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The Potentials of ADR for Corporate Remediation in the Midstream and Downstream Petroleum Sector of Nigeria

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Abstract

The exploration of carbon-based petroleum resources seems to be a curse to the Niger Delta inhabitants of Nigeria, given the negative impacts of multinational oil companies' operations on the Niger Delta ecological space. It is no longer new knowledge about how harmful environmental activities are to human rights and the climate systems. There is no other part of the world where multinational companies are directly linked or contribute to enormous ecological shocks than in the Niger Delta region of Nigeria, owing to poor regulatory and institutional frameworks that drive the political will in engaging the corporate power and engender corporate responsibility. By implication, the indigenous peoples of the Niger Delta are left with fewer options in seeking access to remedy and justice within municipal law and in extraterritorial contexts, resulting in the fate of notable cases like *Gbemre*, *Okpabi*, *Jalla*, *Agbara*, *and Bodo Community*. One observable trait across these cases is the limitation of contentious litigation as a mechanism for enforcing ecological and human rights justice, given some of the typical challenges adjudicatory mechanisms face in Nigeria. Given the reality, the Nigerian Petroleum Industry Act (PIA) was enacted in 2021 to overhaul Nigeria's oil and gas sector, and it established two regulatory agencies saddled with the mandate to make regulations on specific issues within their governance competence. One such regulation made is the *Midstream and Downstream Petroleum Alternative Dispute Resolution Regulations* (*the Regulations*) in 2023. The Regulations aim to establish the Midstream and Downstream Petroleum Alternative Dispute Resolution Centre

as a non-judicial grievance mechanism (NJGM) and provide the procedures for timely and cost-efficient dispute resolution in the sector. Therefore, the crux of this piece is to succinctly review and analyse the Regulations; and examine whether it has the potential to provide the needed forum for dispute resolution and the quest for justice and to engage the responsibility of the multinational oil companies operating in Nigeria in the light of their obligations under the UNGPs to facilitate and provide remediation where they contribute or are directly linked to human rights violations which in most cases are induced by environmental harms and climate change impacts.

Keywords

ADR, BHR, Non-Judicial Grievance Mechanism (NJGM), Corporate Remediation, Access to Justice, Midstream and Downstream

1. Introduction

The exploration of carbon-based petroleum resources seems to be a curse to the Niger Delta inhabitants of Nigeria, given the negative impacts of multinational oil companies' (MNOCs) operations on the Niger Delta ecological space (Olawuyi, 2012). It is no longer new knowledge of how harmful environmental activities affect human rights and the climate systems, necessitating a human rights-based approach (Olawuyi, 2016). There is no other part of the world where MNOCs are directly linked or contribute to enormous ecological shocks (leading to inter-temporal and spatial tensions) than in the Niger Delta region of Nigeria, owing to poor regulatory and institutional frameworks that drive the political will in engaging the corporate power and engender corporate social responsibility (Hassan et al., 2023), coupled with corporate complicity given the categories of corporate complicity in human rights infringement (Clapham & Jerbi, 2001) and corporate powers (Birchall, 2021) in muting any form of challenge. By corporate power, Birchall conceptualises corporations' ability to transform what is accepted as relevant knowledge related to human rights in that it includes the power to self-define their own responsibilities, priorities, and exclusions relating to human rights; to influence BHR; and so on (Birchall, 2021). Connolly & Kaisershot characterise corporate power as an aggregation of economic power that sometimes meets or exceeds the political power of the state, given that corporations today are more than economic participants; they are increasingly pushing back against the regulation of the state, and in some contexts, seeking to capture the state to advance their strategic interests (Connolly & Kaisershot, 2015). Hence, the growing power seems to suggest that regimes of corporations might eventually supplant the state as the main form of social organisation, making corporate law play the role of constitutional law, creating an economic state, and business as economic statesmanship (Bernaz, 2017; Baumann-Pauly & Nolan, 2016; Strange, 2015; Lukes, 2004; Morriss, 2002).

By implication, the indigenous peoples of the Niger Delta are left with fewer options in seeking access to remedy and justice within municipal law and in extraterritorial contexts, resulting in the fate of notable cases like *Gbemre*[1], *Okpabi*[2], *Jalla*[3] (Onwurah, 2023), *Agbara*[4], and *Bodo Community*[5]. One observable trait across these cases is the limitation of contentious litigation as a mechanism for enforcing ecological and human rights justice, given some of the typical challenges adjudicatory mechanisms face in a jurisdiction like Nigeria.

While the cited legal cases of *Gbemre v. Shell* and *Okpabi v. Royal Dutch Shell* arose from upstream operations, they are foundational here as they demonstrate a critical, sector-wide failure: the Nigerian judicial system is an ineffective and protracted mechanism for oil-related community redress (May & Dayo, 2019). The *Gbemre* case, while a judicial victory establishing a constitutional right to a healthy environment, resulted in no remediation, unenforced orders, and continued flaring, highlighting a profound **enforcement deficit** (May & Dayo, 2019). Conversely, the **Okpabi** litigation reveals the extreme lengths communities must take—suing a UK parent company to seek a hearing, facing complex jurisdictional hurdles despite an arguable case (Human Rights Law Centre, 2021). These upstream cases exemplify a systemic breakdown in the traditional litigation pathway.

Thus, the historical context justifies a proactive ADR mechanism for the midstream and downstream sectors. By learning from the past, where litigation has consistently proven costly, slow, and often ineffective in delivering tangible remedies, repeating the same adversarial mistakes can be avoided. Establishing a dedicated ADR framework is the necessary, relevant solution to provide the timely and effective corporate remediation that the judicial system has historically failed to deliver across the petroleum industry.

Therefore, the crux of this piece is to briefly review and analyse the Regulations (Midstream and Downstream Petroleum Alternative Dispute Resolution Regulations, 2023) and examine whether it has the potential to provide the needed forum for dispute resolution and the quest for justice by host communities in the petroleum industry of Nigeria. The extent such Regulations will facilitate the engagement of the responsibility of the multinational oil companies operating in Nigeria in the light of their obligations under the United Nations Guiding Principles on Business and Human Rights (UNGPs) (UN HRC, 2011, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie: Guiding Prin-

[1] *Mr Jonah Gbemre (Suing for himself and representing Iwherekan Community in Delta State, Nigeria) v. Shell Petroleum Development Company of Nigeria Ltd., Nigerian National Petroleum Corporation and Attorney-General of the Federation,* Suit No.: FHC/B/CS/53/2005 (Unreported), AHRLR 151 http://climatecasechart.com/non-us-case/gbemre-v-shell-petroleum-development-company-of-nigeria-ltd-et-al/ (accessed 01 November 2019).

[2] *Okpabi and others v Royal Dutch Shell Plc and Another* [2021] UKSC 3, 154-160.

[3] *Jalla and Another v Shell International Trading and Shipping Co Ltd and Another* [2023] UKSC 16.

[4] *Shell Petroleum Development Company of Nigeria Limited & Ors v. Agbara & Ors* (2020) LCN/4941(SC).

[5] *The Bodo Community and Ors v SPDC* [2014] EWHC 1973 (TCC).

ciples on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework UN doc A/HRC/17/31) to facilitate and provide remediation where they contribute or directly linked to human rights violations which in most cases are induced by environmental harms and climate change impacts will nevertheless be a subject of discussion and analysis in this piece.

1.1. Methodology and Original Contribution

Onboarding any research endeavours traverses a tripartite design framework—research paradigms, strategies, and methods (Creswell, 2009). A research strategy most often falls within the category of qualitative or quantitative. Thus, the study adopts a qualitative legal research design to critically analyse the potential of Nigeria's new regulatory framework to provide effective corporate remediation. The methodology is tripartite. First, it employs a doctrinal analysis to systematically examine the substantive provisions of the *Petroleum Industry Act* 2021 and the *Midstream and Downstream Petroleum Alternative Dispute Resolution Regulations* 2023, interpreting their legal architecture and procedural mechanics (Hutchinson, 2015). Second, it conducts a principled framework analysis by evaluating these doctrinal findings against the eight effectiveness criteria for non-judicial grievance mechanisms outlined in Principle 31 of the UN Guiding Principles on Business and Human Rights (Ruggie, 2013). Such a structured benchmark allows for a normative assessment of the Regulations' design integrity. Third, the paper incorporates a comparative analysis of the new midstream/downstream ADR Centre with the pre-existing upstream dispute resolution model, situating the reform within Nigeria's broader regulatory landscape to identify synergies and potential jurisdictional conflicts (McCrudden, 2006).

