

Dispute Mechanisms and Investment Dynamics in the Nigerian Hydrocarbon Industry

By

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Abstract

*The Nigerian hydrocarbon industry presents substantial opportunities for both local and international investments, significantly influencing the nation's development trajectory. This study explores the regulatory frameworks and dispute resolution mechanisms, emphasizing their effects on investment dynamics. Employing a qualitative (doctrinal) research method, the analysis includes primary and secondary data, with a focus on the Petroleum Industry Act (PIA) 2021. **The findings indicate a growing trend of investments and a strong preference for Alternative Dispute Resolution (ADR) mechanisms, including arbitration, mediation, conciliation, and expert determination. These ADR mechanisms are in line with international best practices and foster robust investment.** The study advocates for the continued use of ADR, the development of institutional frameworks, and the establishment of energy courts to expedite dispute resolution and bolster national economic development.*

Keywords: Dispute Mechanism, Investment Dynamics, Hydrocarbon Industry, Development Trajectory.

General Introduction

The hydrocarbon sector is a critical national asset and intricately tied to the economic development of the Nigerian state. Beginning from the colonial times, through post-colonial and contemporary era, there has been myriad of regulatory frameworks and initiatives in the political economy of hydrocarbon governance in Nigeria, with underpinning for entrenching an effectively regulated oil and gas sector and promoting a sustainable market economy that is driven by investment and competitiveness. While these ambitious plan seems to have been largely undermined by political and economic factors, the quest for establishing a formidable investment driven hydrocarbon economy remains a continuous political and economic aspiration that has dominated the policy framework of the Nigerian state.

The potential in the hydrocarbon industry, spanning the upstream, mid-stream and downstream sectors, represents a haven of enormous economic and investment opportunities in Nigeria. However, there are myriad of challenges beleaguering the industry, ranging from external factors such as uncertainties in production and supply policies, infrastructural deficit, energy transition pressures and the pervasive global geopolitical tensions. Beyond these, is the crucial issue of dispute mechanism within Nigeria's rich hydrocarbon industry. Remarkably, the investment potential in the sector also presents a complex situation for the possible eruption of disputes that would need to be resolved. The growing advancement in technology and complexities of carrying out hydrocarbon businesses

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presents peculiar trends of disputes that may not have existed in the past, and that would need innovative resolution for a sustainable future in the industry.

Entrenching an effective and globally acceptable dispute resolution mechanism would arguably, orchestrate a resilient investment economy that could potentially engender an uptick in Foreign Direct Investment (FDI) in the Nigerian hydrocarbon landscape. The transnational nature of hydrocarbon investments, with attendant international flavour attributed to it, undoubtedly underscores the imperatives of such a dispute mechanism. Dispute settlement trends in the hydrocarbon industry indicate that there exist variety of dispute resolution mechanisms ranging from litigation to the adoption of Alternative Dispute Resolution (ADR), encompassing arbitration, mediation, conciliation, negotiated settlement and expert determination, in resolving contractual or investment related disputes, emanating from the exploration, transportation and refining activities carried across the upstream, midstream the downstream sectors of the hydrocarbon value chain in Nigeria.

These Petroleum Industry Act, 2021, is the major regulatory framework governing the Nigerian hydrocarbon sector. This legislation, in concert with other relevant legislations provide for dispute mechanism within the Nigerian hydrocarbon industry. However, what stands to be determined in this discourse is the impact of the dispute settlement mechanism on the market dynamics in the industry. This forms the statement of problem in the study. The objective of the study, therefore, is to examine the regulatory frameworks on dispute settlement and the impact on market dynamics within the Hydrocarbon industry.

The study appreciates the importance of dispute resolution in the contemporary corporate world, stressing that an efficient dispute resolution system is a viable means of sustaining an investor friendly and resilient market economy within the Nigerian hydrocarbon sector. The study is divided into six sections. The second section of the study profiles the investment potential in the Nigerian hydrocarbon industry, while section three of the study examines the regulatory frameworks for dispute resolution. The thrust of section four is on dispute resolution mechanisms in the Nigerian hydrocarbon Industry. Section five of the study conceptualises on dispute settlement efficiency and market dynamics in the Nigerian hydrocarbon Industry, while section six, being the concluding part of the study forms the summary and recommendations.

Profiling Investment Potential in the Nigerian Hydrocarbon Industry.

Nigeria has a rich energy profile with robust investment potential that traverse the different components of the hydrocarbon industry value chain, encompassing gas commercialization, deep-water exploration, refining, infrastructural development and distribution of finished products. The Petroleum Industry Act has deregulated the hydrocarbon industry, and introduced innovative legal, financial and institutional frameworks, intended to provide an enabling environment for a competitive, private sector and technology driven market economy. The envisioned market is to promote investment by foreign and indigenous investors in the hydrocarbon industry, across the upstream, midstream and downstream sectors accordingly. Driven by reforms with underpinning for optimum exploitation of the vast hydrocarbon potential in Nigeria, there has been a drastic policy shift in hydrocarbon governance, from the erstwhile state dominated architecture, towards market liberalism as the regulatory policy. The shift in policy provides a viable platform for building a sustainable and investment driven economy, with tremendous business opportunities that can potentially change the economic and development trajectory in Nigeria.

