields, the site of an offshore oil and gas development and production project in Trinidad and Tobago, after the government sought to recommence resource production by soliciting the participation of foreign investors in the region.

2.1.6 Petroleum Operators and Service Contractors dispute

The number of services contractors offer to operators in the petroleum industry is unending and includes anything from significant construction and rig lease contracts to smaller supply contracts. Contracts in this category frequently contain arbitration clauses, and the operator frequently makes available pre-written forms of agreement. Nonetheless, where the contractor is providing highly specialized services or plant and equipment, there is likely to be intense negotiation between the parties on the content of the arbitration agreement. For example, in mobile production unit agreements, mobile production units (MPUs), i.e., jack-up rigs, semisubmersible drilling rig and floating, production, storage and off take facilities, are facilities which can be rapidly mobilized and demobilized at a low cost. An arbitral process is frequently carefully designed to settle any disagreement that arises throughout the term of the contract because the parties are expected to do business together for a long time and because of the significant amounts at stake.

2.1.7 Oil and Gas Licensees, and Regulatory Agency Disputes

There have always been disputes between government regulators and oil companies. These disputes mainly arise as a result of non-compliance with the terms and conditions of oil companies' licenses. The oil and gas industry is one of the highly regulated sectors of host countries. While some regulatory requirements are one-off, others are recurring i.e. must be renewed after a stated period to continue operations in that sector. In

Nigeria for instance, **Section 218(7) of the PIA** vests the FHC with exclusive jurisdiction over disputes between licensees, lessees or permit holders and the Commission or Authority. This is in alignment with the exclusive jurisdiction of the FHC under the 1999 Constitution.

*In the case of Hardy Exploration and Production (India) Inc. v. Government of India, Ministry of Petroleum and Natural Gas*²³

Hardy Exploration & Production (India) Inc v Government of India [2018] EWHC 1916 (Comm) Case No: CL - 2017-000454, Royal Courts of Justice

In 2013, the claimant obtained an arbitral award against the defendant. In 2017, on the application of the claimant, the court made an order for the enforcement of the award. On the 2nd of February 2018, the defendant applied to the court to set aside the Enforcement Order. However, before the hearing of the defendant's application for setting aside of the Enforcement Order, the claimant applied ex parte for an Interim Third Party Debt Order against the Government of India and its debtor, India Infrastructure Finance Company (UK) Limited (IIFC). The Interim Order required the India Infrastructure Finance Company not to pay a debt it owed to the Government of India up to a limit of 70,528,107.04. If the Interim Order is made final, the India Infrastructure Finance Company will be required to pay the debt to the Claimant and not to the Defendant.

On the 19th of April 2021, the IIFC applied for an order for the discharge of the Interim Order on the following grounds:

- i. The claimant did not give full and frank disclosure in its application for the Interim Order.*
- ii. The English court lacked the jurisdiction to make the Interim Order and/or should not make a final order because the debt owed by IIFC is enforceable in India and payment by a third party pursuant to an order of an English Court will not discharge the debt as a matter of Indian law.*
- iii. The debt is immune from enforcement under the State immunity Act 1978.*
- iv. The debt owed by IIFC to the Government of India was not “due or accruing due” on the date the Interim Order was made.*

The application by IIFC was decided on ground ii and iv and the Commercial Court held that English Courts did not have jurisdiction to grant an Interim Third Party Debt Order (ITPDO) in respect of a debt situated outside of England and Wales, unless the Interim Third Party Debt Order would be recognised as discharging the debt by the law applicable at the situs.

²³ Neutral Citation Number: [2018] EWHC 1916 (Comm) Case No: CL-2017-000454 (Royal Courts of Justice, Strand, London, 25 July 2018)
https://www.oeclaw.co.uk/images/uploads/judgments/Hardy_Judgment.pdf.

The Court concluded that it did not have jurisdiction to grant an ITPDO in the present case on the basis that the situs of the debt was located in India and that there was a real and substantial risk that the Indian Courts would not recognise the compliance with the ITPDO as discharging IFC (UK)'s of its liability.

The Commercial Court further held that the debt was not “due or accruing due” on the dates on which the ITPDO was granted and served due to the absence of actionable entitlement for the Government of India to be paid on these dates.