The original contribution of this paper is twofold. Primarily, it provides the first comprehensive, scholarly ex-ante evaluation of the 2023 ADR Regulations, a significant but hitherto unexamined legislative development. Moving beyond doctrinal description, its novel application of the UNGP's Principle 31 criteria creates a robust analytical framework to prognosticate the Centre's operational viability, directly addressing the chronic "enforcement deficit" and access to justice barriers documented in the Niger Delta case law (Baldwin, Cave, & Lodge, 2012). Consequently, this research fills a critical gap in the Business and Human Rights literature by offering a structured, evidence-based prognosis on whether this state-based NJGM can transcend the limitations of litigation and become a legitimate source of remedy for victims of corporate human rights abuses in Nigeria's petroleum sector (Deva, 2022).

1.2. Nature of Petroleum Regulatory Landscape in Nigeria

Given the need to ensure that business enterprises in the petroleum sector of Nigeria operate sustainably and are accountable for externalities inherent or contributed by their operations, several regulatory standards were adopted to enhance the provision of remediation to the victims of business impacts. Hence, this aspect

of this piece will highlight the critical regulations on petroleum management and environmental protection, and Nigeria's regulatory efforts on BHR.

1.2.1. Petroleum Management and Regulation in Nigeria

Like most nations, the ownership, control, and regulation of petroleum resources fall within the exclusive legislative competence of the Federal Government of Nigeria according to the Constitution (Constitution of the Federal Republic of Nigeria (as amended), 1999) of Nigeria under its Section 44(3) of the Constitution provides, amongst other things, that "*the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly*," reemphasising the state's sovereignty over its natural resources (UN General Assembly, 1962, Resolution 1803 (XVII) on "Permanent Sovereignty over Natural Resources"). Paragraph 1 of the Resolution declares that "*the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned*." Thus, several legal frameworks regulate the activities of petroleum operators (whether in upstream, midstream, or downstream sectors) (Usman, 2017).

As a matter of law, most of the critical petroleum operators in Nigeria are corporate bodies (with a majority of MNOCs). As such, corporate law in Nigeria is pivotal in its regulation. The Companies and Allied Matters Act (CAMA) (Companies and Allied Matters Act, No. 3, 2020) is Nigeria's primary legal framework regulating corporate bodies. CAMA was amended in 2020, which, pursuant to Section 869 of the CAMA, 2020, repealed the Companies and Allied Matters Act, Cap. C20, Laws of the Federation of. Nigeria, 2004, which originally regulated bodies corporate in Nigeria until 2020 to reflect modern corporate governance and management realities and enhance the ease of business operations in Nigeria (LawNigeria, 2021; Udoma & Belo-Osagie, 2021; Business Made Easy Nigeria, 2020). One of the significant provisions of the Act that has implications for the responsibility of MNOCs in Nigeria is Section 119(1), which requires that every person with significant control over a company shall, within seven days of becoming such a person, indicate to the company in writing the particulars of such control. Thus, this provision's relevance enables regulators to ascertain who controls the decision-making process, especially when liability issues arise.

Another significant regulation is the Petroleum Industry Act (PIA) (2021). Before the enactment of the PIA in 2021, the Petroleum Act, 1969, was the major regulatory legal framework on petroleum, which regulates the granting of oil exploration licenses (OEL), oil prospecting licenses (OPL), and oil mining leases (OML) by the Minister of Petroleum Resources and the Nigerian National Petroleum Corporation (NNPC). The NNPC, Cap. 320, Laws of the Federal Republic of Nigeria 2004 established the defunct Nigerian National Petroleum Corporation,

which was charged with the responsibilities stipulated in Section 5 of the Act, including the powers of exploring and prospecting for, working, winning, or otherwise acquiring, possessing, and disposing of petroleum in Nigeria. Though the Petroleum Act has been repealed by the PIA, its provisions will continue to apply until the expiration or termination of all permits issued under it. The Ministry of Petroleum Resources (Ministry of Petroleum Resources of Nigeria, 2023) also functions through its Department of Petroleum Resources (DPR) to develop and administer standards for environmental protection in the petroleum sector. The DPR was an agency under the Ministry of Petroleum Resources and had the statutory responsibility of ensuring compliance with petroleum laws, regulations and guidelines in the Oil and Gas Industry. Its key responsibilities involve monitoring of operations at drilling sites, producing wells, production platforms and flow stations, crude oil export terminals, refineries, storage depots, pump stations, retail outlets, any other locations where petroleum is either stored or sold, and all pipelines carrying crude oil, natural gas and petroleum products (Department of Petroleum Resources, 2021). However, the DPR has been replaced by the Nigerian Upstream Petroleum Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority as agencies of the Ministry of Petroleum Resources (Ministry of Petroleum Resources, 2023).

With the enactment of the PIA, several legal instruments like the Nigerian National Petroleum Corporation Act, Associated Gas (Re-Injection) Act, Petroleum Profit Tax Act, Deep Offshore & Inland Basin Production Sharing Contracts Act, Hydrocarbon Oil Refineries Act that regulated specific issues relating to petroleum resources were repealed according to Section 310(1) of the PIA, although without compromising subsisting rights before the coming into being of the PIA[6] (Resolution Law Firm, 2021). However, the essence of the PIA is to unbundle the powers of the NNPC for regulatory efficiency and commercial viability of the newly established Nigerian National Petroleum Company Limited (NNPCL)[7] (Agunia, 2023) to deepen local content practice and promote transparency and accountability in the management of petroleum resources in Nigeria. Hence, the PIA is one of the most audacious attempts to overhaul the petroleum sector in Nigeria. It seeks to provide a legal, governance, regulatory and fiscal framework for the Nigerian Petroleum Industry. It stipulates how the Minister of Petroleum Resources can interface with the Nigerian Upstream Petroleum Regulatory Commission[8] (the Commission or NUPRC) (Nigerian Upstream Petroleum Regulatory Commission, 2023) in granting and revoking petroleum prospecting licenses and mining leases.

The goal is to develop an efficient, predictable, clear, and effective regulatory environment. The PIA governs the Commission, and as part of its mandate and

[6]Sections 311 (2) & (9), and 92(6) of the PIA.
[7]Sections 53(1), 54(1) and 55(1) of the PIA established the NNPCL as a replacement for NNPC.
[8]Section 4 of the PIA.

authorises the Commission to draft rules that are consistent with the spirit of the Act, to create a business-friendly environment with a focus on openness, efficiency, and long-term growth. The NUPRC's regulations are critical for determining the industry's future. The Commission has published 12 regulations[9] thus far, with seven more recently added. Despite these regulatory measures, Nigeria's petroleum industry continues to experience corruption, environmental degradation, inefficiency, and a lack of transparency. The main issue with the listed laws and regulations in this sector remains a lack of enforcement by the regulatory agencies (Olujobi, Olujobi, & Ufua, 2020). The Commission, in addition to the Nigerian Midstream and Downstream Petroleum Regulatory Authority[10] (the Authority), the Midstream and Downstream Gas Infrastructure Fund[11], and the NNPCL, was established under the PIA with specific regulatory competence in controlling and administering the activities of oil companies, including MNOCs in Nigeria (Onwurah, 2024).

Other paramount legal frameworks include the Nigerian Oil and Gas Industry Content Development Act[12], the Oil Pipelines Act[13] (Okafor & Olaniyan, 2017), the Niger Delta Development Commission (Establishment) Act[14], Oil in Naviga-

[9]The Nigeria Upstream Petroleum Measurement Regulations, 2023 which govern measurement techniques in the upstream sector, the Production Curtailment and Domestic Crude Oil Supply Obligation Regulations, 2023 (govern production curtailment and domestic supply requirements), the Frontier Basins Exploration Fund Administration Regulations, 2023 (govern frontier basin exploration funds), the Nigeria Upstream Decommissioning and Abandonment Regulations, 2023 (govern decommissioning and abandonment processes), Significant Crude Oil and Gas Discovery Regulations, 2023 (regulates significant discoveries), Gas Flaring, Venting, and Methane Emission (Prevention of Waste and Pollution) Regulations, 2023 (aims to reduce gas flaring and emissions), and Nigeria Upstream Petroleum Unitization Regulations, 2023 (establishes rules for unitizing oil and gas reservoirs that extend beyond license or lease boundaries). The following five regulations were enacted between June and October 2022: Petroleum Licensing Round Regulations 2022 (for licensing rounds), Petroleum Royalty Regulations 2022 (for royalty payments), Domestic Gas Delivery Obligations Regulations 2022 (for domestic gas supply), Conversion and Renewal (Oil Prospecting Licences &Oil Mining Leases) Regulations 2022 (for converting and renewing of Oil Mining Leases) and Nigeria Upstream Petroleum Host Community Development Regulations 2022 (for administrations of trust and Fund for host communities).