The upstream sector of the petroleum industry involves majorly, the exploration and production aspects, and engaged in extracting crude oil and natural gas from the earth's surface. It also includes geological surveys to trace hydrocarbons, exploration and drilling. This is basically the initial stage of extracting raw materials through the application of advanced technological infrastructures including the application of artificial intelligence, automated and digitalized technology to achieve optimum exploration and production benefits.

Gas exploration is one of the major activities at the upstream. Nigeria possesses some of Africa's largest proven oil and gas reserves, which provides a strong foundation for investment, with an estimated gas reserve deposit of 5.91 trillion cubic metrics of proved natural gas reserves as of 2022,² worth over 803.4trillion US dollars as of 2023³. Nigeria has been described as a gas province with proven vast natural gas reserves estimated to be far larger than its oil reserves. The government's "Decade of Gas" initiative and the Nigerian Gas Flare Commercialization Programme (NGFCP) government are initiatives aimed at to attracting investment in gas explorations, expected to reduce flaring and attract significant funding⁴. Other activities within this sector include deep water exploration and Asset divestments for onshore and shallow-water assets, which are capable of creating opportunities for indigenous and foreign investors in the industry.

The legal framework that shapes transactions at the upstream sector includes upstream oil and gas contracts concessions, anchored on the procurement of exploration rights; production sharing contracts (PSCs), where the contractor funds operations and shares output; service contracts, where a company acts as a service provider for a fee; and joint ventures, where multiple parties share costs, risks, and profits. These agreements govern the relationships between companies and governments or private parties in the exploration, development, and production of hydrocarbons.

In 2024, a wave of divestments and acquisitions reshaped Nigeria's oil and gas landscape, influencing the industry's trajectory for the future. Notably, in the first quarter of 2024, Savannah Energy announced the execution of a sales and purchase agreement (SPA) for the acquisition of 100% of the shares in Sinopec International Petroleum Exploration and Production Company Nigeria Limited. In the third quarter of 2024, Oando Plc acquired 100% of Nigerian Agip Oil Company for a total of US\$783 million⁵. In the same quarter, Chappal Energies Nigeria Limited which acquired Equinor Nigeria Energy Company in 2023, announced its acquisition of Total Energies EP Nigeria Limited (TEPNG)'s 10% interest in its onshore and shallow water assets for an aggregate consideration of US\$860 million.

The acquisition and mergers trend continued in the industry when Renaissance African Energy Company Limited (Renaissance) also made headlines with its landmark acquisition of Shell Petroleum Development Company (SPDC)'s assets, valued at US\$1.3 billion. The SPA for the transaction was signed in January 2024, unlocking a major opportunity for renaissance in the oil and gas industry. The industry also saw Aradel Energy announce its execution of an SPA for the acquisition of 100% interest in the Olo and Olo West marginal fields from the NNPC/TEPNG JV

² <https://www.statista.com/statistics/1387331/proved-natural-gas-reserves-in-nigeria/>; last visited on the 24th of February, 2024.

³ <https://punchng.com/nigerias-proven-gas-reserves-worth-over-803-4tn-fg/>.. Last visited on the 24th of February, 2024.

⁴ Ibid

⁵ OALP-Oil-and-Gas-Outlook-February-2025.pdf <https://share.google/HkYOFTsjlUHKc4rnb>; last visited in October, 20, 2025

for the sum of US\$16million and a deferred payment of US\$3.5million⁶. Likewise, Africa Oil Corporation, a Canadian oil and gas company⁷, obtained clearance from the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) for the merger of its subsidiary, Africa Oil Papa Corporation with BTG Pactual Holding S.a.r.l, with a view to holding 100% shares in Prime Oil & Gas Cooperative⁸.

The midstream sector of the petroleum industry involves the transportation, storage, processing and wholesale marketing of crude oil and natural gas, as well as refined products. The transactional activities in this sector are legally shaped by midstream energy contracts that are complex, long-term and primarily fee-based; and govern the transportation, processing, and storage of oil and natural gas activities. These contracts traditionally span between 10 to 25 years or more, depending on corporate exigencies and aspiration of the parties concerned. Most midstream contracts generate revenue through set fees for services like gathering, treating, and transportation, which insulates midstream companies from the volatility of commodity prices.

