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Overview of environmental disputes and alternative dispute resolution mechanisms in Nigeria

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Abstract
Disputes are inevitable in all spheres of life. These disputes are of different types and are caused by different factors. When disputes arise, efforts are usually made to resolve such disputes. The success or otherwise of the attempt to resolve a matter to a great extent depends on the method adopted. Like in other spheres of life, disputes arise every day in the Nigerian environmental industry. Such disputes take various forms, but the most common environmental disputes are those in the oil and gas industry. Over the years, attempts at resolving environmental disputes have been through litigation or what is sometimes called "the traditional adjudicatory process". This has achieved limited success, and calls have been made for the settlement of environmental disputes by methods such as arbitration. The purpose of this section is to consider the settlement of environmental disputes through arbitration. This research examines the various environmental disputes Mechanisms in Nigeria.

Keywords: Environmental disputes, Nigerian environmental industry, oil and gas sector, dispute resolution, arbitration, litigation, traditional adjudicatory process

Introduction
Over the years, environmental disputes have been through core litigations. However, the litigation processes are not helpful in environmental matters.
ADR introduces a more flexible, collaborative, and tailored approach to managing these severe conflicts outside traditional litigation. Environmental disputes are disputes or disagreements between parties, Government corporations, and communities. There is a serious need for ADR to settle such disputes. These disputes often involve damages from pollution, land use, or competing interests in economic development.
Environmental Disputes encompass disagreements arising from environmental conflicts.

Disputes Arising From Environmental Pollution
Environmental pollution can be found in different industries and takes various forms. It can be found in the oil and gas industry, in the construction industry, in the manufacturing industry, etc. In the oil and gas industry, for example, the pollution of the environment through activities can be caused by oil blowouts, equipment failure, sabotage, etc. When any of these happen, the environment is polluted with oil and a lot of marine life is wasted, farmlands, et, are destroyed. As soon as this happens, the affected person or, in most cases, the community engages in bitter disputes with the oil companies responsible for destroying their environment. Claims and counter-claims are made. In most cases, the parties resort to litigation. The outcome of litigation is rarely palatable. Especially for the affected communities. This is because, in many cases, the courts rely on technicalities to dismiss a suit against an environmental polluter. Even where the claimants succeed, they are awarded paltry sums of money as compensation compared to the damages caused. When these happen, the communities become dissatisfied and lose confidence in the judicial process. They then resort to kidnappings of oil workers and disturbance of exploration and exploitation activities to see that they get justice.
In the construction and manufacturing industries, for example, debris and wastewater are sometimes discharged into rivers that serve as drinking water sources for host communities, thereby polluting the water. A good number of times, the communities are not adequately compensated when the dispute between them and the company is brought before a court.

Disputes arising from Breach of Statutory Provisions
There are several statutes that have formulated rules and regulations to govern players' activities across different sectors of the economy, with a view to protecting the environment. The best known of these statutes is the Environmental Impact Assessment Act (EIA). The Act provides that before a project likely to have a significant impact on the environment is commenced. An environmental impact statement (EIS) for the proposed project must be prepared and submitted to the appropriate authority to assess the project's likely environmental impact. Most times, many oil- and manufacturing-producing companies do not comply with this provision of the ElA, and this is usually a source of dispute between them and their host communities.

Litigation as a Means of Resolving Environmental Disputes
Litigation or the traditional adjudicating process has, from time past, been the normal process for resolving disputes between parties. Such disputes are usually settled by courts established under the laws of the land. In Nigeria, the litigation process has been the most common method used in resolving environmental disputes. It has, however, caused more problems than good. Admitted that the disputes are

resolved, but the 'resolution' leaves a bitterness in the hearts of the parties concerned. In most cases, the plaintiff host community is usually at the receiving end of the activities of companies. Whether oil-producing or manufacturing, they feel bitter and cheated. This is not unexpected because of the nature of litigation, which is more like a contest between the parties. And it is usually very expensive and takes quite some time to conclude. Litigation is also very technical, and a party can lose a simple case on mere technicalities. This has been the bane of litigation as a means of resolving environmental disputes. For example, in Seismograph Services Ltd. v Benedict Onokpasa [1], O's actions in negligence failed since he could not prove how the duty of care owed him by S was breached during seismographic activities by S that allegedly led to the collapse of O's house. Litigation is also very formal and is held in public. This contributes to the hardening of positions taken by parties involved in the litigation process.

These and many other factors have contributed in making litigation not always the desired means of resolving environmental disputes. Calls have been made for the use of arbitration, and some other means, notably the Alternative Dispute Resolution processes, as a means of resolving environmental disputes. We are, however. Concerned here with arbitration.