2.1.8 Oil Companies and Trade Union Disputes

Industrial dispute is the presence of disharmony when interests, goals or values of different individuals or groups are not compatible, thus frustrating each other's attempt to achieve objectives in an organisation²⁴. The causes of industrial disputes can be divided into economic and non-economic. Economic causes are wages, employee dismissal and retrenchment, bonus, working conditions and hours of work. Further causes of industrial dispute may include medical, educational facilities, housing facilities for the workers. In Nigeria, it was reported²⁵ that between 1968 and 2004, 6,287 trade disputes were declared. The number that resulted in strikes or work stoppages is 4,079 or 64.88% when compared to the number of dispute declared. Owing to the strategic importance of this sector to national economic development, the two trade unions in this sector namely National Union of Petroleum and Natural Gas Workers (NUPENG) and Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN), which are the bargaining agents for workers in this industry have gained considerable bargaining power and they have repeatedly exploited this to their advantage in the cause of championing the demands of their members.

In Nigeria, there are various labour legislations aimed at regulating the industrial relations environment. For example, the first significant labour policy in Nigeria was the **1938 Trade Union Ordinance**, which enabled the formation and recognition of trade unions²⁶ following the International Labour Organization's Convention on Freedom of Association. The Ordinance empowered a minimum number of five workers to form their union. This policy led to the proliferation of workers' organization as pockets of trade unions cropped up with its attendant increased trade disputes, thereby overheating the industrial relations environment. The **Trade Union Ordinance of 1938** was replaced by the **Trade Union Act of 1973**, which increased the minimum number of work forming a trade union. However, it did not arrest the increasing spate of trade disputes. Under the PIA, the Authority has powers under **Section 33** to issue dispute resolution and consumer protection regulations. Under

²⁴ P Kazimoto 'Analysis of Conflict Management and Leadership for Organisational Change' [2013] International Journal of Research in Social Sciences, 3 (1), 16-25.

²⁵ Central Bank of Nigeria Annual Statistical Bulletin (2007)

²⁶ S Fajana, *Industrial Relations in Nigeria: Theory and Features* (3rd edn, Labofin and Company 2006).

Sections 163, 179 and 180 of the PIA, the Authority has powers to mediate over disputes arising from the rights of third parties to access areas for midstream and downstream gas and petroleum liquids operations as well as open access, respectively.

2.1.9 Investment-State disputes

These are also called *State Investment dispute*. They occur when governments significantly change the terms and condition of the original deal or nationalize (or as sometimes referred to, “expropriate”) an investment. The investor (in this case is the Oil and Gas Company or a consortium of Oil and Gas companies) can base its claim on its investment contract (either a production sharing contract or risk service agreement) or an investment treaty, or possibly both. Most treaty claims are now made under bilateral investment treaties (BITs) and some under a multilateral treaty such as the Energy Charter.

These represent disagreements between the government and IOCs in relation to agreements for petroleum exploration, development and production (“PSAs”). They are also referred to as state investment disputes.

A typical illustration of issues that can lead to investment-state dispute, is the Nationalisation of BP. On 30 July 1979, the then managing director of the Nigerian National Petroleum Company (NNPC) acting on behalf of the then Nigeria military leader, dispatched a telegram to BP (Nigeria) Ltd. stating that Nigeria intended to “increase its participation to 100%” in Shell-BP and BP (Nigeria). This was as a result of the decision stemmed from the United Kingdom's (UK) proposed change in policy favouring the resumption of oil supplies to apartheid South Africa. Within a week, however, journalists and scholars offered a modified version of the declaration by stating that Nigeria as one of the world's largest producers and exporters of petroleum had “nationalised” the London-based British oil company, British Petroleum (BP). In looking at how the announcement has been presented, it is evident that the nationalisation of BP was more complicated than suggested in the news reports and scholarly essays with regard to Nigeria's intended purpose and execution.²⁷

Most treaty claims are made under bilateral investment treaties (BITs), which are negotiated and ratified by two sovereign states. There are presently more than 2,500 BITs involving some 180 countries in existence around the world. There is one multilateral investment treaty of significance to the oil and gas industry and that is the Energy Charter Treaty.²⁸

²⁷ Ann Genova, ‘Nigeria's Nationalization of British Petroleum’ (2010) 43(1) The International Journal of African Historical Studies 115-IV
<https://www.proquest.com/docview/347845638?sourcetype=Scholarly%20Journals>.

²⁸ See <http://www.encharter.org> for more details.

Another illustration is in a situation where an IOC violates part of its license obligations as stated in the contract between the IOC and the State government, by not fulfilling its developmental projects to the host communities, this could result in dispute between the IOC and the Host State.