Investments in Nigeria's midstream sector in 2024 were primarily driven by natural gas projects, strategic government funding, and the operational start of the Dangote Refinery. The Petroleum Industry Act (PIA) provides a legal and fiscal framework that has created new avenues for private and public sector midstream investments in 2024⁹. One of such initiatives is the Midstream and Downstream Gas Infrastructure Fund (MDGIF), where the federal government released a total of N122 billion to six gas infrastructure companies, by way of committing public and private sectors to transform the domestic gas value chain. The funding is intended to aid the development of Liquefied Natural Gas (LNG), Compressed Natural Gas (CNG), and Liquefied Petroleum Gas (LPG) projects. Furthermore, the Nigerian Gas Association reported over \$5 billion in new investments for the gas sector as of early 2024, citing increased global confidence orchestrated by policy reforms in the industry. The Presidential Compressed Natural Gas Initiative (PCNGI) is another key policy initiative in the industry that has attracted over \$500 million in investments intended to boost the use of CNG to address transport fuel needs in Nigeria¹⁰.

Besides the Presidential Compressed Natural Gas Initiative (PCNGI), there are other key policy initiatives so far introduced to complement investment drive as articulated by the Petroleum Industry Act. For instance, the investments in the petroleum industry include Fiscal incentives, which came by way of executive Order in 2024, introduced new tax incentives for midstream and downstream oil and gas operations. This order created a competitive fiscal environment for investments, especially for gas projects. Furthermore, the Nigerian government's approved divestments deal by International Oil Companies, has further broadened the participatory landscape, and increased opportunities for ambitious indigenous firms to acquire and invest in onshore and shallow water assets.

The downstream sector is engaged in refining and distribution of petroleum products to final consumers within the production value chain in the hydrocarbon industry. With deregulation that allows for private ownership, there are prospects for investment in both large-scale and modular

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

refineries. The Dangote refinery demonstrates the viability of large private refineries that aims to reduce Nigeria's reliance on imported petroleum products.

Other potential investments in this sector include a growing petrochemical industry with promises for producing various chemical products from crude oil and natural gas. The Compressed Natural Gas (CNG) infrastructure presents the potential for robust investment in the downstream sector, especially in view of the initiative by the federal government for Compressed Natural Gas, as the emerging transportation fuel in the country. It has prospects for opening investment opportunities in auto-CNG facilities and distribution networks.

The downstream sector of the hydrocarbon industry in Nigeria has observed unprecedented development in 2024, with the establishment of the largest private owned and arguably, one of the largest petrochemical refineries in the world. The Dangote Refinery made significant strides in its operations, positioning itself as a critical asset to the Nigerian oil and gas industry in 2024. Market projections indicate that the refinery has significantly reduced Nigeria's reliance on imported petroleum products and saved the nation an estimate sum of over \$12 billion annually in foreign exchange annually, while reducing the pressure on the naira¹¹.

The long-term aspiration for permanently removing disruptions in the oil and gas sector has further influenced investments in the transport sector of the oil and gas value chain, by the investment of 720 billion naira worth investment in a fleet of 10,000 CNG-powered trucks intended to facilitate nationwide distribution of petroleum products. This strategy is intended to effect direct supplies to retailing outlets, a development that reshapes the traditional and establishment business modules that has held sway in the supply chain of the petroleum industry. The expected employment figure for the expected 10, 000 fleet of CNG trucks stands at 60, 000 potential job opportunities, adding to the over 30, 000 workers already engaged by the petrochemical refinery. Additionally, the Dangote Company has plans of introducing a credit scheme that allow retailers enrolled for the provision of petroleum products to be paid after sales¹².

The Nigerian Petroleum industry is a haven of investment opportunities but also susceptible to a myriad of disputes that can potentially undermine market operations. Accordingly, there are possibilities of disputes eruptions from a wide range of contractual and regulatory arrangements, encompassing disagreements between government and project parties over profit sharing and licensing; fiscal disputes involving taxes and charges; contractual disputes between private entities; disputes arising from obligations, tortious liabilities giving rise to responsibilities in law; land-related conflicts over compensation for occupied or sacred areas; operational disputes concerning the appointment of operators and technical service agreements; and industrial disputes between oil companies and labour unions.

Other include disputes over Non-compliance with environmental standards, and other regulatory provisions; human rights violations; disputes as touching the agitations of aggrieved host communities; and disputes touching on market dominance and competition. These disputes traverse the upstream, midstream and downstream sectors of the industry and the imperatives of resolving them cannot be overemphasised. This is owing to the fact that an effective resolution of disputes is coterminous with sustainable investment in the petroleum industry.

¹¹ Nigerian THISDAY Newspaper of May 8, 2023.

¹² Ibid

Regulatory Frameworks for Resolving Disputes in the Nigerian Petroleum Industry

Generally, there is a broad range of dispute mechanisms applicable in the hydrocarbon sector, traversing international and national frameworks. The international frameworks include the United Nations Convention on the Recognition and Enforcement Awards (New York Convention) 1958 and International Centre for Settlement of Investment Disputes (ICSID). These are international treaties on arbitration, to which Nigeria is signatory, and they constitute part of the arbitration regime in Nigeria. However, for the purpose of this discourse, our review is limited to the local regime on dispute settlement in the petroleum industry. Accordingly. The study shall be concentrating on national and sector specific dispute settlement regimes like the constitution of the Federal Republic of Nigeria (1999) as amended, Nigerian Arbitration and Mediation Act 2023; Nigerian Investment Promotion Act 2004; Oil Pipelines Act 2004, and petroleum Industry Act 2021.