[10]Section 29 of the PIA. Nigerian Midstream and Downstream Petroleum Regulatory Authority, 'Our Mandate' https://nmdpra.gov.ng/our-mandate/ (accessed 01 May 2023).

[11]Section 52 of the PIA.

[12]Nigerian Oil and Gas Industry Content Development Act, 2010 No. 2, which was enacted to encourage Nigerian content. Section 106 states "Nigerian content implies the quantum of composite value added to or created in the Nigerian economy by systematically developing capacity and capabilities through the deliberate utilisation of Nigerian human resources and services in the Nigerian oil and gas industry."

[13]Oil Pipelines Act, Cap. 338, Laws of the Federation of Nigeria 2004, regulates the laying of petroleum pipelines and provides for the granting of licenses and permits for laying and using pipelines for transporting petroleum products. Section 14 prohibits a pipeline licensee from constructing any works within fifty yards of any public roads, dam, reservoir, building, or over any watercourse required for domestic irrigational use. There is a requirement for compensation when a licensee causes damage.

[14]Niger Delta Development Commission (NDDC) (Establishment, etc.) Act 2000, Cap N86 Laws of the Federation of Nigeria, 2004, Section 2 (1) established the NDDC for the primary purpose of administering allocations for tackling ecological problems that arise from the exploration of oil minerals in the Niger Delta region. It is also statutorily charged with formulating policies and guidelines for the development and rehabilitation of the region.

ble Water Act (ONWA)[15] (Ajayi, Odumosu, & Okorocha, 2014), the National Oil Spill Detection & Response Agency (Establishment) (NOSDRA) Act[16], and the Companies Income Tax Act (CITA)[17], which consolidates the Companies Income Tax Act 1961 provisions. CITA regulates the imposition of tax on the profits of companies operating in Nigeria. It equally applies to petroleum companies by the PIA[18]. Nonetheless, it provides tax incentives for some companies, like those involved in gas utilisation downstream operations[19].

1.2.2. Environmental Protection under the PIA

As pertains to the regulation of petroleum operators like the MNOCs concerning activities that negatively affect the environment, Section 102 of the PIA requires the MNOCs and other licensees or lessees to submit for approval an environmental management plan in respect of projects that require an environmental impact assessment to the Commission or the Authority. Section 103 requires a financial contribution to be made to an environmental remediation fund (the Fund) established by the Commission or the Authority as a condition for the grant of a license or lease and before the approval of the environmental management plan. Such a Fund aims to help rehabilitate or manage adverse environmental impacts.

In the event that a licensee or lessee fails or is unable to rehabilitate or manage any negative impact on the environment, the Commission or the Authority may, upon notice to the licensee or lessee, apply the Fund to rehabilitate or manage the negative environmental impact[20]. In addition, there shall be an annual assessment of the licensee or lessee's environmental liability and their financial contribution to the satisfaction of the Commission or the Authority[21].

Moreover, Section 104 of the PIA makes it an offence subject to a fine for a licensee, lessee, or marginal field operator to flare or vent natural gas except under certain circumstances, like in emergency cases, an exemption by the Commission, or as an acceptable safety practice[22]. However, Section 105 of the PIA gives the Commission the right to take natural gas destined for flaring at the flare stack free

[15]Oil in Navigable Water Act, LFN 2004, implements Nigeria's international obligations in the adopted International Convention for the Prevention of Pollution of the Sea by Oil 1954-1962 and extends the prevention to the navigable water of Nigeria. By Section 3, the Act makes it an offence to discharge oil or a mixture of oil into the waters of Nigeria from any vessel or from any other place for the purpose of transferring oil from or to a vessel.

[16]National Oil Spill Detection and Response Agency (Establishment) Act 2006 No. 15, established the NOSDRA with responsibility for preparedness, detection, and response to all oil spillages in Nigeria. NOSDRA is required to coordinate and implement Nigeria's National Oil Spill Contingency Plan according to Section 5, while also being responsible for surveillance and ensuring compliance with all existing environmental legislations and the detection of oil spills in the petroleum sector pursuant to Section 6 (1) of the Act.

[17]Companies Income Tax Act, 2004. The Act was amended in 2007 by the Companies Income Tax (Amendment) Act 2007 to make it more responsive to the tax reform policies of the Federal Government and enhances its implementation and effectiveness.

[18]Section 302 (1) of the PIA.

[19](note 17) Section 49.

[20]Section 103 (4) of the PIA.

[21]Section 103 (5) of the PIA.

[22]Midstream Gas Flare Regulations, 2023, Regulations 3, 4(2), 7 and 8.

of charge and to impose a penalty on licensees or lessees for gas flaring[23]. The Authority has similar rights aimed at reducing the environmental and social impact caused by excessive flaring and venting of flare gas in midstream petroleum operations and protecting the environment[24].

It was argued that the goal of this provision is to inspire the licensees, lessees, and marginal field operators to find alternative uses for the gas, such as selling it or using it to produce electricity, rather than just wasting it through flaring or venting (Eze & Egobueze, 2023). The aim also supports the Nigerian Gas Flare Commercialisation Programme, which "seeks to attract investments and develop a transparent market mechanism through a competitive procurement process for allocating gas flares and to achieve zero routine flaring within this decade."[25]

Although there is a legal obligation requiring a licensee to install metering equipment on every facility from which natural gas may be flared or vented, subject to the prescription of the Commission or the Authority, failure of which amounts to an offence punishable by fine[26]. It is contended that the penalty imposed by the Regulations that seeks to prevent gas flaring is too meagre[27] and not enough to effectively prohibit or discourage companies like MNOCs from flaring or venting greenhouse gas (Eze & Egobueze, 2023), which drives climate change and contributes to environmental pollution. Ultimately, the PIA requires that the licensee or lessee submit to the Commission a natural gas flare elimination and monetisation plan to ensure an end to gas flaring[28], given its environmental impacts and contribution to climate change.

Further, a lessee, licensee or permit holder is obligated by a written notice from the Commission or the Authority to commence the decommissioning and abandonment of a well, installation, structure, utility, and pipeline, where such decommissioning and abandonment are required under good international petroleum industry practices or guidelines issued by the Commission or the Authority[29]. It is also required that details of such decommissioning and abandonment by a lessee or licensee shall be submitted to the Commission or the Authority[30]. Each les-

[23]Gas Flaring, Venting and Methane Emissions (Prevention of Waste and Pollution) Regulations 2022, Regulations 2 and 3. These Regulations provides a legal framework for the protection of the environment against the effect of gas flaring, prevent waste of gas and the creation of social and economic benefit to Nigeria from gas flares.

[24]Midstream Gas Flare Regulations, 2023, Regulations 1 and 4 (1).

[25]'About NGFCP' https://ngfcp.nuprc.gov.ng/about-ngfcp/ (accessed 01 May 2023).

[26]Section 106 (1) & (2) of the PIA. Gas Flaring, Venting and Methane Emissions (Prevention of Waste and Pollution) Regulations 2022, Regulations 18, 23, 24 and 25. See Midstream Gas Flare Regulations, 2023, Regulations 9, 10 and 11.

[27]Gas Flaring, Venting and Methane Emissions (Prevention of Waste and Pollution) Regulations 2022, Regulation 16 (1) provides for a flaring penalty payment of $2.00 per 28.317 standard cubic metres of gas flared and vented. See Midstream Gas Flare Regulations, 2023, Regulation 13 (1) which similarly provides that "a licensee shall be liable to pay a penalty for venting or flaring of flare gas of USD0.50 per 28.317 standard cubic meters (one thousand standard cubic feet) of flare gas flared or vented beyond the limit set by the Authority by not more than one million standard cubic feet (1MMSCF)."

[28]Section 108 of the PIA.

[29]Section 232 (1) & (3) of PIA.

[30]Section 232 (6) of PIA.

see and licensee is required to set up, maintain and manage a decommissioning and abandonment fund in the form of an escrow account accessible by the Commission or the Authority for decommissioning and abandonment costs[31].

The consequence of the above provisions to MNOCs' responsibility is that where the operations of the MNOCs affect or continue to affect the environment of the host communities, the MNOCs cannot divest from Nigeria without providing adequate compensation for ecological remediation because if the MNOCs fail to comply, the Commission or the Authority can use the Fund to pay for the performance by a third party, after a reasonable period to rectify the non-compliance[32].