2.1.10 Individual and Company Disputes

There are a number of situations where individuals initiate claims against oil and gas companies. The first is when an individual suffers a personal injury and begins a tort claim against a company. This is common in U.S. jurisdictions but is increasingly happening in other countries. A second area of individual claims arises from human rights or environmental claims. They are sometimes filed in U.S. courts using the Alien Tort Statute or other jurisdictions using a variety of innovative legal mechanisms²⁹. The third group of claims by individuals arise when promoters of oil & gas deals claim they have an interest in a host government contract and the accompanying joint operating agreement as a result of a third party tortious action or by way of agreement. The final group of claims concerns agents or consultants who demand payment under their agent agreements for winning a government contract for a company. There are a series of arbitrations that have happened over the last 50 years where companies have refused to pay their agent based upon corruption allegations after securing the host government contract.³⁰

The negative legacy issues of early oil and gas operations brought to the forefront of the industry agenda concerns of sustainable development and intergeneration equity. For example, under the provisions of the United States Alien Tort Statute, individuals outside of the US can institute judicial cases and claims against large corporations that engage in business activities that violate their human rights.³¹

As a result of the difficulty in holding the oil companies liable in Nigeria, the oil spill victims decided to sue the parent companies of these oil companies abroad. Recently, there has been an increase in transnational litigations arising from the Niger Delta, which individuals and communities have brought against parent companies in England, the Netherlands, and the US, where most of the parent companies of multinational oil companies operating in Nigeria are based.³² These litigations include – **Wiwa v Shell**, **Kiobel v Shell**, and **Bowoto v Chevron Corp in the United States**; **Bodo v**

²⁹ Jonathan Drimmer, 'Human Rights and the Extractive Industries: Litigation and Compliance Trends' (2010) 3(2) J World Energy Law & Business.

³⁰ A Timothy Martin, 'International Arbitration and Corruption: An Evolving Standard' [2009] 20th Annual Institute for Transnational Arbitration <http://www.timmartin.ca/qualifications/publications>.

³¹ Liesbeth Enneking, 'The Future of Foreign Direct Liability? Exploring the International Relevance of the Dutch Shell Nigeria Case' (2014) 10 Utrecht L Rev 44-50.

³² Ibid.

Shell/SPDC and *Okpabi v Shell* in the United Kingdom; and *Oguru v Shell* and *Kiobel v Shell*³³ in the Netherlands.

2.2 Causes of Oil and Gas Dispute

2.2.1 Inadequate Compensation for Environmental Damage

This is one of the major causes that usually throws the host communities, oil companies and the government into dispute. This has resulted in violent demonstration, agitation and litigation claim³⁴ against these companies for environmental damage. The flagrant refusal of oil and gas prospecting firms to pay the declared valuation compensation figure often attracts the people's wrath. They may likely take laws into their own hands by disrupting the normal operations of the oil and gas prospecting firm. This also causes the oil-bearing and host communities to act against oil companies.

2.2.2 Long years of Neglect of the Host Communities by Oil Companies and the Government

This has led to a serious problem in the host communities of oil companies in Nigeria. There is no Legal frameworks with genuine consideration for the environment of the host communities. There is no oil industry in some oil-producing countries. More so, there is also ineffective monitoring and control of practices and activities of the oil companies in their host communities.

2.2.3 Oppressive Legal Regimes in Oil Production

The legal regime for prospecting, mining, and exploration of oil in some countries is highly oppressive,³⁵ and harsh to the host communities and their states. For instance, in Nigeria, most of the legislations show how oppressive the laws made under the leadership of the major ethnic groups are and how they deprive and marginalize the minority which constitute these host communities. Thereby leaving the communities with no other option than to resort to violence, demonstration and eventually to litigation which has the effect of affecting the parties relationship.

2.2.4 Inadequate Provision of Community Assistance Projects

Host communities of oil companies see the provision of capital projects as their rights and the duty of oil companies to provide.³⁶ Failure of the oil companies to provide these

³³ *Oguru v Shell* [2011] District Court of The Hague.

³⁴ *SPDC (Nig.) Ltd. v Allaputa* [2005] 9 NWLR (pt. 931) 475

³⁵ F. F. Nido, *Multi-National Oil Companies and Community Relations in the Niger-Delta: A look at dispute Resolution*
www.geplaw.com/media/publications/multi.pdf?phpmyadmin=17c4d67d23et186b5773r72bc.
 Accessed 18/10/2014 .