Constitution of the federal Republic of Nigeria (1999) as amended

The constitution of the federal Republic of Nigeria (hereinafter referred to as the CFRN 1999, as amended) is the grundnorm with provisions for the judicial¹³ powers of the state in the determination of any dispute with respect to the existence of any right or liabilities between governments¹⁴, or between government and an individual or organisation or between private entities in Nigeria. This constitutional provision confers adjudicatory powers on the conventional court system, with exclusive jurisdiction conferred on the federal high court of Nigeria¹⁵ to determine disputes related to the oil and gas sector. The CFRN 1999 also recognizes the application of Alternative Dispute Resolution (ADR)¹⁶, in the promotion of international dispute settlement, through the application of ADR mechanisms like arbitration, mediation and conciliation.

Section 19(d) makes reference to the use of ADR in promoting the settlement of international disputes. However, in practice, Nigerian courts have expounded the application of the ADR in resolving domestic disputes, as shown in standard practice where Nigerian courts, in a bid to exploring the ADR avenue in resolving disputes, have set out the relevant guidelines to regulate these proceedings and advance cost effective and timely determination of disputes. Therefore, within the scope of the Nigerian constitution, both the conventional dispute resolution system and the ADR mechanism are applicable in the determination of oil and gas disputes.

Nigerian Arbitration and Mediation Act 2023

The Nigerian Arbitration and Conciliation Act 2004¹⁷ hitherto, regulated arbitration practice in Nigeria. The ACA 2004 has been repealed by the Arbitration and Mediation Act (AMA) 2023,¹⁸ as the extant legislation regulating arbitration practice in Nigeria. The AMA 2023 provides a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and mediation and makes applicable the New York Convention to the enforcement of any award

¹³ Section 6 of the CFRN (1999) as amended

¹⁴ Section 272 (1), 232 (1) of the 1999 Constitution

¹⁵ Section 251 of the Constitution

¹⁶ Section 19 of the Constitution

¹⁷ Enacted by a military decree in March 1988.

¹⁸ Cap A 18 laws of the Federation of Nigeria 2004.

made in Nigeria or any contracting state, from disputes arising out of International commercial arbitration. The objective of this legislation is to inter alia, promote fair resolution of disputes by an impartial tribunal without unnecessary delay or expenses¹⁹.

The Act provides for autonomy of parties and finality of arbitral awards on the respective parties, subject to review in the manner as provided by the Act²⁰. A major innovation in the AMA 2023 is the introduction of third-party funding into the Nigerian Arbitration regime.²¹ Third party funding is a process where someone that is not directly involved in a dispute (third party) provides funds to a party to that arbitration in exchange for agreed benefits to the third party. The arbitration regime is applicable in resolving oil and gas disputes in Nigeria, and with provisions on third party funding, it is submitted that the prospects for the arbitration of energy related disputes in Nigeria has been drastically enhanced.

Nigerian Investment Promotion Act 2004

The Nigerian Investment Promotion Act²² is the key legislation governing all forms of foreign investments, including oil and gas investments in Nigeria. The legislation contains clauses for the resolution of disputes arising between an investor (Nigerian or foreign) and any Government of the federation of Nigeria. The Act encourages alternative dispute resolution as first option and subsequent resort to arbitration; by providing that in the event of any dispute between an investor and any Government of the Federation, all efforts shall be made through mutual discussions to reach an amicable settlement. However, in the event that an amicable settlement cannot be reached, the aggrieved party can proceed to arbitration²³.

The Nigerian LNG (Fiscal Incentives, Guarantees and Assurances) Act 1989

This Act was enacted for the purpose of inter alia, conferring pioneer status on the Nigerian LNG limited. Additionally, the Act is intended to provide guaranteed assurances of the Federal Government of Nigeria. By the spirit and letters of the Act, in the event of any dispute, provision is made for the resolution of same through arbitration under circumstances where amicable resolution had failed. These disputes may erupt with respect to any substantial matter arising from the interpretation of the Act, between an aggrieved share holder and the company²⁴.

***The Oil Pipelines Act 2004*²⁵**

The Act provides that where there is a dispute between the minister of petroleum and a licensee, such dispute can be referred to arbitration, in the event the parties cannot mutually resolve the dispute²⁶. An interesting point to note in this legislation is that no reference is made to the

¹⁹ Section 1(1) of the Act.

²⁰ Section 55

²¹ Sections 61 and 62 AMA 2023

²² Cap 117 LFN 2004

²³Section 26 of the Act.