The introduction of the Petroleum Host Community Development (PHCD) is another innovation of the PIA that concerns MNOCs. Its goals are to foster sustainable prosperity within host communities, provide direct social and economic benefits from petroleum operations to host communities and develop a framework to support the development of host communities[33]. This can be achieved through the incorporation of the Host Communities Development Trust[34], with the mandate of financing and executing projects for the benefit and sustainable development of the host communities, to facilitate economic empowerment opportunities in the host communities, as well as supporting local initiatives within the host communities, which seek to enhance protection of the environment and security[35].

Also, a hydrocarbon tax was created by the PIA, and it will be assessed on the profits of companies involved in upstream petroleum operations onshore, shallow water, and deep offshore, and it will be due at the end of each accounting period[36]. Payment of companies' income tax is also required under Section 302(1) of the PIA.

1.2.3. Regulatory Efforts on BHR

Nigeria falls within the states in which either its national human rights institution or civil society has taken steps in the development of a national action plan (NAP) (UN OHCHR, 2016) (The Danish Institute for Human Rights, 2023a), on business and human rights as a policy framework for the implementation of the obligations and regulatory standards contained in the UNGPs, even though it was one of the twelve countries that promoted the UNGPs in 2011 (Ojetunde, 2018). The African Centre for Corporate Responsibility collaborated with Nigeria's National Human Rights Commission in 2016 to further the NAP development process. In 2017, the NHRC hosted a strategic consultation at a multi-stakeholder forum, resulting in a draft National Action Plan on Business and Human Rights (The Danish Institute

[31]Section 233 (1) & (2) of PIA.
[32]Section 233 (3) of PIA.
[33]Section 234 of PIA.
[34]Section 235 of PIA.
[35]Section 239 (2) & (3) of PIA.
[36]Section 260 of PIA.

for Human Rights, 2023b). Although the draft NAP has been updated with additional inputs (Global Rights, 2019, Draft National Action Plan United Nations Guiding Principles on Business and Human Rights, Federal Republic of Nigeria Prepared by NHRC and Global Rights Nigeria, November 2018, Reviewed and Updated by IN-CSR, August 2019, Inputs from CSOs, MDAs and OPS Facilitated by the NHRC, 2019), it is pertinent to note that it stipulated several state duties based on pillar 1 of the UNGPs on the responsibility of the state to protect human rights, especially as it relates to rights to free, prior and informed consent; stakeholder identification and analysis (can facilitate human rights due diligence—HRDD); protection of the environment by monitoring and inspection of companies' operations to ensure compliance with environmental standards; ensuring community consultation and engagement; conflict resolution and security; and reporting and monitoring compliance (Ovrawah, 2017).

Regarding corporate responsibility to respect human rights, the draft NAP requires companies operating in Nigeria to have a human rights policy that reflects the principles of the UNGPs and ensures that they conduct HRDD from the onset. Businesses under the draft must also have an operational-level grievance mechanism, ensure community relations (based on human rights impacts assessment, peace and conflict impact assessment, and EIA), build capacity and report their human rights compliance (Ovrawah, 2017). There is also a stipulation on access to remedy, which involves the integration of state-based judicial mechanisms, state-based non-judicial mechanisms, and non-state-based judicial mechanisms, as well as the necessity to deal with the complex issue of compensation in Nigeria (Ovrawah, 2017). However, the Nigerian government recently approved the National Action Plan on Human Rights for 2022 to 2026 (Uche, 2023). In its chapter eight, the NAP reflects most of the topical issues already covered in the draft, thereby explicating Nigeria's commitment to implementing the UNGPs.

Therefore, while there is no specific law in Nigeria that regulates the human rights responsibility of businesses, some of the regulations on environmental law, as well as on corporate governance, have shown the commitment of Nigeria to put in place a legal framework that is aimed at nipping corporate abuses and unaccountability in the bud, especially in the petroleum sector of Nigeria. The NAP on business and human rights also shows Nigeria's readiness to implement the UNGPs.

1.2.4. Resolution of the African Commission on BHR

It is also worth noting that within regional Africa, the African Human Rights Commission recently adopted a resolution (The African Commission on Human and Peoples' Rights Resolution on Business and Human Rights in Africa—ACHPR/Res.550 (LXXIV) Mar 21, 2023) calling on the African Union "to take into account and appropriately reflect in updating and finalising the African Union Policy Framework on Business and Human Rights while taking into consideration the UNGPs" (The African Commission on Human and Peoples' Rights Resolution on Business and Human Rights in Africa—ACHPR/Res.550 (LXXIV)

Mar 21, 2023)[37] (Adeola & Ikubaje, 2022, in Olawuyi & Abe, 2022). The African Commission, in the resolution, also decided to mainstream the issue of business, trade and human rights, as well as sustainable oceans, into the agenda of its ordinary public sessions (The African Commission on Human and Peoples' Rights Resolution on Business and Human Rights in Africa—ACHPR/Res.550 (LXXIV) Mar 21, 2023)[38].

Also, the UNWG issued a report on the first African Regional Forum on BHR, which, amongst other things, emphasised the need for preventing and addressing adverse human rights impacts in the extractive industries, integrating the corporate responsibility to respect human rights across African businesses, multi-stakeholder consultation on enhancing access to judicial remedy for corporate involvement in human rights impacts supporting and protecting human rights defenders and the role of national human rights institutions and strengthening implementation of the state duty to protect human rights through a national action plan (UN Human Rights Council, 2015, Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Addendum: Report on the First African Regional Forum on Business and Human Rights UN doc A/HRC/29/28/Add.2, 2 April 2015).

Likewise, the UNWG at the African BHR Forum (UN Human Rights Council, 2022, "Concept Note of African Business and Human Rights Forum, Accra Ghana" (12-13 October 2022) set the stage for future peer-learning sessions, collaborative projects, and programs on business and human rights in Africa, assessing progress in implementing the UNGPs and encouraging collaboration and networking among governments, business enterprises, civil society, National Human Rights Institutions (NHRIs), human rights defenders, and other stakeholders and examining national and regional initiatives to implement the UNGPs, such as NAPs, HRDD laws and practices, and guaranteeing access to effective remedies.

1.3. Challenges to Access to Remedy in the Petroleum Sector of Nigeria

Nigeria's oil and gas business has historically struggled with environmental damage, community dislocation, and human rights violations (Eaton, 1997). Communities harmed by extractive industries have struggled to obtain justice and reparation for their losses. In analysing the court's attitude in facilitating access to remedy through litigation, Mmadu identified the challenges of legal procedural technicalities involving locus standi, jurisdiction, pre-action notice, and limitation of

[37]Paragraph 1(a).

[38]Paragraph 2 (a & c) (By tasking its Working Group on Extractive Industries, Environment and Human Rights in Africa (WGEI) and its Working Group on Economic, Social and Cultural Rights (WG-ECOSOC) with this responsibility while working together with all other relevant Special Mechanisms of the Commission, to prepare the draft of an African Regional Legally Binding Instrument to Regulate the Activities of Transnational Corporations and other Business Enterprises, towards ensuring accountability and access to remedy for business-related human rights violations in Africa, with particular focus on marginalised and vulnerable populations).

action[39] that hinder a victim from accessing remedies through the judicial process (Mmadu, 2013) (UN Human Rights Council, 2014, Joint Written Statement Submitted by the Europe-Third World Centre (CETIM), a Non-governmental Organization in General Consultative Status, Environmental Rights Action / Friends of the Earth Nigeria (ERA/FoEN), a Non-governmental Organization in Special Consultative Status UN doc A/HRC/26/NGO/100, 6 June 2014). Such jurisdictional issues also challenge the victim when extraterritorially accessing remedies (Augenstein & Jägers, 2017, in Rubio & Yiannibas, 2017).

The Appellants' case in *Okpabi*[40] was filed in England against Shell's parent company partly because of the appellants' inability to obtain substantial justice in Nigeria. Even the English Court of Appeal observed that litigation in Nigeria is typically beset by "extraordinary", "inordinate", "enormous", and "beyond...catastrophic" delays, with civil cases frequently taking up to 40 years to conclude[41].

While litigation through court decisions has the potential to award variant remedies to the victims of petroleum exploration impacts based on statutory liability and common law torts, long delays (Eze, 2018) and legal manoeuvring (procedural challenges and frequent interlocutory appeals) at appellate stages of a case in Nigeria, and implementation of final judgment makes it less appealing to a victim in producing an effective and urgent remediation (Chapman & Dube, 2020).