³⁶ K A B Okoko, *Community Relations Report, Op. cit*

projects in their host communities leads the people of the communities to take to attacking the oil companies.

2.2.5 Non-Employment of Youth of the Host Communities by the Oil Companies

The issue of employment of youths and graduates of oil producing communities is a recurring viable cause of dispute between oil companies and their host communities. The former Governor of Rivers State Melford Okilo observes that:³⁷

Unless oil producing communities are provided with adequate social amenities and their indigenes are employed in these companies, the companies shall periodical dessert from their inhabitants.

2.2.6 Protracted Litigation

The oil-bearing and host communities being dissatisfied with the way and manner the compensation matters are handled, often resort to court action to coerce the oil and gas prospecting firm to pay. Yet their dreams are not always achieved, and consequently, it takes a long time for a court to decide on a compensation case.³⁸ The people of these host communities believe that the oil and gas prospecting companies are responsible for the court delays.³⁹

The multiplicity of parties and interest involved tend to make oil and gas disputes to be *prolonged*. For instance, the Piper Alpha North Sea disaster occurred on 6 July 1988, but the final judgment in respect of the claims by the Caledonia North Sea Ltd (formerly Occidental Petroleum Caledonia Ltd) and their insurers for indemnities from 24 contracting companies was delivered on 7 February 2002 by the House of lords.⁴⁰ The effect of the delay is damaging to the reputation of the company, as it may draw negative publicity. For example, BP has suffered this kind of negative publicity leading to being black-listed by the US government.⁴¹

³⁷ M Okilo, 'National Concord, A Daily Newspaper Published in Lagos, Nigeria 1980' cited by D I Hamilton, *Oil and Gas Companies and Community Crises in the Niger Delta*, op cit.

³⁸ C Jack Osimiri, 'Arbitration As a Conflict Resolution Approach to Oil Spill Compensation in Oil Producing Communities of River State Nigeria (2011) 2(1) *International Journal of Advanced Legal Studies and Governance* 23.

³⁹ *Ibid*

⁴⁰ Caledonia North Sea Limited and Another, British Telecommunications Plc and Others (2002) UKHL 4

⁴¹ Jonathan Russell, 'BP Banned from New US Business Over Lack of Business Integrity' *The Telegraph Oil and Gas News* (28 November 2012) <https://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/9709191/BP-banned-from-new-US-business-over-lack-of-business-integrity.html>.

3.0 DISPUTE RESOLUTION MECHANISM IN THE PETROLEUM INDUSTRY

Dispute resolution refers to several mechanisms that can be used to resolve a conflict, dispute, or claim. These involve litigation and alternative mechanisms, including mediation, negotiation, and arbitration. As a result of the nature and complexities 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 different oil and gas jurisdictions, disputes in oil and gas sector from time to time are predictable⁴². Disagreements may happen among investors (domestic or foreign) or between operators and the host communities in the petroleum-producing areas, contracting with state governments, the federal government, and the component states⁴³.

Resolving any possible ensuing disputes is to “foster a business environment conducive for petroleum operations”⁴⁴ along with enhancing “peaceful and harmonious co-existence between licensees or lessees and host communities.”⁴⁵ The new Petroleum Industry Act 2021, conscious of the dynamism, peculiarity and complexities in the Nigerian oil and gas sector, stipulated certain dispute resolution mechanisms for settling oil and gas disputes.

3.1 Litigation and Alternative Dispute Resolution (ADR) In Petroleum Disputes

3.1.1 Litigation

Litigation is the most common dispute resolution technique for lawyers. It is the process of taking a case to the court of law. In domestic oil and gas disputes where all parties are from the same jurisdiction, litigation is preferred but not preferred in international disputes because of issues relating to neutrality and enforcement of judgments in the foreign jurisdiction, aversion to local courts by foreign investors, and the times it takes to conclude a case.

Litigation is an adjudicatory mechanism for resolving conflicts. 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**

⁴² Adesina Temitayo Bello, 'Dispute Mechanism in Petroleum Industry: An Overview of Arbitration Frontiers' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2971020 (accessed 14 March 2024).

⁴³ Peter Olaoye Olalere and Maryam Abdulsalam, 'Dispute Resolution by Arbitration in the Nigerian Oil and Gas Industry under the Nigeria Petroleum Industry Act 2021' *Mondaq* <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 14 March 2024).