²⁴ Section 22

²⁵ Cap 07LFN 2004

²⁶ Section 17 (5) of the Act

application of litigation in the determination of oil pipelines disputes, thus emphasising the policy shift towards ADR mechanisms in the determination of disputes in the oil and gas sectors.

The Petroleum Industry Act 2021 (PIA)²⁷

The Nigerian Petroleum Act, 1969²⁸ was the legislation governing activities in the petroleum industry before the present regime on petroleum governance was enacted. A key provision in the PA was the provision on dispute settlement mechanism. The PA provided for the application of arbitration as a dispute settlement mechanism under circumstances provided by the Act or regulation made thereunder, in accordance with the law regulating arbitration in the concerned state, being the state agreed to by the respective parties to the dispute. However, when there is no such agreement, the dispute can be arbitrated at the Federal Capital Territory Abuja²⁹. Notably, the PA did not provide the procedure or rules to be followed in the conduct of arbitration proceedings in Nigeria.

The PIA 2023 repealed the PA 2004 and serves as extant legislation governing the Nigerian petroleum industry. The law provides for a dispute mechanism spanning litigation³⁰ and ADR mechanisms in the determination of oil and gas disputes. The prescribed ADR procedures for the determination of oil and gas disputes include either of arbitration, mediation, conciliation or expert determination³¹. In effect, the dispute resolution mechanism under the Act encompasses litigation and ADR mechanisms. The PIA established the Nigerian Midstream and Downstream Petroleum Regulatory³² as the regulatory institution in the midstream and downstream sectors of the petroleum industry. The NMDPRA is charged alongside other critical functions with the responsibility of making regulations concerning dispute resolution and customer protection³³.

Dispute Resolution Mechanisms in the Petroleum Industry.

Dispute resolution mechanisms in the Nigerian petroleum spans the conventional court system involving litigation, the application of ADR and the often-observed intervention initiatives adopted by government agencies and institutions in resolving disputes. For clarity and ease of reference, these dispute mechanisms shall be explored, beginning with litigation. The study shall also examine the ADR mechanisms line Arbitration, mediation, negotiation and agreement, conciliation and expert determination respectively.

Litigation Mechanism

Litigation, by way of the conventional court system has been the traditional way of resolving disputes in the Nigerian petroleum industry. The constitution of the Federal Republic of Nigeria confers exclusive jurisdiction on the federal high court in relation to disputes arising from mines and minerals, including oil fields, oil mining, geological surveys and natural gas³⁴. Therefore, the general rule

²⁷ 2021 No. 6

²⁸ Cap.P10 LFN 2004

²⁹ Section 11 of the Act

³⁰ Section 101 (d) of the PIA 2021

³¹ Sections 96 and 76(1)(f) of the PIA

³² Section 29 of the Act

³³ Section 33 (t) of the Act

³⁴ Section 251 of the CFRN (1999) as amended

is that any dispute arising from the operations of the Act should be submitted to the FHC for adjudication. Matters over oil fields and related areas like environmental and human rights violations emanating from the oil and gas sector can also be adjudicated through the conventional system. A reference point is the development in the Niger Delta area of Nigeria. With the discovery and eventual exploration of crude oil since 1956, the people of the Niger Delta have suffered massive environmental degradation from frequent oil spills and gas flaring, with adverse impact on their health and traditional means of livelihood. There has been systemic violation of human rights violations and environmental degradation in the area with impunity and agitations by the indigenous people had not been given the required attention either by the Nigerian government or the Shell Petroleum.

Between 2004 and 2007, the people of the area suffered excruciating environmental degradation, leading to oil spills that destroyed fish ponds and farmlands in the Bodo and Goi communities. There was also a major oil spill from the Trans-Niger pipeline, which runs through Ogoni land to the Bonny Export Terminal causing hardship for the people who relied on the environment for means of livelihood. In reaction, the applicant, Gbemre, a representative of the Niger Delta Iwherekkan community, who had also incurred damages occasioned by oil spillage, instituted an action against Shell Petroleum and Nigerian government. The Nigerian government was joined for her failure to stop the oil and gas flaring activities.

The applicant argued that Shell failed to consider the environmental impact of its activities on the communities' means of livelihood and their collective survival. The applicant claimed that such gas flaring activities violated the community's rights to life and human dignity as constitutionally guaranteed by sections 33 and 34 of the 1999 Nigerian Constitution, and reinforced by Articles 4, 16, and 24 of the African Charter on Human and Peoples Rights (ratified and domesticated by Nigeria as Cap. A9, Laws of the Federation of Nigeria, 2004).