For instance, in *Shell Petroleum Development Company of Nigeria Limited & Ors v. Agbara & Ors*[42], (Aloh & Uwakwe, 2022) the respondents (claimants at trial) as representatives of the Ejama-Ebubu community in Rivers State, claimed that their surface and ground waters had been rendered unfit for human consumption as a result of a significant crude oil blowout and spillage involving over 2,000,000 barrels of oil that had occurred from the appellants' (defendant at trial) oil installations and facilities in Ejama in Ebubu Eleme which flooded the Ochani stream and permeated the soil of their lands at a point of saturation and that the appellants failed to clear up the spill. The case emanated from a suit filed in 1999/2000 at a Federal High Court (FHC) sitting in Asaba, Delta State, wherein the claimants, in a representative capacity, sought to recover from Shell for the losses they suffered because of the oil spillages at Ejama-Ebubu in Tai Eleme Local Government Area of Rivers State.

[39]Limitatation of action or action being statute barred was the basis of the decision in denying the claims of the claimants by the Supreme Court of the UK in *Jalla and Another v Shell International Trading and Shipping Co Ltd and Another* [2023] UKSC 16, which was an appeal the Supreme Court (SC) of the UK was faced with sole basis of determining the issue of whether there is a continuing private nuisance as result of the persisting impacts of the oil spill of 2011 and hence keeping the cause of action alive given that the limitation period for the bringing of claims in English law for torts is normally six years even in Nigeria.

[40]*Okpabi and others v Royal Dutch Shell Plc and Another* [2021] UKSC 3, 154-160.

[41]*IPCO (Nigeria) Limited v Nigerian National Petroleum Corporation* [2015] CLC 815 per Christopher Clarke LJ at §§22 and 27). Christopher Clarke LJ added that "the character and extent of the delay" in the Nigerian legal system was such that a dispute "is not likely to be resolved for up to a generation from now" and a final determination in Nigeria "would probably not take place for decades" (§§167, 169).

[42](2020) LCN/4941 (SC). See *Centre for Oil Pollution Watch v NNPC* (2019) 5 NWLR (Pt. 1666) 518.

In a judgment delivered on 14 June 2010, the trial court (FHC) entered judgment in favour of the claimant and awarded over N17 billion as damages against Shell. From 2010 until November 2020, Shell has been filing several applications at the appellate court (Court of Appeal) and the Supreme Court (SC) under the guise of exploring their rights of appeal; all aimed at further delaying the judicial process of enforcing[43] the judgment and paying the compensation to the victims of the eco-disaster in the Niger Delta. In ensuring a fair hearing, the SC allowed the appellants to file an appeal in 2015. Despite the Supreme Court's 2015 decision permitting Shell to properly appeal the trial court's ruling to the Court of Appeal (CoA), Shell was unable to do so and instead submitted a new application to the CoA requesting an "extension of time to seek leave to appeal on grounds other than law." The CoA in 2017 rejected the application, and Shell subsequently appealed to the SC, which also dismissed the application in a decision on 11 January 2019. As a result of the SC's decision, the trial court's judgment continued to stand.

Nevertheless, in late 2019, the appellants filed a new application to the SC seeking leave to challenge the substantive verdict of the trial court that assessed damages against them. Moreover, they requested that the Supreme Court reverse its earlier ruling from 11 January 2019 in an application dated 24 July 2019. However, after hearing arguments regarding the applications, the SC dismissed the application in 2020 as "unmeritorious" and upheld the trial court's 2010 decision that awarded damages to the appellants.

2. Road to Corporate Remediation in Nigeria's Petroleum Sector

2.1. Potentials of ADR as a Means of Corporate NGM in Nigeria's Petroleum Sector

It is the primary responsibility of states to ensure that rights holders affected by business-related human rights abuses can seek, obtain, and enforce a bouquet of remedies, including, amongst other things, restitution, compensation, rehabilitation, satisfaction, a guarantee of non-repetition and other preventive measures (UN General Assembly, Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises UN doc A/72/162 (18 July 2017))[44]. Amongst the various forms of remedies a state can provide are effective and appropriate non-judicial grievance mechanisms and supplementing judicial mechanisms, as part of a comprehensive State-based system (UN HRC, 2011, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other

[43]The applicants (respondents) had to approach the English court for the enforcement of the judgement. See also *Agbara and Others v The Shell Petroleum Development Company of Nigeria Ltd and Others* [2019] EWHC 3340 (QB), where an English court held that the Nigerian judgment against Shell was not enforceable in England because the judgment was obtained in substantial breach of natural justice.

[44]Paras 38-54.

Business Enterprises, John Ruggie: Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework UN doc A/HRC/17/31, March 21 2011)[45], provided such mechanism satisfies the requirements of Principle 31 of the UNGPs.

2.2. An Overview of Midstream and Downstream Petroleum ADR Regulations, 2023

Considering the above reality, the PIA was enacted in 2021 to overhaul Nigeria's oil and gas sector, and it established two regulatory agencies—the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the Authority) (Nigerian Midstream and Downstream Petroleum Regulatory Authority, 2023) and the Nigerian Upstream Petroleum Regulatory Commission (the Commission) (Nigerian Upstream Petroleum Regulatory Commission, 2023), which are saddled with the mandate to make regulations (administrative laws) on specific issues within their governance competence. These agencies ensure that health, safety, and environmental regulations conform with national and international best oil field practices, addressing climate change issues (Guidelines for Management of Fugitive Methane and Greenhouse Gas Emissions in the Upstream Oil and Gas, NUPRC Guide 0024-2022, 2022) and societal impacts of petroleum operations, and are empowered to address several issues ranging from gas flaring administration (Gas Flaring, Venting and Methane Emissions (Prevention of Waste and Pollution) Regulations, 2022) (Midstream Gas Flare Regulations, 2023), host communities' management (Nigerian Upstream Petroleum Host Communities Development Regulations, 2022)[46], dispute resolution (Midstream and Downstream Petroleum Alternative Dispute Resolution Regulations, 2023), and administration of ecological funding[47] to enhance ecological restoration.

One such regulation made by the Authority is ***the Midstream and Downstream Petroleum Alternative Dispute Resolution Regulations*** (***the Regulations***) (Midstream and Downstream Petroleum Alternative Dispute Resolution Regulations, 2023) in 2023 under its powers in Sections 33 (t), 120 (j), 163 and 179(2) of the PIA. The main aim of the Regulations is to establish the Midstream and Downstream Petroleum Alternative Dispute Resolution Centre (MADP ADR or Centre) as a *non-judicial grievance mechanism* (*NGM*) and provide the procedures for timely and cost-efficient dispute resolution in the sector. Thus, a review of the Regulations follows to understand the extent to which its establishment of MADP ADR serves as a mechanism for accessing remediation in the midstream and downstream petroleum sector.

2.2.1. Establishment and Competence of MADP ADR Centre

The PIA provides the legal framework establishing the Centre[48] to facilitate

[45]Principle 27.
[46]*Sections* 235-257 of PIA.
[47]Section 52 (7) (d) of the PIA.
[48]Pursuant to Sections 33 (t), 120 (j), 163, and 179 (2) of the PIA.

timely and cost-efficient dispute resolution related to midstream and downstream petroleum operations. It coordinates, cooperates, and concludes agreements with specialised regional and international arbitration institutions. The Centre maintains a register of its members and a list of arbitrators and experts. Additionally, it organises a database of decisions it issues.

As regards its competence, the Centre is saddled with the primary function of resolving disputes through alternative dispute resolution mechanisms by ensuring efficient handling of conflicts within the petroleum industry[49]. Moreover, the Centre is empowered to provide administrative supervision[50] in dispute resolution matters by ensuring adherence to procedures and fairness; maintaining a register of members and lists of qualified arbitrators and experts[51]; coordinating and cooperating with other regional and international arbitration institutions to enhance its effectiveness[52]; and maintenance of a database of all the decisions issued by the Centre[53] thereby contributing to transparency and consistency.

However, the Centre is authorised to conclude agreements and memoranda of understanding with competent courts within and outside Nigeria on matters related to the enforcement of arbitral awards and decisions issued by the Arbitration Tribunals of the Centre, ratification of settlement agreements mediated by the mediators and conciliators registered with the Centre, and ratification of decisions of experts registered with the Centre, following the procedures and standards adopted by competent courts, and as agreed by the Centre and the court[54]. It is empowered to issue guidelines, rules or directives to implement these Regulations effectively[55]. Its organisational structure and functions are essential for efficient dispute resolution and maintaining industry integrity.

Furthermore, the Regulations established the Advisory Council and the Administrative Secretariat[56], whose functions ensure the Centre's effectiveness and efficiency.

