UNIZIK LAW JOURNAL 19, (3) 2023

REFLECTIONS ON THE IMPACT OF P&ID CASE, CHALLENGES AND LESSONS OF ARBITRATION IN COMMERCIAL TRANSACTIONS IN NIGERIA*

Abstract

The protracted case of *Process & Industrial Developments Limited (*P&ID*) v The Ministry of Petroleum Resources of the Federal Republic of Nigeria* has indeed generated a lot of controversy both domestically and internationally. The issues in the case bordered on non-performance of contract, the seat of arbitration, the effect of the enforcement of an arbitration award tainted with bribery, fraud and corruption in the procurement of contract. Nigeria was adjudged to have breached a contract, awarded to P&ID in 2010 by the country's Petroleum Ministry for the construction of a gas processing plant in the South Eastern city of Calabar. It was never built! it is trite to say that a contract which neither of the parties performed nor executed ought not to be arbitrated upon in the first instance. This article examined the lessons learnt in the recent case of *(P&ID)* in a contract procured by fraud and the challenges of Arbitration in Nigeria. This article adopted the doctrinal research methodology, which examined both primary and secondary sources. Primary sources such as statutes, cases and conventions were utilized in the course of writing. Also, secondary sources such as text books, journals, articles and internet materials were critically analysed. Generally, the article advocated for the promotion, growth and effective functioning of the institutions and the justice sector indigenous to Africa in the resolution of commercial disputes in Nigeria. The work recommended the need to make Nigeria the seat of arbitration and other ADR mechanisms in the resolution of disputes for contracts entered in Nigeria. The case is indeed a wakeup call to commercial parties, governments, legal practitioners, ADR practitioners and arbitrators in Nigeria.

Keywords: Commercial, Arbitration, Nigerian, Court, Transactions

1. Introduction

Commercial transactions demand a high level of competence and integrity, more so when it has to do with foreign investors. Foreigners are attracted to countries where there are stabilized and effective institutions for the resolution of commercial dispute.[1] Commercial transactions not only involve huge investments but also go a long way to determine the development of the economy. This explains the reason why international commercial arbitrations are frequently utilized in developed states as a dispute resolution method of choice in energy contracts and transactions involving huge capital and investments.[2] The *Process and Industrial Developments Ltd v Federal Republic of Nigeria (P&ID)* is instructive in this study. One major lesson in the *(P&ID)*[3] case is for the nation to ensure that contracts entered into by the government are prepared by competent and experienced legal and other experts with unimpeachable degree of integrity. With respect to the above-stated case, three arbitration awards were made in favour of P&ID against the Federal

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1 M Ross, Dispute Management and Resolution in Gordon and Paterson, Oil and Gas Law-Current Practice and Emerging Trends (Edinburgh: Edinburgh University Press, 2018) 490-528.

2 A Redfern, N Blackaby, C Partasides & M Hunter, *Redfern and Hunter on International Arbitration-Student Version* (5th edn, New York USA: Oxford University Press, 2009) 1.

3 [2019] EWHC, 2241 (Comm.).

government by a London tribunal on the 3rd of July 2014, 17th of July, 2015 and 31st January 2017[4] respectively. Upon conducting a late investigation, the issue of fraud and bribery were raised after the initial sum of $6.6 billion which accumulated to $11 billion in 2021 had been awarded against Nigeria. Nigerians narrowly escaped a huge debt that would have brought the economy to its knees but for a positive legal intervention.[5] The 140-page judgement followed an eight-week hearing earlier this year (2023) in which the Nigerian Government argued that it should not be required to honour the award as a result of fraud and bribery discovered in the contract. The Court quashed the judgment against P&ID and gave its verdict in favour of Nigeria on the 23rd of October, 2023.