The Federal High Court found for the applicant and held that these constitutionally guaranteed rights inevitably include the rights to a clean, poison and pollution-free environment. The federal Judge ruled that the actions of the respondents in allowing and continuing to flare gas in the applicant's community is a violation of their fundamental rights to a clean and healthy environment. The judge further ruled that Shell's failure to carry out an environmental impact assessment is a clear violation of the Environmental Impact Assessment Act, and a violation of said rights. The Judge's ordered them to take immediate steps to stop gas flaring. In *Jalla v. Shell*, also known as the Bonga Spill case, the claim for nuisance, orchestrated by oil spillage was entertained from the federal high court up through the supreme court of Nigeria. Even though the claim was defeated on procedural grounds, it is indicative on the competence of the courts to entertain oil and gas related disputes under our jurisprudence.

The PIA also confers exclusive adjudicatory jurisdiction on the Federal high court in her dispute mechanism framework. The Act precludes licensees and lessees from entering, occupying or exercising any rights conferred by their licenses or leases over certain sacred, protected or previously occupied land without the written permission of the Commission. Licensees and leases who intend to enter or occupy such land must first write to the Commission specifying the land proposed to be occupied, the purpose for such occupation and amount of compensation paid or proposed to be paid to the legal occupier of the land³⁵. In the event of any dispute arising with respect to the legal occupier or the amount of compensation payable, the licensee or lessee would be required to deposit with the federal high court a sum to be determined by

³⁵ Section 101 PIA

the court as reasonable compensation payable to the rightful owner or occupier of the land³⁶. Moreover, disputes arising from refusal to grant, renew, modify or extend applications³⁷, or disputes arising between licensees, lessees or permit holders and the Commission or Authority³⁸ all fall under the adjudicatory authority of the federal high court of Nigeria.

Adjudicatory dispute mechanism in the Nigerian hydrocarbon industry extends in scope to criminal jurisdiction, evidenced by the criminalization of certain offences with prescribed punishments for defaulters. Prescribed offences encompass obstructing or assaulting any officer of the Commission or Authority, or any person authorised by law; refusing any officer of the Commission or Authority or any person authorised by the Commission or Authority, as the case may be, access to any premises, facilities or retail outlets; or refuse to submit to a search of any premises and failure to comply with any lawful demand, notice or order of an officer or authorised person of the Commission or Authority in the execution of the Officer's duties under the Act³⁹.

The PIA prohibits any person from engaging in any petroleum operations without a valid lease, license or permit where such lease, license or permit is required under the law; unlawfully removal, destruction or damage of any facility used for petroleum operations; or furnishing a statement or incomplete information calculated to mislead or wilfully delay or obstruct the Commission or Authority and its officers in the exercise of their duties; and obstructing or failing to cooperate with the Commission or Authority in its investigation of any suspected crime or corrupt practice.⁴⁰ In the event a person is alleged to have committed the offences in section 228 of the Act is liable or found guilty, he shall on conviction, be made to pay a fine prescribed in regulations⁴¹ as contemplated under the PIA.

Refusal to furnish, return or supply information, or furnishing of false or incomplete information; wilfully delaying or obstructing the Commission or Authority, its officers and agents, police officers and other law enforcement officers in the exercise of the powers or duties conferred or imposed on the Commission or Authority under the Act; as well as related offences as provided in the Act⁴², are deemed offences, and any person that commits such offences shall on conviction, by a court of competent jurisdiction, be liable to a term of imprisonment and applicable fine as may be prescribed by regulation under the PIA. The commission, established under section 4 of the PIA is also involved in the dispute mechanism within the hydrocarbon industry. In the discharge of her administrative functions, the commission is empowered to prescribe fines to be paid by any person who contravenes any of the prescriptions of the Act⁴³. In discharging this function, the commission seems to have been clothed with some form of judicial regalia as an administrative tribunal, with prescribed procedures reminiscent of an adjudicatory system of dispute resolution⁴⁴.

ADR Mechanisms

The application of the ADR mechanism as a dispute mechanism in commercial and investment matters is significantly gaining traction globally. ADR refers to a set of processes that are applied to manage disputes without resorting to adversarial methods such as litigation. This method has a wide set of non-court dispute resolution mechanisms encompassing negotiation, mediation,

³⁶ Section 101(1) (d) PIA

³⁷ section 111 PIA

³⁸ Section 218(7) PIA

³⁹ Section 228(a) (b) (c) PIA

⁴⁰ Section 228(2) PIA

⁴¹ Section 229 PIA

⁴² Section 230 PIA

⁴³ Section 231 PIA

⁴⁴ Section 231 PIA

arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms(TDRMs). Cost reflective, speedy determination of disputes, technical capacity and other perceived imperatives have significantly influenced the incorporation of ADR into the legal and disputes mechanism of international and national organization and governments.

The Nigerian constitution provides for the use of ADR in promoting the settlement of international disputes. This qualifies the application of ADR in the oil and gas disputes mechanism since they are internationally flavoured disputes that need to be resolved according to global best practices. More so, the Nigerian courts have expounded the interpretation of section 19 of the constitution to encapsulate ADR in the determination of domestic disputes. This has led to the observed proliferation of multi door court houses and the consequential enunciation of ADR guidelines to facilitate the determination of disputes by Nigerian courts.