Arbitration as a Means of Resolving Environmental Disputes

Arbitration has been defined as:

"the reference of a dispute or difference between not less than two parties for determination after hearing both sides in a judicial manner by a person or persons other than a court of competent jurisdiction."

Brown and Marriot on the other hand, define it as:

"a private mechanism for the resolution of disputes which takes place in private pursuant to an agreement between two or more parties, under which the parties agree to be bound by the decision to be given by the arbitrator according to law after a fair hearing, such a decision being enforceable at law."

The arbitral process has deep roots in history [2]. Arbitration was known to virtually all legal systems. African indigenous systems of customary law recognized resort to traditional arbitration before neighbours or elders. In Nigeria, many communities still resolve disputes through arbitration and the award of such arbitrations are recognized and enforced by our English type courts". There is also statutory authority for the process of Arbitration in Nigeria. This can be found in the Arbitration and Conciliation Act' [3]. There are certain advantages which arbitration has over litigation that makes it an attractive means of settling or resolving environmental disputes. For example, the principle of party autonomy which is a feature of the Nigerian Arbitration and Conciliation Act, ensures that the parties have the first choice in appointing or determining the number of arbitrators [4], in selecting the place of arbitration [5], in fixing the date of commencement of arbitral proceedings [6], in selecting the language to be used in the arbitral proceedings [7], or the procedure for the presentation of evidence or arguments [8], and in deciding whether the arbitral tribunal can appoint an expert [9]. The parties in arbitral proceedings are also able to proceed with the settlement process at a speed much faster than is obtainable in litigation and the parities and their witnesses enjoy the convenience of having the date, time and place of the hearing fixed to them. The parties have the opportunity of deciding who should settle their dispute and usually there is opportunity for an expert to be chosen. The continuity of the proceedings enables the arbitrators to grasp quickly the issues in dispute and this usually makes for quick resolution of the dispute thereby saving the parties money

These attributes mentioned are not available in a court litigation where, for example, conformity with laid down procedures makes no room for flexibility and usually results in time waste. Parties do not have the desired privacy and confidentiality and sometimes do not enjoy the convenience of the date, time and place of hearing being subjected to their choice.

Arbitration, like litigation, however, is a finality-oriented process. A major weakness of the arbitral process is the limited powers which the tribunal may exercise. An arbitral tribunal. For example, must depend upon an underlying national system of law if it is to be effective Arbitrators, just like mediators. Conciliators, etc, lack certain powers conferred upon a court of law. For example, the power to compel the attendance of witnesses. To enforce awards by the attachments of a bank account or the sequestration of assets, are powers which form part of the prerogative of the state [10]. Another weakness is the impossibility of bringing multi-party disputes before the same arbitral tribunal.

Arbitration as a means of settling disputes owes its origin to the search for an alternative dispute resolution mechanism to court litigation. According to Redfem and Hunter [11] The modern arbitral process has, however, lost its early simplicity. The sophisticated development of arbitration over the years and its acquisition of some of the distinct features of court litigation have brought about divergent opinions on its position. The formality of court litigation and the increasing complexity of arbitration cases have all contributed to making it acquire the notoriety of time waste associated with court litigation. These notwithstanding, arbitration with the advantages elucidated above still makes arbitration a preferred choice in resolving environmental disputes between host communities and companies that cause environmental dislocation in such communities in the course of their activities.

The Arbitral Process

Where an arbitrable dispute arises, the party anxious to proceed to arbitration initiates the arbitration. Sometimes the arbitration agreement in respect of the dispute is drawn at the time the dispute arises. This is known as a submission agreement. Depending on the agreement between the parties, an arbitrator or arbitrators are appointed by the parties [12]. If any arbitrator knows of circumstances likely to give rise to any justifiable doubts as to his impartiality or independence, he shall disclose such circumstances to the parties [13]. The parties also reserve the right to terminate an arbitrator's mandate [14] and appoint a substitute arbitrator [15]. The Arbitral tribunal is competent to rule on its jurisdiction where the issues arise [16]. A claimant usually files his points of claim, to which the respondent files his points of defense. The arbitral proceeding is conducted in accordance with the procedure contained in the Arbitration Rules set out in the First Schedule to the Act [17]. The tribunal is to ensure that the parties are given equal

treatment [18]. The parties designate the place where the proceedings are to take place. Where no place has been designated by them, the tribunal shall determine the place of arbitration [19]. The parties may also determine the language to be used in the arbitral tribunal [20]. Where they fail to do so, the arbitral tribunal shall take the decision on the language to be used. The parties shall prepare and submit their claims and defenses. After which, the arbitrator or arbitrators will then adjudicate upon the dispute that has arisen between the parties.