2. The Facts of P&ID v Nigeria Case

On the 11th of January 2010, the Federal Republic of Nigeria (FRN), through the Ministry of Petroleum Resources entered into a Gas Supply and Processing Agreement (GSPA) with Process & Industrial Developments Limited (P&ID). Under the terms of the agreement, Nigeria was required to arrange for the supply of wet gas (natural gas) for P&ID's gas processing facility, which it intended to construct, build and operate in Nigeria. In return, P&ID would process the wet gas and return approximately 85% of it to the Government of Nigeria in the form of lean gas.[6] This arrangement required the Government to construct pipelines and arrange facilities to transport the wet gas to P&ID's facilities which was never acquired. Neither did the government meet its part of the agreement in three years. In essence both parties failed to meet their side of the agreement. P&ID did not secure any land or location for the transaction. The GSPA had a tenure of 20 years from the date of first supply of wet gas. The GSPA agreement[7] provided for:

a. The agreement to be construed in accordance with the laws of Nigeria.
b. In the event of a dispute over the interpretation or performance of the agreement which cannot be resolved amicably, either party will serve on the other a notice of arbitration.
c. The Arbitration award shall be final and binding upon the parties and
d. The venue of the arbitration shall be London, England or otherwise as agreed by the parties.

In view of the failure on both sides to honour the contract being seen as a repudiation of the contract, P&ID commenced an arbitration action against the Nigerian Government before a London tribunal in August 2012. The Arbitration Tribunal proceeded under the previous Nigerian Arbitration and Conciliation Act 2004 Act,[8] with London, England as the place of Arbitration. After affirming its jurisdiction in the matter, the tribunal began its procedural

4 In 2017, The tribunal awarded damages to P&ID in the sum of $6.597 billion with interest at the rate of 7% starting from March 20, 2013.
5 No. 21-7003 (D.C.Cir. 2022).
6 O Omiunu & O Akanmidu, 'Reflecting on Nigeria v Industrial Development Limited' (2022) International Law and Politics v 53, 111.
7 Clause 20 of the GSPA Agreement.
8 [ACA] Laws of the Federation of Nigeria, 2004.Cap A18. The Act incorporates the New York Convention.

hearing to determine whether or not there was any breach of contract. At this point, there was an attempt by the Ministry of Petroleum to reach a settlement agreement with P &ID to the tune of $850 million, payable in installments. Meanwhile, the arbitration tribunal had, by July 2015, affirmed that indeed Nigeria had failed to perform its obligations under the GSPA and then unanimously decided that P&ID was entitled to damages with interest. It took the Nigerian government during Buhari's tenure more than 4 months to respond. The lackadaisical approach of the civil servants responsible for handling the case almost grounded the economy. For instance, in 2017, the tribunal awarded damages to P&ID in the sum of $6.597 billion with an interest rate of 7% starting from March 20, 2013. This sum was increased to $10 billion in September 2020 and if enforced, the Award would have created contingent liabilities for Nigeria because it posed a significant threat to the Nigerian economy whose high inflation rate is already a challenge.

Nigeria raised the issues of fraud and bribery against P &ID in England but it was initially counterproductive. Unsuccessful in having its way in England, the Nigerian government took up the matter at the Lagos Judicial Division of the Federal High Court of Nigeria, seeking essentially the same reliefs that were rejected by Philips J. When notified of the proceedings in the Lagos High Court. P &ID dismissed the proceedings as abusive and as an unattractive attempt to forum shop and cause a delay in enforcement. Meanwhile, as expected during the process there were lots of exchange of emails between the parties involved and the tribunal over the meaning of venue and seat of arbitration which was another burning issue in this case. Thus, necessitating Nigeria to enact the National Policy of Nigerian Arbitration 2020 for the seat of arbitration to be situate in Nigeria for contracts entered into for and on behalf of the Federal Government. [9]

The Tribunal considered two principal issues. In the first place, the issue of what ought to be the seat of arbitration and whether it was open to the Federal Republic of Nigeria (FRN) to contend that it is Nigeria and not England.[10] Second whether the seat of arbitration is England, or where it is not open to the FRN to contend otherwise, whether there are other basis on which the FRN can challenge the enforcement of the final award? The Tribunal ultimately ruled that London was the seat of arbitration in the "juridical sense." Its decision was as a result of "the clause" in the Arbitration agreement between the parties. This underscores the importance of arbitral agreement and policies in any legal proceedings.