The Advisory Council consists of external advisors with specific skills and experience in various fields and professions[57], and they are not members of the Centre. They prescribe the qualifications for applicants who wish to be arbitrators, mediators, conciliators, and experts at the Centre[58]. The composition[59], qualifications[60], appointments[61], and functions[62] of membership of the Council are as pre-

[49]Reg. 7 (1) (1).
[50]Reg. 4 (a).
[51]Reg. 4 (f).
[52]Reg. 4 (c).
[53]Reg. 4 (g).
[54]Reg. 4 (d) (i-iii).
[55]Reg. 9.
[56]Reg. 7 (3)(a and b).
[57]Reg. 7 (4) (1).
[58]Reg. 7 (2) (1).
[59]Reg. 7 (4) (3).
[60]Reg. 7 (4) (9) (3).
[61]Reg. 7 (4) (4).
[62]See Reg. 7 (6) (1) (a-o).

scribed under the Regulations. Members offer tailored advice in areas such as technology, marketing, and other specialised domains. Their expertise augments the board's knowledge, especially in technical matters.

Similarly, the Administrative Secretariat is manned by the Centre coordinator, whose appointment[63], qualification[64], and functions[65] are regulated under the Regulations. The Administrative Secretariat also performs other functions stipulated under the Schedule to the Regulations[66].

2.2.2. Nature of Disputes/Jurisdiction of the Centre

The jurisdiction of the Centre covers *inter alia*:

- Operations between licensees or permit holders in the midstream and downstream petroleum industry.
- Open access and third-party access to facilities and infrastructure used for gas and petroleum liquids operations.
- Gas trading and settlement matters.
- Host communities and their related disputes.
- Industry labour matters[67].

The Centre plays a crucial role in resolving disputes related to petroleum operations within the midstream and downstream sectors, with the specific aim of speedy and cost-effective settlement of disputes in the midstream and downstream sector[68], an intentional effort to depart from the traditional litigation process and the age-long conflict that has marred the relationship between oil operators and their host communities (Idiong, Koko, & Essang, 2023). To actualise its aim, the Centre encourages fairness and equity and is guided by fundamental values such as ethics, professionalism, responsibility, and transparency[69].

2.2.3. Dispute Resolution Mechanisms

The MADP ADR Centre employs several dispute resolution mechanisms to address conflicts within the midstream and downstream petroleum industry through:

i) *Expert Determination*: which involves seeking expert opinions to resolve specific technical or factual issues.

ii) *Conciliation*: where a neutral third party facilitates discussions between disputing parties to find common ground.

iii) *Mediation*: to assist parties in negotiating mutually acceptable solutions.

iv) *Arbitration*: a more formal process where an arbitrator renders a binding decision after hearing both sides.

v) And any other approved mechanism that may be suggested by parties to en-

[63]Reg. 7 (9) (1).
[64]Reg. 7 (9) (3).
[65]Reg. 7 (9) (10).
[66]See Reg. 7 (11) (a-q).
[67]Reg. 5 (1) (a-h).
[68]See Regs. 1 (b), 3 (1 and 2).
[69]Schedule to the Regluations, Paras 6 (1), 9 (l) and 10 (n).

sure an amicable resolution[70].

Apart from its aim for a swift resolution, the Centre adapts to the specific needs of each dispute, tailoring procedures accordingly[71]. It also engages specialised regional and international arbitration institutions, ensuring access to experienced professionals[72]. In aligning with UNGPs, the Centre facilitates corporate responsibility, especially for multinational oil companies, in line with the United Nations Guiding Principles on Business and Human Rights (UNGPs). Above all, the MADP ADR Centre applies a combination of efficiency, flexibility, and expertise as a valuable forum for resolving petroleum-related disputes, benefiting industry stakeholders and affected communities. The enactment of the new Arbitration and Mediation Act (Arbitration and Mediation Act, 2023) in Nigeria governs arbitration and conciliation proceedings, ensuring that the Centre adheres to recognised international standards for dispute resolution.

2.2.4. Composition and Independence of the Centre

The Centre comprises experts, professionals, and neutrals with specialised knowledge in the midstream and downstream petroleum industry[73]. Key members include experienced arbitrators and mediators, who facilitate dispute resolution proceedings; industry specialists, well-versed in petroleum operations, regulations, and related matters; legal professionals with expertise in ADR and energy law; and community representatives, who ensure inclusivity and local perspectives[74].

To ensure its independence, the Centre's membership operates with core values of integrity, professionalism, and transparency[75]. Decisions are made by persons of high reputation, intellect, trustworthiness, and skill[76]. Its decisions are meant to be rendered impartially, ensuring accountability to all stakeholders. It operates independently from the government and other vested interests but has its own budget and funding mechanisms[77]. Thus, its decisions are made without bias, favouring neither companies nor communities, being transparent, and avoiding conflicts of interest[78]. Therefore, the Centre's composition, independence, and tailored procedures position it as an effective forum for resolving petroleum-related disputes, benefiting both industry stakeholders and affected communities.

2.3. The Upstream ADR Model: The Nigerian Oil and Gas Excellence Centre and Host Community Disputes

While the Midstream and Downstream Petroleum ADR Regulations establish a dedicated, sector-wide dispute resolution centre, the upstream sector employs a

[70]See Reg. 6 (1) (a-e).
[71]Reg. 4.
[72]See Schedule to Reg. 7 (1, 2, 3).
[73]Reg. 7 (2) (1-2).
[74]Reg. 7 (4) (1-3).
[75]Reg. 17 (1).
[76]Reg. 7 (3) (a-h).
[77]Reg. 7 (12).
[78]Reg. 7 (17) (1 and 2).

different, yet parallel, ADR mechanism tailored to its specific context. The upstream framework, established by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) under the *Host Communities Regulations* (Nigeria Upstream Petroleum Host Communities Development Regulations, 2022), mandates a structured grievance procedure for disputes between settlers (oil companies) and host communities.

As detailed in *Regulation* 39 *of the Host Communities Regulations*, a dispute must first undergo a mandatory internal resolution process between the Board of Trustees and the settlor. If this fails, the dispute is referred to the Alternative Dispute Resolution Centre of the Nigerian Oil and Gas Excellence Centre for mediation. Only if mediation is unsuccessful can the matter be escalated to the NUPRC itself and, ultimately, to arbitration under the Arbitration and Conciliation Act.

Therefore, a parallel ADR reform is indeed underway in the upstream sector, but it is functionally distinct. The upstream mechanism is specifically channelled through the Nigerian Oil and Gas Excellence Centre and is intrinsically linked to host community disputes arising from the Host Communities Development Trust. In contrast, the Midstream and Downstream Centre is a broader, dedicated institution for a wider range of commercial and operational disputes, indicating a sector-wide policy shift towards ADR, albeit implemented through specialised mechanisms designed to address the unique historical and operational challenges of each segment.

2.4. Practical Hurdles for the New ADR Centre

While the establishment of the Midstream and Downstream ADR Centre is a positive regulatory development, its practical effectiveness will be tested by several implementation challenges. Key among these are ensuring its financial independence, managing inherent power imbalances, and raising community awareness.

2.4.1. Financial Independence

Safeguarding the Centre's financial autonomy is critical for its perceived and actual impartiality. The Centre's funding structure, as outlined in the Regulations, includes sources from the Nigerian Midstream and Downstream Petroleum Regulatory Authority and fees for its services. However, Nigeria's petroleum sector has a history of opacity and political interference in institutional financing. Over-reliance on funding streams controlled by the industry or government risks undermining the Centre's autonomy, potentially leading to under-resourced operations and a loss of stakeholder trust (Gboyega, Søreide, Minh Le, & Shukla, 2011) (IMF Country Report No 19/92, 2019). Proactive measures, such as a transparent and diversified funding model, are essential to prevent this.

2.4.2. Power Imbalances

The Centre must proactively manage the significant power asymmetries between multinational corporations and local communities. Corporations typically possess superior financial resources, legal expertise, and influence, which can skew proceed-

ings against less-resourced communities (Cuervo-Cazurra, Prashantham, Pedersen, & Tihanyi, 2021; Newell, Price, & Daley, 2023). Without deliberate interventions such as providing capacity-building programs, ensuring access to independent legal advice for communities, and enforcing strict procedural guidelines, the Centre's outcomes may perpetuate existing inequalities rather than remediate them.

2.4.3. Community Awareness

The **challenge of raising community awareness** cannot be overstated. The Centre's potential will remain unrealised if its intended users are unaware of its existence, jurisdiction, or advantages over litigation. Past formal sector interventions in Nigeria have often failed due to inadequate grassroots engagement and information dissemination (Adeniyi, 2011). A comprehensive, multi-lingual outreach strategy, developed in partnership with trusted civil society organisations, is vital to ensure communities can effectively access this new remedial avenue (Chikoto-Schultz & Uzochukwu, 2016).