This will be done by receiving evidence from the parties and their witnesses, carefully considering the same, and coming to a decision on the basis of such evidence. The arbitrator must abide by the direction of the parties as contained in the agreement of reference. He should, as far as possible, observe the rules which prevail at court trials. He may, however. Deviate from such rules in appropriate cases provided that in doing so, he does not disregard the substance of justice, for example, he may not have consultations on the reference with one party in the absence of the other [21]. The arbitrator is not bound by the rules of evidence, but it is submitted that he should not admit and act on evidence which is patently inadmissible and which goes to the root of the questions he has to decide [22].

At the conclusion of the proceedings, the arbitral tribunal carefully reviews the evidence and arguments presented to it and hands down a decision known as an award. A party aggrieved by an award may apply to have it set aside on certain grounds [23]. Where no application to set aside is made, the successful party, if the award is not complied with, will apply to a court for the recognition and enforcement of the award [24]. A court may refuse recognition and enforcement if the applicant can show that the award should not be recognized or enforced. Such grounds for refusal to recognize and enforce awards are set out in section 52 of the Arbitration Act.

Conclusion

Disputes are inevitable in the affairs of man. Such disputes may be of different types, and they occur in all aspects of human existence. Environmental disputes are one of such disputes that do occur. Environmental disputes have always been 'resolved' through litigation in the past. At the end of the day. The parties are still not satisfied with the resolution. Litigation, no doubt, is the most binding of any form of dispute resolution mechanism. It, however, has a lot of shortcomings. These include its formality and technicality, the length of time spent in deciding cases, cost, etc. Moreover, the nature of litigation is such that it ends up creating animosity between the parties to a dispute. This is because the parties to the dispute, usually the host community of a company, feel short-changed. Tensions run high and it sometimes snowballs into community disturbances.is because of these shortcomings of litigation that arbitration as a means of resolving environmental disputes is advocated. Indeed, arbitration has been used in resolving international environmental disputes. Two landmark cases attest to this. They are The Bering Sea Fur Seals Fisheries Arbitration (Great Britain v The United States), decided in 1898, and The Trail Smelter Arbitration (United States v Canada), decided in 1938.

Arbitration is conciliatory in nature, which makes it easy for the parties to the dispute to continue to relate well after the dispute is resolved. It is contended that the use of arbitration to resolve environmental disputes will help reduce the resort to self-help by parties who feel short-changed by other processes, especially the litigation process.

Recommendations

- **Early Engagement:** Utilizing and involving ADR early in the conflict stage to prevent entrenched positions.
- **Capacity Building:** Training mediators in environmental issues and ensuring transparency in the resolution process.

Legislative Integration: Supporting the use of ADR through Legal Frameworks.

References

1. See also Amos v Shell BP (Nig) Lid (1974) 3 ECSCR p. 486 where the plaintiff claim in nuisance failed becaue of the lack of a loous.
2. See Mustill “Arbitration History and Background (1986) 6 Journal of Intl. Arb. P.43.
3. See Nwoke v. Okeke (1994) 5 NWLR (pt 342) 159 at 172See Mustill. "Arbitration: History and Background (1986) 6 Journal of Int. Arb.P.43
4. Cap 19 Laws of the Federation of Nigeria, 1990.
5. S. 6 (1) and s. 44 of Cap. 19.
6. S 16 (1).
7. S 17 (1)
8. S 18 (1).
9. S 20.
10. The successful party however, may have to resort to judicial processes to compel compliance with the award where the losing party proves recalcitrant. See ss 31 & 51 Arbitration and Conciliation Act. Cap. 19.
11. Redfem and Hunter. p.24.
12. The parties are free to decide on the number of arbitrators they want. Where there is no provision for this, the Arbitration and Conciliation Act provides that the number shall he three-S6 Cap 19 LFN 1990. Section 7 specifies the procedure to be adopted in the appointment of arbitrators where none is specified in the arbitration agreement
13. SS.8 &45.
14. s.10.
15. s. ll.
16. S 12.
17. S. 15
18. S. 14.
19. S. 16
20. S. 18.
21. Harvey v Shelton (1884) 7 Beav p.453.
22. Ezejiofor. *The Law of Arbitration in Nigeria* (lkeja: Longman.1997106
23. See ss 29,30 &48.
24. See ss 31 &: 51.