The Tribunal frowned at the interference by the Nigerian Court to frustrate the arbitral proceedings, contrary to the ideals of the English Arbitration Act of 1996, which curtails Courts interference in arbitration proceedings, except when necessary.[11] It is without doubt that, one of the sources of arbitration is the parties' agreement and the hallmark of arbitration is party autonomy. [12]

Arbitration commences when a party to an arbitration agreement or an agreement containing a clause for submission or reference to arbitration, makes a request to the other party that their dispute be referred to arbitration. It is appropriate for the request to be in writing. It is proper for the said request to be properly communicated to the other party as

9 Memorandum on the National Arbitration Policy, 19th of March 2021.

10 This was as a result of the Arbitration Agreement, Clause 20 (d) of the GSPA Agreement.

11 AOOT Kalmneft v Glencore (2001) 2 All ER (Comm) 577 (2002) 1 Lloyd's Rep 128 (Per Colman) J at Para 52.

12 C Okorie, 'Does the Regime of Statutory Arbitration of Investment Disputes in Nigeria Negate the Sanctity of Party autonomy in Relation to the Agreement of the parties to the Arbitration, *ACADEMIA* 1-21.

well as provided by the Act. The request for arbitration is called a Notice of Arbitration and should contain the following components;[13] a request that the dispute be referred to arbitration; names and addresses of the parties to the arbitration; a reference to the specific arbitration clause or the separate arbitration agreement that is being referred to; a reference to the contract out of or in relation to which the dispute involved arises; the general nature of the claim and amount involved, if any; the relief or remedy being sought; and also the number of Arbitrators to be utilized (i.e. one or three, if the parties have not previously agreed on the number).[14] Therefore, an arbitral tribunal properly constituted should be allowed to discharge its functions without unnecessary interference.

The Nigerian government returned to the Lagos High Court to set aside the Tribunal's Procedural Order No. 12 and well, got a favourable judgment. Nonetheless, the Arbitration proceedings in London continued in determining the quantum of damages and on January 31, 2017, the Tribunal issued its final Award. On the 5th of December, 2019 the Federal Government applied for an extension of time to challenge the awards under sections 67 and 68 (2) (g) of the 1996 Act. On the same date the Federal Government applied for relief from sanctions to adduce new evidence to resist the enforcement of the award. On the 29th of January 2020, Flaux LJ, the supervising judge of the commercial court stayed the appeal from Butcher J's Enforcement Order pending the outcome of the hearing of the Federal Government application which included an allegation of bribery and fraud.

The details establishing the allegations of fraud in the procurement of the GSPA by P&ID was persuasive as the Federal Government argued with evidence that P&ID bribed Late Mrs. Grace Taiga (the legal officer in the Ministry of Petroleum Resources at the relevant time) to ensure that the GSPA was agreed on favorable terms to P&ID, including a London arbitration clause. Taiga was accused of corruptly receiving over $10,000[15] from the owners and promoters of P &ID, a firm incorporated in British Virgin Island, in relation to her roles in the GSPA, on December 30, 2009. The said bribe was alleged to have been paid into her daughter bank account. An EFCC operative, Aminu Lawal who testified in the case at the High Court of the Federal Capital Territory (FCT) Abuja that said Mrs. Taiga received the money from P &ID affiliate, Marsh Pearl Ltd, through her daughter, Vera Ename Moses Taiga eleven days before signing the GSPA. Consequently, P&ID had access to Nigerian's internal legal documents during the arbitral process that were covered by legal professional privilege and detailed Nigerian legal strategy.[16] The bribe caused her to suppress information from the tribunal and the Nigerian Government till her death.