⁴⁴ Petroleum Industry Act, 2021, No. 6, section 2(d).

⁴⁵ Ibid. section 234(1)(c).

Nigeria (CFRN) 1999, 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 to determine any question regarding the civil rights and obligations of that individual⁴⁶.

Litigation was used to settle boundary disputes between the Nigerian Federal government and the component States⁴⁷. See the case of **Attorney-General of the Federation v. Attorney-General of Abia State & 35 Others**. Challenges in Litigation such ways as the *locus standi*, litigation expenses, delay in pursuing court litigation, high, lack of confidentiality, and limitation of time. Litigation is securely inhibited and guarded by rules of law and of courts, parties to court proceedings have little or no influence on the conduct of their dispute, litigation is slow and very expensive, access to the court can be highly restricted, and parties to litigation do not own the dispute in any material way.⁴⁸

3.2 Alternative Dispute Resolution (ADR) and Nigerian Jurisdiction

These challenges of litigation have therefore given rise to Alternative Dispute Resolution (ADR) mechanisms which have been used to resolve environmental conflict in recent years. Furthermore, due to the sophisticated and multifaceted contractual agreements involved in the oil and gas industry, foreign investors prefer to resort to arbitration to settle disputes swiftly and timeously.

The Nigerian ADR legal regime has metamorphosed over the years from a distinct legal regime guiding only arbitration and conciliation⁴⁹ to court-connected legal and procedural frameworks.⁵⁰ Nigerian courts have incorporated ADR into their justice administrative system by building ADR into their court rules.⁵¹ This has been formalized through the concept of multi-door court system, that allows conventional civil suits in courts to be transferred to ADR court connected multi-door courts within the same court premises by the presiding judge, if the court in his wisdom, considers any of the ADR mechanisms best suited for effective resolution of the dispute. Neutrals who are on the list of the Multi-Door court are appointed by the registrar of the multi-

⁴⁶ Enobong Mbang Akpambang, 'Oil and Gas-Related Disputes Resolution: Trajectory under the Nigerian Petroleum Industry Act 2021' [2022], *American International Journal of Contemporary Research* Vol. 12, No. 2.

⁴⁷ *Attorney-General of the Federation v. Attorney-General of Abia State & 35 Others* [2002] FWLR (Pt. 102) 1.

⁴⁸ J I Mohammed, 'Dispute resolution in the Oil and Gas Industry: An Appraisal of Mediation and Litigation Procedures' [2020] *Journal of Private and Business Law*; (2)(1) 115-126

⁴⁹ Arbitration and Conciliation Act (ACA), 2004 (Cap A18, Laws of the Federation of Nigeria, 2004).

⁵⁰ Mediation Regulation 2012.

⁵¹ High Court of Lagos State (Civil Procedure) Rules, 2019 for ADR in Lagos State; Civil Procedure Rules (CPR), 2009 (Order 25, Rules 1-13); Mediation Regulation 2012.

door court⁵² to either mediate, conciliate, or evaluate the case between the parties. The outcome of this resolution is taken back to and filed in the referral court as the court's consent judgment.

Presently, Nigerian ADR practice is generally governed by the federal law referred to as Nigeria Arbitration and Mediation Act, 2023,⁵³ which repealed the Arbitration and Conciliation Act of 2004. This new ADR law made novel provisions in ADR practice in Nigeria. The Act for the first time in Nigeria, codifies mediation as an alternative dispute resolution mechanism, to arbitration.⁵⁴

In arbitration, it created the following new provisions; (i) Joinder of Parties⁵⁵ (ii). Consolidation of Arbitration Proceedings.⁵⁶ (iii) Third-Party Funding⁵⁷ (iv) Arbitral Award Review Tribunal.⁵⁸ (v) Electronic Communication⁵⁹ (vi) Emergency Arbitrators⁶⁰ (vii) Grounds for Setting Aside an Arbitral Award.⁶¹

While we commend the above new provisions of the Act, it is worthy of note that, there are still some gaps despite innovative provisions. Some of those gaps are as follows: (i) Absence of clarity as to what qualifies a mediator. (ii) Lack of adequate guidance on arbitration procedures. (iii) Failure to provide for adequate online mediation scope. (iv) The provision on confidentiality does not make for a clear guidelines. (v) Consumer protection provisions does not suffice. (vi) The Act creates uncertainties in terms of its application across states. (vii) The Act fails to protect arbitrators and mediators by not providing for their immunity. (viii) Enforcement mechanisms provisions are ambiguous. (ix) Lack of adequate international cooperation.