2.5. Interplay and Jurisdictional Overlap between HCDTs and the ADR Centre

The introduction of the Petroleum Host Community Development (PHCD) is another innovation of the PIA that concerns multinational oil companies operating in Nigeria's petroleum sector. It has as its goals fostering sustainable prosperity within host communities, providing direct social and economic benefits from petroleum operations to host communities, and developing a framework to support the development of host communities[79]; which can be achieved through the incorporation of Host Communities Development Trust[80] with the mandate of financing and executing projects for the benefit and sustainable development of the host communities to facilitate economic empowerment opportunities in the host communities as well as supporting local initiatives within the host communities, which seeks to enhance protection of the environment and security[81].

The PIA establishes a dual-layered dispute resolution architecture comprising the localised Host Communities Development Trusts (HCDTs) and the centralised ADR Centre. While complementary in theory, their coexistence creates a potential for jurisdictional overlap that requires careful management to avoid inefficiency. The HCDTs are designed as frontline, community-embedded mechanisms for resolving grievances arising directly from petroleum operations, leveraging local knowledge for culturally appropriate resolutions. In contrast, the ADR Centre provides a formal, sector-wide forum with specialised expertise in petroleum law for complex commercial and community disputes.

The primary overlap arises from the escalation pathway. Disputes originating within an HCDT, particularly unresolved issues concerning compensation, envi-

[79]Section 234 of PIA.
[80]Section 235 of PIA.
[81]Section 239 (2) & (3) of PIA.

ronmental damage, or inter-community conflict, can escalate to the ADR Centre. Without clear procedural thresholds, this risks forum-shopping, procedural ambiguity, and duplication of efforts, potentially leading to protracted delays and increased costs for all parties. Differing evidentiary standards between the informal HCDT processes and the formal ADR Centre could further undermine the legitimacy of outcomes (Egbon, Idemudia, & Amaeshi, 2018).

To harness their complementary potential, a clear procedural framework is essential. The system should be harmonised to position HCDTs as the first-tier for local grievances, with the ADR Centre serving as an appellate or escalation forum for more complex, intractable, or cross-community disputes (Dhali, Hassan, & Subramaniam, 2023). In view of that, it would create a seamless interface that enhances both accessibility and legal enforceability, thereby strengthening the overall integrity of the PIA's remedial framework.

3. Scrutinising the Midstream and Downstream Petroleum ADR Regulations against the UNGP Effectiveness Criteria

To provide a robust framework for assessing non-judicial grievance mechanisms, the United Nations Guiding Principles on Business and Human Rights (UNGPs) outline eight core criteria for effectiveness under Principle 31 (United Nations Office of the High Commissioner for Human Rights, 2011, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework). These criteria ensure that such mechanisms are not merely procedural formalities but are capable of delivering tangible, fair, and durable outcomes for rights-holders (Triponel, 2023, in Choudhury, 2023). The criteria require mechanisms to be: *Legitimate*, enabling trust and accountability; *Accessible*, known to all users and providing assistance for barriers; *Predictable*, with clear procedures and timelines; *Equitable*, ensuring fair engagement for all parties; *Transparent*, keeping parties informed and providing clarity on the mechanism's performance; *Rights-compatible*, ensuring outcomes accord with internationally recognized human rights; *A source of continuous learning*, drawing on lessons to improve and prevent future harm; and *Based on engagement and dialogue*, consulting stakeholders and focusing on dialogue-based solutions.

A critical measure of the proposed Midstream and Downstream Petroleum Alternative Dispute Resolution Centre's potential is its alignment with the eight effectiveness criteria for non-judicial grievance mechanisms established under Principle 31 of the UNGPs. A systematic evaluation reveals that the Regulations thoughtfully incorporate many of these principles, though their ultimate efficacy will depend on implementation.

The Regulations establish a ***legitimate*** structure through an independent Advisory Council comprising a retired judge, industry experts, and legal practitioners, fostering impartiality and trust[82]. ***Accessibility*** is promoted by mandating reason-

[82]Schedule to Reg. 7 (4 & 6).

able fees and providing parties with sufficient cost information upfront[83]. The mechanism's ***predictability*** is anchored in its authority to issue detailed rules for arbitration and mediation, providing a structured procedural roadmap[84].

Furthermore, the Centre's design embodies ***equity*** by requiring neutrals to act with independence and impartiality[85] and ***transparency*** through its obligation to publish rules and fees[86]. Its ***rights-compatibility*** is fundamentally ensured by its power to enforce binding arbitral awards and mediated settlements, providing a tangible path to remedy[87]. The mechanism is also designed as *a* ***source of continuous learning***, mandated to conduct periodic reviews of its rules and benchmark against international best practices[88].

Finally, the entire process is ***based on engagement and dialogue***, as the core ADR methods—mediation and conciliation are inherently focused on facilitating a mutually agreed settlement between the parties[89].

Hence, the Midstream and Downstream Petroleum ADR Regulations' structural alignment with the UNGPs demonstrates a significant legislative intent to create a credible and effective forum that offers timely redress for corporate externalities affecting human rights and the environment of the host communities. However, the persistent enforcement gap evident in upstream cases like *Gbemre* underscores that the Centre's success will hinge on the practical application of these robust provisions and the consistent enforcement of its outcomes by the Nigerian courts on time. It is only with such a proactive approach that Christopher Clarke LJ's dictum in *IPCO* (*Nigeria*) *Limited v Nigerian National Petroleum Corporation*—"the character and extent of the delay" in the Nigerian legal system was such that a dispute "is not likely to be resolved for up to a generation from now" and a final determination in Nigeria "would probably not take place for decades"[90] will continue not to be apposite.

3.1. Discussion and Insights: Is Nigeria Arbitration-Friendly?

Accessing an effective forum for seeking remedies by victims of corporate human rights (environmental rights inclusive) abuse has been challenging for most claimants in the Global South, including Nigeria, given the challenging limitations of litigation, like the burden of proof and jurisdiction in a judicial process and lack of access to substantial justice[91]. In this regard, Croser noted that the *Vedanta* de-

[83]Reg. 8 (1)-(3).
[84]Reg. 4 (h).
[85]Schedule to Reg. 7 (17).
[86]Reg. 4 (h).
[87]Reg. 4 (i).
[88]Schedule to Reg. 7 (11) (m).
[89]Reg. 6.
[90][2015] CLC 815 per at §§22 and 27) (§§167, 169).
[91] *Vedanta Resources PLC and Anor v. Lungowe and Ors.* [2019] UKSC 20. The case involves an allegation of toxic effluent discharge from KCM—a Zambian subsidiary of the UK parent, resulting to loss of income from damage to land and waterways, and personal injuries. While accepting the UK jurisdiction over the case against the parent company, the Supreme Court noted that although Zambia

cision leaves room for *forum non conveniens* (FNC) and that access to justice is a critical consideration regarding the proper forum (Croser et al., 2020; Ahmad, 2021; Cassell, 2016)[92]. More so, Croser et al., while commenting on the decision, noted that it "appears to catch the parent companies on the horns of a dilemma" (Croser et al., 2020). Thus, Nigeria continues to be challenged in enforcing business responsibility for human rights and ecological harm, and it is overshadowed by corporate powers (Croser et al., 2020; Ahmad, 2021; Cassell, 2016). In light of this, the Centre strives to serve as the missing forum for effectively providing access to remedies for human rights abuses and environmental harms resulting from Nigeria's petroleum industry.

However, the Arbitration and Mediation Act (AMA) 2023 governs ADR processes in Nigeria, intending to provide a unified legal framework for the fair and efficient settlement of commercial disputes through arbitration and mediation and to promote fair resolution of disputes by an impartial tribunal without unnecessary delay or expense[93]. The AMA provides a comprehensive framework for settling international disputes between Nigerians and foreigners, covering the seat of arbitration, applicable laws, and choice of arbitrators. Its provisions demonstrate Nigeria's commitment to enhancing the transparency, speed, autonomy, and enforceability of arbitral awards and mediation settlement agreements, aligning with international best practices[94]. The AMA was modelled after the UNCITRAL Model Law on International Commercial Arbitration and the Model Law on International Commercial Mediation. It incorporated many provisions, signifying Nigeria's efforts to align its arbitration and mediation framework with global standards[95].

Although the Midstream and Downstream Petroleum Alternative Dispute Resolution Regulations did not refer to the AMA given that the latter came into force later than the Regulations, nonetheless, by the combined effect of Reg. 4 and 6 of the Regulations, the AMA applies and regulates the activities of the Centre because the AMA is the primary law that regulates the process of alternative dispute resolution mechanisms.