The allegation points to a series of fraudulent practices perpetrated by senior Nigerian government officials and public civil servants in almost all the sectors of the economy. The Government itself was to an extent reluctant to expose the corrupt practices to overturn the arbitration award. The obvious question was why were investigations not adequately carried out? Could it be the complicity and connivance between Mrs. Taiga and

13 Arbitration Rule, Rule 3.

14 Arbitration and Mediation Act, 2023 s. 6.

15 D Yakubu, National Assembly to Probe Lawyers, others behind 411 Billon P&ID Scandal, Punch News Paper, 26th of October, 2023 Accessed on 6th Nov, 2023 https:punchng.com/nassembly-to-probe-lawyers-others-behind-11bn-pid-scandal/.

16 For details of the allegations adduced by Nigeria to substantiate the allegations of fraud and collusion see *Nigeria v. P& ID* [2020], supra note 6, 93–151.

P&ID and other officers during the arbitration proceedings among the grounds adduced by Nigeria the High Court to explain the protracted case delays.

Once the tribunal issued the adverse award, the Nigerian anti-graft agencies carried out a comprehensive, albeit delayed, investigation. The level of detail outlined in Nigeria's application reminds one that the anti-graft institutions can function effectively in Nigeria with the right motivation. In this case, the threat of a US $10 billion Award motivated the Government to uncover the alleged fraud. Ordinarily, under Nigerian Procurement Law, any oil and gas contract worth $20 million dollars and above must go through the Federal Executive Council and secure the BPP Certificate of No Objection before approval. Unfortunately, this was not done in this case involving a huge amount thus alarm bells were raised. Nigeria's former Attorney General, Mr. Malami, raised the issue that "the form of the arbitration agreement in the GSPA contract did not even match the model reflected in a government circular in force at the time providing for arbitrations with their seat in Nigeria." In light of this, several legal practitioners called for Nigeria to introduce a National Arbitration Policy in 2020. The memorandum for the said National Arbitration Policy was drafted in 2021.

As at 2021, the value of damages claimed in the dispute was equivalent to a third of Nigeria's total annual budget for 2023 and five times its health budget. The outcome was therefore significant not only in respect of the legal arguments being presented but also due to real terms financial impact on the country. The appeal which was pending before the Court of Appeal was finally determined in favour of Nigeria. The team who represented Nigeria was led by Mr. Mark Howard KC. Mr. Kofo Salam-Alade was a to-go liaison between the UK lawyers and law enforcement agencies in Nigeria. If the judgement had been delivered against the Nigerian Government, the effect of enforcement as stated earlier on would have crumbled the economy financially.

On the 23rd of October, 2023 in a stunning victory for Nigeria, the High Court in London set aside the arbitration award obtained in January, 2017 by a British Virgin Islands registered company against Nigeria. One must admit that this is one of the very rare cases where an arbitration award has been successfully challenged under section 68 of the Arbitration Act 1996 on grounds of serious irregularity.

3. Challenges of Arbitration

There are some challenges inherent in the arbitration process. Regardless, arbitration and other ADR mechanisms are popularly used in the commercial transactions in Nigeria. These challenges are underscored as follows;

a) **Problem of Venue of Arbitration**:

One attractive factor for choosing arbitration is its speedy conclusion. This factor is however countered by the thorny issue of venue of arbitration in the previous Act.[17] Whilst in litigation, the choice of venue is fixed by law,[18] in arbitration, the choice of venue was

[17] Arbitration and Conciliation Act, 2004.

[18] Order 2 of High Court of Lagos State (Civil Procedure) Rules 2004 as amended 2012, Order 9 of High Court of Federal Capital Territory Abuja (Civil Procedure Rules) 2004 and Order 2 of High Court of Anambra State (Civil Procedure) Rules, 2006 and High Court Rules of Federal High Court as well as those of other States *Op cit,* Section 16.