3.3 ADR and Petroleum Disputes

3.3.1 Negotiation and Petroleum disputes

In simple terms, Negotiation as a dispute resolution mechanism is used when one party has something the other wants and is willing to bargain for it. Thus, when parties meet to draw up contracts such as Energy contracts, buy or sell anything, resolve differences, or make mutual decisions and agreements, negotiation skills are deployed to achieve favorable terms and conditions. Contract negotiation is a major feature of petroleum

⁵² Lagos State Multi-Door Courthouse Law 2007 established the Lagos Multi-Door Courthouse; Also, Abuja Multi-Door Courthouse Regulation, 2007.

⁵³ Nigeria Arbitration and Mediation Act, 2023.

⁵⁴ Ibid. section 67

⁵⁵ Ibid. section 40

⁵⁶ Ibid. section 39

⁵⁷ Ibid. Sections 62(1) and 91

⁵⁸ Ibid. Sections 55(3) and 56(6)

⁵⁹ Ibid. Section 91

⁶⁰ Ibid. section 16

⁶¹ Ibid. Section 55(3) and (4)

business transactions between licensees and oil and gas energy regulators. The case of **Esso Exploration and Production Nigeria Limited, et ano., Petitioners, v. Nigerian National Petroleum**⁶² illustrates the use of negotiation in energy contracts. In this case, a 1993 Production Sharing Contract (the "Agreement") between Esso and NNPC related to the Erha oil field off the coast of Nigeria. This case was eventually settled between the parties after they deployed innovative negotiation skills to arrive at a consensus *ad idem*.

3.3.2 Mediation and Petroleum disputes

Sometimes, parties in energy contracts agree that in the event of disputes, they should resort to mediation first. Where mediation fails, arbitration may probably be adopted as the next mechanism. In the new Nigerian petroleum legal regime, the PIA makes provision for resolving disputes arising from issuance or compliance with terms and conditions of petroleum licenses; See sections 76(f), 96(1)(l), 120 (j)), 163, 179, 180 and 234 of the PIA, 2021.

Mediation has been deployed to resolve petroleum disputes around the world. In the case of the *Government of the Republic of South Sudan v Hope for Humanity Africa (HHA)*, the plaintiff, Hope for Humanity Africa (HHA) challenged the government of South Sudan on alleged oil spillage due to leakage of oil pipelines resulting to environmental pollution that affects the population. The court order resulted from a request by the lawyer representing South Sudan's Minister of Justice, who asked the Court to allow the Government to attempt a settlement through mediation. The court granted the request and ordered the case to proceed with the court annexed mediation under Rule 64 (2) of the Court Rules.

3.3.3 Conciliation and Petroleum disputes

Conciliation has also been utilized to resolve petroleum disputes. In the case of **The Timor Sea**, Conciliation is reported to have recorded one of the first instances where compulsory conciliation mechanism under Annex V of the 1982 United Nations Convention on the Law of the Sea. The Conciliation Commission addressed the objections to its competence as a preliminary matter and rendered a separate decision.⁶³ In resolving this dispute, on the 6th day of March 2018, the parties signed the treaty on the Timor Sea Maritime boundary commonly referred to as the 2018 treaty. The Timor Sea Conciliation led to the successful settlement of the long-standing deadlock between the parties which had earlier not been settled by either litigation or negotiation.

⁶² " *Esso Expl. & Prod. Nig. Ltd. v. Nigerian Nat'l Petroleum Corp.*, 397 F. Supp. 3d 323, (S.D.N.Y. 2019)

⁶³ *Timor-Leste v. Australia*, Timor Sea Conciliation, 19 September 2016, para. 111 (A)