Thus, the AMA allows for the seat of arbitration in Nigeria and provides for extraterritorial application, making it applicable to domestic and Nigerian-seated arbitrations. Section 32 offers flexibility in choosing the seat of arbitration, ensur-

would have been the proper forum but for lack of a possibility for a substantial justice to be done unlike in the UK where there is access to legal aid.

[92]Also, in *Okpabi and Others v Royal Dutch Shell Plc and Another* [2021] UKSC 3, 154-160, the UK Supreme Court, on appeal from the Court of Appeal's decision which rejected the appellants' claims against RDS on the basis that there was no arguable duty of care owed to the appellants despite the dissenting opinion of otherwise by Sales LJ; however held that the appellants had a triable issue before the court based on a direct duty of care, on account of the extent of Royal Dutch Shell Control Framework on decision-making on health, security, safety, and environmental standards, had on the SPDC (Nigerian incorporated Shell).

[93]Section 1 (1) of the Arbitration and Mediation Act, 2023.

[94]Sections 1 (1-5) of the Arbitration and Mediation Act, 2023.

[95]Section 92 (10) of the Arbitration and Mediation Act, 2023.

ing that international transactions involving Nigerians and foreigners can be subject to arbitration in Nigeria. The AMA equally allows parties to choose the governing law of an arbitration agreement[96]. If the parties do not make a choice, the AMA and the Rules will apply[97]. However, the AMA emphasises that for the choice of law to be effective, it must be real, genuine, legal, and reasonable, and it should not be capricious and absurd. Additionally, it specifies that the mandatory laws of Nigeria would prevail over the law chosen by the parties if it contravenes Nigerian substantive/mandatory laws or is against public policy[98] (Aderoju, 2023).

From the preceding, the preference for ADR as a dispute mechanism or NGM seems apparent based on Nigeria's legal posture. However, the ADR mechanism dispensed as an NGM needs to be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning (UN HRC, 2011, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie: Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework UN doc A/HRC/17/31, March 21 2011)[99] (Scheltema, 2013; Otteburn, 2024). While the AMA demonstrates Nigeria's commitment to modernising its arbitration framework by introducing several positive changes, there are also some criticisms and potential loopholes:

i) *Enforcement Delays*: Historically, the enforcement of arbitral awards in Nigeria has faced delays and challenges. Adopting an arbitral award into a legally enforceable judgment can be protracted. These Challenges include court congestion, inefficient procedures, and a lack of specialised commercial courts. Parties seeking enforcement often encounter delays due to backlogs in the judicial system (Balogun et al., 2023).

ii) *Judicial Interference*: Some Nigerian courts have been criticised for interfering with arbitral proceedings or awards. This interference can lead to delays and unpredictability (Onuoha, 2021). Permissibly, by Article 34 (1) of the UNCITRAL Model Law on International Commercial Arbitration[100], recourse to a court against an arbitral award may be made only by an application for setting aside within the contemplation and tenor of the Model Law in pursuance of Article 34 (a)[101] & (b)[102]. Similarly, the New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards, (United Nations

[96]Section 15 (1) Arbitration and Mediation Act, 2023.
[97]Section 31 Arbitration and Mediation Act, 2023.
[98]Section 15 (3) of the Arbitration and Mediation Act, 2023.
[99]Principle 31.
[100]Model Law on International Commercial Arbitration 1985 (United Nations Commission on International Trade Law [UNCITRAL]) UN Doc A/40/17, Annex I.
[101]Article 34 (a) conditions for seeking recource to court include incapacity of the party/ invalidity of said agreement; lack of proper notice of arbitration appointment and proceedings; different contemplated dispute; and improper composition of the tribunal and conduct of the proceedings.
[102]Article 34 (b) relates to where the subject-matter of the dispute is not arbitrable and the award is contrary to public policy.

[UN]) 330 UNTS 3, 1958) stipulates slightly comparable conditions for refusal of recognition and enforcement of an award in Article V (1) 9 (a-e) and (2) (a-b). Thus, the recent decision of the Commercial Court of the UK in the *Federal Republic of Nigeria* (*FRN*) *v Process & Industrial Development Limited*[103] raises questions on the legitimacy of arbitral proceedings and the reputation of arbitration as an investment dispute resolution mechanism, especially concerning its finality in the Nigerian context (Sodipo, 2021).

iii) *Inconsistent Decisions*: Lack of uniformity in judicial decisions regarding enforcement creates uncertainty for parties (Abdul, 2024). It creates significant uncertainty for parties. Inconsistent interpretations by courts across jurisdictions undermine predictability, deter investment, and weaken confidence in arbitration as a reliable dispute resolution mechanism, despite the AMA 2023's intent to harmonise and modernise Nigeria's arbitration framework.

iv) *Administrative Hurdles*: Bureaucratic procedures for filing enforcement applications can be cumbersome, often involving multiple layers of administrative requirements, redundant documentation, and prolonged processing times. Despite the AMA's aim to streamline dispute resolution and align with international best practices, these procedural hurdles can delay the recognition and enforcement of arbitral awards. Hence, the necessity for further reforms to simplify court processes, enhance digital filing systems, and reduce judicial bottlenecks to fully realise the AMA 2023's efficiency objectives.

v) *Mechanisms of the Arbitration Review Tribunal* (*ART*): Although the Arbitration and Mediation Act (AMA) 2023 establishes the Arbitration Review Tribunal (ART) to review arbitral awards, there remains considerable room for further clarity regarding its procedures, jurisdiction, and powers. The absence of detailed operational guidelines may lead to procedural ambiguities, inconsistent applications, and potential legal challenges (Aduloju, 2024; Ogbodo & Ugwu, 2023). Such uncertainty could undermine the ART's effectiveness and the parties' confidence in the review mechanism, thereby weakening the overall enforcement and integrity of arbitral outcomes under the new regime.

vi) *Consolidation of Arbitral Proceedings*: The Arbitration and Mediation Act (AMA) 2023 requires the unanimous agreement of all parties as a precondition for consolidating multiple arbitral proceedings, a strict stipulation that may significantly hinder the efficient resolution of related disputes. In complex commercial scenarios involving several contracts or stakeholders, securing consensus among all parties can be impractical or impossible, especially when interests diverge. Therefore, such rigidity risks duplicative proceedings, inconsistent awards, increased costs, and delays, ultimately undermining the AMA's objective of promoting efficient, cost-effective dispute resolution. Introducing more flexible consolidation mechanisms, for instance, court-ordered or tribunal-led consolidation under defined criteria, could enhance coherence and procedural economy without

[103] *Federal Republic of Nigeria v Process & Industrial Development Limited* [2023] EWHC 38 (Comm).

compromising party autonomy.

Despite these critiques, adopting the AMA is a significant step forward for Nigeria's arbitration system, especially in facilitating petroleum-related dispute settlement using the mechanism of the Midstream and Downstream Petroleum Alternative Dispute Resolution Centre, which seeks to boost Nigeria's position as a leading arbitration and mediation centre in Africa and beyond. Nigeria's arbitration environment balances between promoting arbitration and protecting national interests. Above all, Nigeria is attempting to be arbitration-friendly, but it is still a work in progress. While the ruling in *Nigeria v. PID* raises concerns, it also demonstrates Nigeria's willingness to challenge arbitral awards obtained by fraud and conduct contrary to state policy, highlighting its commitment to fair and just dispute settlement.

Given the innovative provisions introduced by the Arbitration and Mediation Act of 2023 and the establishment of the Midstream and Downstream Petroleum Alternative Dispute Resolution Centre, Nigeria's willingness to challenge arbitral awards obtained fraudulently and its alignment with international best practices, one can aver that Nigeria is arbitration-friendly. The AMA's commitment to providing a conducive environment for alternative dispute resolution per current global norms lends credence to this averment.

3.2. Conclusion

In reviewing the viability of the Midstream and Downstream Petroleum Alternative Dispute Resolution Regulations and its established Centre for Petroleum ADR, this piece assessed the Regulations' potential in trailblazing non-judicial grievance mechanisms (NJGM) of dispute settlement in the petroleum sector of Nigeria. With the new petroleum legal frameworks-PIA and Regulations, it is expected that the missing efficient and effective forum for seeking remediation by victims of human rights abuses and environmental harms contributed by business/petroleum operators (mostly multinational oil companies) will be served by the Centre, given its potential to adopt global best practices of ADR (especially arbitration and mediation) reflecting the UNGP requirements for effective remediation as provided in Principle 31. Ultimately, it is a matter of time to assess how efficiently the Regulations and the Centre have filled the vacuum created by the inefficiency of litigation in the Nigerian petroleum sector, as far as the remediation needs of the victims are concerned.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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