outrightly left for parties seeking arbitration and conciliation to decide. However, under international arbitration, the choice of venue is a matter of law.[19] Although, the choice of venue had been a very sensitive issue, this article shows that the new AMA has sorted out the issue of venue.[20] In international arbitration involving the oil and gas industry, one of the parties may be unable to attend arbitral proceedings scheduled to hold outside Nigeria which is usually the case. For instance, in the P&ID case, the sum of $40 million was alleged to have been expended for transportation and other expenses. Sometimes, parties may disagree on the choice of venue and the only option left for them is to resort to the court for a determination as to the rules that will guide them in choosing a place of arbitration in the absence of their agreement.[21] Despite the fact that the international community has chosen Lagos as the Center for International Commercial Arbitration for West Africa, disputants still prefer London and other places thereby making the choice of Lagos as an International Arbitration Centre within the West African hub redundant. There is need to establish, reform and strengthen the institutions in Nigeria and for total overhaul of the justice sector. According to Akinjide[22]

> We make ourselves a laughing stock when the international community made Lagos the Centre for International Commercial Arbitration, but sheepishly, we choose to take our international commercial arbitration proceedings abroad save that *IPCO (Nigeria) Ltd v NNPC* which took place in Lagos and the only thing that properly went abroad was the award enforcement proceedings under the New York Convention.

Akinjide's opinion shows how painful it may be for parties in the oil and gas industry to leave a prospect made available for them behind and move abroad for arbitration. This is the very reason why Saudi Arabia and Dubai incorporated alternative disputes resolution into their laws and one may add for the development of their society. For international transactions which are entered and effected in the Saudi Arabia the seat of arbitration must be in Saudi Arabia.

Another challenge arbitration suffers in the oil and gas industry is the effect arbitral awards have on multiple parties as a result of the uniqueness of the contractual frameworks associated with oil and gas projects; the effect it can have not just on the initial signatories to the arbitration agreement, but to the whole set of interconnected players who together form to make oil and gas projects a reality. Parent companies, subsidiaries, contract assignees, and so on, find themselves bound by such agreements, not to mention the effect a decision can have on the general public at large as a growing concern for public policy and the effect a petroleum policy has on national development.

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19 The international community designation by Lagos as the International Commercial Arbitration Centre for West Africa. See *IPCO (Nigeria) Ltd v NNPC* (2005)2 Lloyd's Report 326; *IPCO (Nigeria) Ltd v NNPC* (2008)1 Lloyd's Report 89.

20 Arbitration and Mediation Act 2023 s. 32(2).

21 This was the case in *N.N.P.C. v Lutin Investment supra* where a determination on the choice of venue in the absence of the parties' agreement lingered for so long and as well took the parties to the Supreme Court.

22 R Akinjide, Oil and Gas-International Commercial Arbitration and the Nigeria's National Interest 4 www.Nigerianlawguru.com/articles/oilandgasaccessed accessed on 17 January, 2019.

b) **Unenforceability of Award**.

Where an arbitral award is made and the party against whom it was made is willing to perform his obligation under the award, there is no problem. Problems, however, arise where the party against whom the award was made fails to co-operate. This would force the victorious party to seek the Court's assistance for the enforcement of the award. The other party may attempt to impinge on the award on grounds of misconduct of the arbitrator or that the award is improperly procured. This is likely to lead to a protracted litigation. When this happens, the gains of time saving and money enjoyed by the use of arbitration will be lost. This was the situation in the P&ID case and it is one of the challenges the new Arbitration and Mediation Act seeks to cure in Nigeria. The guerilla tactics of error on the face of the law had been expunged with streamlining instances where an award can be set aside. This is a totally different ball game when the contract, award or judgment is obtained by fraud.