The PIA establishes the Nigerian Upstream Petroleum Regulatory Commission⁴⁵, also known as the “Commission.” The objective of the commission is to regulate upstream operations in the oil and gas sector⁴⁶, which includes *inter alia*, regulation of upstream petroleum operations, including technical and commercial operational activities, ensuring “*compliance with all applicable laws and regulations governing upstream operations and promote enabling environment for operations in the upstream petroleum operations*”⁴⁷. *The technical and regulatory functions of the commission include to enforce, administer and implement laws, regulations and policies relating to petroleum operations*⁴⁸; *ensure compliance with applicable national and international petroleum policies standards and practices for upstream petroleum operations in Nigeria*”.⁴⁹

The PIA does not provide for any specific dispute mechanism on the commission. However, In August 2024, in apparent commitment to the adoption of ADR as part of her dispute mechanism, the Nigerian Upstream Petroleum Regulatory Commission (“NUPRC”) announced plans to establish Alternative Dispute Resolution Centres (“ADRCs”) in various regions of the country. The ADRC, an important component of the National Oil and Gas Excellence Centre (“NOGEC”), was originally inaugurated by then-President Muhammad Buhari on 21st January 2021. The ADRC represents a transformative shift from conventional dispute resolution pattern towards a centralized, integrated, inclusive, quality assured, industry friendly and investment-oriented dispute resolution processes across Nigeria’s oil and gas sector.

The centralized ADRC as a dispute mechanism marks a significant milestone in the evolution of the Nigerian oil and gas sector that aligns with global best practices. The model is similar to the dispute mechanism in Tanzania. The Petroleum Act No. 21 of 2015 (as amended) is the primary legislation that governs oil and gas activities, and regulates the exploration, development, and production of petroleum resources in Tanzania, the law also provides extensively for alternative dispute resolution methods. The Petroleum Act is supplemented by the Petroleum (Settlement of Disputes Arising from Upstream Operations) Rules, G.N. No. 620 of 2023 the Dispute Settlement Rules.

Disputes arising from contracts relating to upstream activities may be determined by the Petroleum Upstream Regulatory Authority (**PURA**) which exercises regulatory authority over upstream

⁴⁵ Section 4 of the PIA

⁴⁶ Section 5 of the PIA

⁴⁷ Section 6 of the PIA

⁴⁸ Section 7(a) of the PIA

⁴⁹ Section 7(b) of the PIA

petroleum operations. The scope of such disputes as may be determined by PURA include boundaries of any exploration area or development area; any act committed or omitted, or alleged to have been committed or omitted, in the course of, or ancillary to, exploration or development operations; the assessment and payment of compensation pursuant to the Petroleum Act; or any other matters in relation to exploration and development operations. It is important to note that adjudication of a contractual dispute by PURA may only be done where the contract from which the dispute arises does not contain specific provisions for alternative dispute resolution⁵⁰.

Within the purview of the oil and gas industry, Section 76(1) (f) of the PIA provides for ADR by mandating for the inclusion of clauses concerning arbitration, mediation, and conciliation or expert determination mechanisms in the model licenses or leases. These ADR mechanisms are to be adopted in the resolution of disputes with reference to model leases and licensing. Moreover, Section 16 (Grievance Mechanism) of the Petroleum Host Community (Commission) Regulations made pursuant to Section 235 PIA, provides that grievances should be referred to the National Oil and Gas Excellence Centre (NOGEC), being the Alternative Dispute Resolution Centre (ADRC), established for the resolution of disputes through mediation, reconciliation and arbitration by the Department of Petroleum Resources (DPR) now (the Nigerian Upstream Regulatory Commission).

Arbitration is one of the major dispute resolution mechanisms in the Nigerian hydrocarbon industry, as reflected in the PIA. Notably, the law provides for the revocation of a license or lease where the licensee or lessee fails to abide by an arbitral award set forth in the license, lease or the Act⁵¹. Arbitration is also to be explored under circumstances where disputes arise over supplies of petroleum products⁵². Another ADR mechanism that can be used in resolving disputes in the oil and gas sector is negotiated settlement. This mechanism is contemplated and provided for, under the PIA, to be explored, failing which parties may resort to arbitration.

Section 4 of the First Schedule to the PIA made pursuant to section 3(3) of the PIA also provides that: *"Any disputes as to whether a delay was due to causes beyond the control of licensee/lessee shall be settled by agreement between the Minister and the licensee/lessee or in default of agreement by arbitration". Section 5 (b) of the First Schedule to the PIA made pursuant to section 3(3) of the PIA also provides that "Dispute as to price of petroleum products taken by the Minister at port of delivery pursuant to his pre-emptive right is to be settled by agreement between the Minister and the licensee/lessee or in default of agreement by arbitration."*

The application of mediation as an ADR mechanism is provided as one of the dispute settlement options by the PIA. Section 163 provides that the Authority may mediate disputes in relation to third party access to gas transportation pipelines and networks. Section 179 (2) provides that the Authority may also mediate disputes in relation to third party access to mid-stream petroleum liquid operations. Section 180 (2) further provides that the Authority may mediate disputes in relation to open access in relation to petroleum liquids operation.