3.3.4 Arbitration and Petroleum disputes

There are a plethora of energy disputes, and arbitration as a dispute resolution mechanism has been adopted to resolve energy disputes of varying types and forms.⁶⁴ In the popular case of the **Federal Republic of Nigeria v Process and Industrial Developments Limited**, the Nigerian Ministry of Petroleum Resources signed an agreement for the construction and operation of a new gas processing facility with P&ID, a company incorporated in the British Virgin Islands. As specified in the contract, Nigeria was to supply natural gas (“wet gas”) at no cost to P&ID’s facility. On the part of P&ID, the company was to construct and operate the facility. The company was to process the gas to remove natural gas liquids, which P&ID was entitled to and return lean gas to Nigeria at no cost, which would be suitable for use in power generation and other purposes. There was evidence of corruption which led the court to award US\$11 billion against Nigeria. On October 2023, Nigeria successfully challenged the US\$11 billion arbitral award under **Section 68 of the Arbitration Act 1996** on the basis that the award was obtained by fraud and conduct contrary to public policy, including bribery of a witness, improper retention of privileged documents and perjury by a key witness.⁶⁵

3.3.5 Expert Determination as an Alternative Dispute Resolution Process in the Oil and Gas Industry

Expert determination have been used often as a preferred dispute resolution mechanism by some parties because of the technical nature of oil and gas disputes. However it does not enjoy the same level of recognition or enforceability as an international arbitral award. Expert determinations have been resorted to in oil and gas disputes in several cases. In the case of **Shell (UK) Limited & Anor v. Enterprise Oil Plc. & Others**,⁶⁶ the parties were licensees for oil block exploration and production operations in the North Sea. Part of their agreement was that the matter would be referred to an expert for determination, the defendant contended that the expert determination was of no contractual importance and that the parties were, therefore, not bound by the expert determination. The Court 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 unbound on the parties⁶⁷.

The use of expert determination to resolve oil and gas disagreements is also recognised in Nigeria. Under the provisions of the PIA, upstream licenses and leases are required in all cases to contain clauses relating to dispute resolutions through the procedure of

⁶⁴ G. Ezejiakor, *The Law of Arbitration in Nigeria*, Ikeja; Longman Nigerian Plc, 2005) 3.

⁶⁵ *The Federal Republic of Nigeria v Process and Industrial Developments Limited*; [2020] EWHC 2379 (Comm)

Case No: CL-2019-000752

⁶⁶ *Shell (UK) Limited & Anor v. Enterprise Oil Plc. & Others* [1999] 2 All ER 87; 2 Lloyd’s Rep. 456.

⁶⁷ *Jones v Sherwood Computer Services Plc.* [1992] 1 WLR 277 at 278.

expert determination and failure to adhere to any expert determination relating to dispute resolution provision outlined in the license or lease or the Act could provide a potential justification for the nullification of the license or lease by the Minister of Petroleum Resources⁶⁸. Similarly, a license or permit granted for midstream and downstream petroleum operations may be withdrawn where the licensee or holder of the permit falls short of complying with any expert determination toward dispute resolution as under the license or the Act.⁶⁹

4.0 RECOMMENDATIONS AND CONCLUSION

4.1 Recommendations

It is recommended that while the use of ADR to resolve petroleum disputes globally should be encouraged more, nations of international communities should strengthen frameworks that will encourage enforcements of arbitration awards and mediated settlement agreements. National domestic petroleum legal regimes of host countries should be amended to eliminate protracted litigation, oppressive legal regime, and improve on compensation, justice delivery systems. On the part of Nigeria, it is recommended that gaps identified above in the ADR legal framework should be filled through legislative amendments that will accommodate provisions that will make for necessary improvement.

4.2 Conclusion

Dispute is a potential occurrence in every commercial transactions. It is an inevitable occurrence to be envisaged in every contractual relationship.⁷⁰ Though disputes are natural phenomenon, the less dispute in the petroleum industry, the better for the growth of businesses in the industry. The responsibility of reducing disputes in petroleum industry belong to all stakeholders.

To the benefit of the oil and gas sector, dispute resolution has advanced from conventional litigation that is time-consuming with negative business development implications to alternative disputes resolution mechanisms that makes for quicker dispute resolution and preserve commercial relationships. The current and emerging petroleum disputes have had more win-win outcomes for disputing parties because of more use of ADR mechanisms. Petroleum stakeholders are encouraged to promote the use of ADR mechanisms over litigation to resolve petroleum disputes because of its overriding advantages.

Be that as it may, it should be noted that as much as judicial interventions in some ADR cases, like in the **Nigeria v P&ID** case (supra), could be helpful in ensuring justice in

⁶⁸ PIA 2021, section 96(1)(l).

⁶⁹ Ibid. section 120(1)(j).

⁷⁰ CONNERTY 2002, pp 144-145.

energy-related disputes. It should be cautioned that undue judicial interventions in energy-related ADR cases might be counter-productive.