⁵⁰ Rule 2(3) of the Dispute Settlement Rules

⁵¹ Sections 96 and 120 of the PIA

⁵² Section 7 of the First Schedule to the PIA made pursuant to section 3(3) of the PIA

Dispute Mechanism and Investment Dynamics in the Nigerian Hydrocarbon Industry

There is a correlation between efficiency in dispute resolution and sustainable investment in any sector of the global economy. There seems to be consensus by scholars, academics and investments analysts in this respect, alluding to the entrenchment of a functional and efficient justice delivery system, measured by unfettered access to the justice, and system shaped by a measured form of independence, time effectiveness and reasonable predictability and efficient contract enforcement. The envisioned justice system provides the ideal institutional framework in the dispute resolution landscape, serving as a catalyst for market transactions, increased investment and unhindered economic activities within a given region or state.

Beyond contradiction, legal and judicial systems play pivotal roles in providing institutional frameworks that shape the economic architecture of states, with underpinning for influencing attitudinal disposition of potential investors. This seemingly incontrovertible expression is predicated on the contextual presumption that a proper understanding of how laws and regulations are administered affect economic behaviour and becomes fundamental in modern economies. This includes understanding the judicial, litigation incentives and process for disputes resolution. The perception on the justice system in a given region, therefore, has a corresponding impact on its economic growth and sustainable development. Anticipated economic derivatives from a functional justice system include *inter alia*, increased direct investments, improved fiscal incentives and increased private sector and technologically driven investments, anchored on the rule of law and devoid of negative market externalities.

Unarguably, Nigeria has a rich hydrocarbon industry with tremendous potential and business opportunities spanning the upstream, mid-stream and downstream sectors. The regulatory framework for hydrocarbon governance has as its preoccupation, the ambitious plan of entrenching an efficient and effective governing institutions for a business oriented, Investment driven and competitive hydrocarbon industry under the aegis of a commercially viable and friendly business climate. These economic imperatives, with implication for changing the developmental trajectory of the Nigerian state are anchored on the full realisation of the enormous potential in the national hydrocarbon industry, but only realisable within the framework of an efficient, reliant and resilient dispute mechanism.

The dispute management mechanism in the Nigerian hydrocarbon industry represents a flexible and dynamic blend of the conventional dispute management system and ADR mechanisms. Since the thrust of the hydrocarbon industry is on anticipated foreign and local investments, the dispute mechanism therefore, with strong emphasis on ADR represents the spirit of the time; and a reflection of global trends on the management of investment related disputes. ADR remains the future of dispute mechanism in the Nigerian hydrocarbon industry, with broader implication of impacting on inclusive and sustainable development in Nigeria.

This can be appreciated in the light of the challenges that have continued to beleaguer the conventional justice system in Nigeria. Therefore, with the continuous strengthening of relevant institutions on dispute resolution, the market dynamics in the Nigerian hydrocarbon industry have propensity for increased and sustainable investments, with potential for robust investment that can significantly address infrastructural gaps in the industry, promote optimum exploitation of the vast hydrocarbon resources domiciled in Nigeria and impact positively on the national economy.

Summary, Conclusion and Recommendation.

The study has profiled the Nigerian hydrocarbon industry and identified tremendous investment opportunities in the sector that can possibly impact on the developmental trajectory in Nigeria. However, there are concerns on the dispute settlement mechanism which are capable of undermining trade and investment opportunities in the Nigerian hydrocarbon industry. The growing advancement in technology and complexities of carrying out hydrocarbon businesses presents peculiar trends of disputes that may not have existed in the past, and that would need innovative resolution for a sustainable hydrocarbon industry in Nigeria. The study has therefore examined the regulatory frameworks on dispute resolution and the dispute settlement mechanisms within the Nigerian hydrocarbon industry.

The PIA 2021 provides for a dynamic blend of dispute mechanisms, with significant preference for Alternative Dispute Resolution (ADR). The ADR mechanisms, spanning arbitration, mediation, conciliation and expert determination present a flexible dispute management architecture, that aligns with international best practices, and capable of promoting robust investment in the hydrocarbon industry. The Nigerian hydrocarbon industry dispute mechanism positively impacts on the dynamics for transnational investments, in minimizing negative market externalities, with underpinning for entrenching national economic development. Leveraging ADR mechanisms, the continuous advisement of institutional frameworks for dispute resolution that aligns with global best practices underscores the need for the establishment of energy courts for expeditious determination of investment disputes within the Nigerian hydrocarbon industry. The envisioned court system should have exclusive jurisdiction to determine investment and related disputes from the hydrocarbon sector, serving as a catalyst for transnational investment, with implication for economic development in Nigeria.