The obvious difference in the Process & Industrial Developments Limited contract was that the contract was procured by fraud. Thus, precipitating a prolonged matter and which led to the awards in favour of P&ID case to be quashed on the 23rd of October, 2023. Clearly, such a contract obtained by fraud and bribery cannot be enforced. It cannot stand.

c.) The Effect of Limitation of Laws:

The limitation laws in Nigeria had the effect of rendering nugatory a right of action which existed earlier on. This is because they require a prospective litigant to commence action against the wrongdoer within a stipulated time.[23] Under the Arbitration and Conciliation Act, Arbitration usually keeps the parties out of time in an effort to settle their dispute amicably. In a situation where a dispute arises, and an aggrieved party submits to arbitration and the arbitral proceedings is against a public office or officers like the workers in the Nigerian National Petroleum Corporation or the Ministry of Petroleum or the Corporation itself, where the suit lasts for more than three months, the suit will be caught up by the provisions of the Public Officers Protection Act and will be liable to be dismissed. This is because the cause of action is already dead. This is so because the period of amicable negotiation does not suffice as a defense to statutes of limitation laws. This defect has been cured within the new Act.

d.) Challenge of Ineffective Court-Connected ADR

The need to put in place an effective Court-connected ADR is one of the challenges of Arbitration in Nigeria. As can be gleaned, this case in study has shown justification for advocating for court-connected ADR in the settlement of commercial disputes in Nigeria. The exaggerated costs involved in the settlement of commercial transactions in London and Paris for contracts entered in Nigeria is outrageous. There is the need to overhaul the legal framework to support a more aggressive use of Court-connected ADR in the settlement of commercial disputes in Nigeria. It is therefore most imperative that a National Court-connected ADR Policy be formulated. As it were, there is currently no National Policy

[23] Limitation Act, Public Officers Protection Act, Cap 41 LFN 2004 which limits the period of suit against a public officer to three months.

framework for Court-connected ADR in Nigeria except the local procedure practised in Lagos. The Federal and State Judiciary as well as other stakeholders especially the Nigerian Bar Association needs to fashion out and inculcate a Policy for implementing Court-connected ADR for settlement of commercial disputes in Nigeria and Africa generally.

4. Lessons

i. The reputation and track record of the well-known global Alternative Disputes Resolution Centres remains an attraction to arbitration users in Africa. However, recent cases such as *Nigeria v P&ID* presented high economic stakes and public policy considerations which underscore the need to develop the capacity of alternative disputes resolution centres across Africa in order to provide a viable forum for settling arbitration disputes. For instance, there are over 80 arbitration centres and institutions across Africa. It is odd is it not that more disputes are not settled in these arbitration centres in Nigeria, or at least in neutral arbitration forums within the African continent. What if the P &ID case had not gone in favour of Nigeria?

ii. Disputes will always arise. However, where they are not properly managed, they could undermine the economic viability of a project. Parties therefore need to begin addressing potential disputes from the drafting of their agreements to the selection of their indigenous counsel to the appointment of the adjudicators of their disputes. These obviously are some of the reasons why countries like Saudi Arabia, and the UAE insist that the seat of arbitration must be in their country for contracts entered into and on behalf of their country. In essence, the case of *Nigeria v P&ID* examined in the article, present unique opportunities for foreign courts or arbitration panels to champion or stifle economic justice for millions of people who suffer the real impact of fraudulent transactions between public officials and foreign investors. Again, in giving ADR a more potent legal force, the amendment sought should contemplate and embody (even tangentially) that every transaction entered into and affecting Nigeria, the seat of ADR should be in Nigeria. The seat is significant because it determines the Procedural Rules that apply to the Alternative Dispute Resolution as well as the Court that exercises supervisory jurisdiction over ADR. This is what is obtained in Saudi Arabia and Dubai.

iii. Public interest suits are likely to be on the increase and to be given a legal backing and judicial nod. There is need for the commercial industry to put its house in order so as not to be troubled by avoidance law suit. Due process with integrity pays in so many ways and leads to transparency.

iv. There is bound to be an increase in public access to information. The P&ID case is all over the social media as a remarkable case. The public can only participate in arbitration effectively where they are intimated and aware of effective institutions and the legal framework for the resolution of investment disputes. Companies should work with experts to apply greater clarity in drafting Arbitral agreement. Oil companies do not need to climb on government's back to perpetuate fraud and injustice.[24] There is a likelihood that such a case may be revisited in the law court as

[24] A Ogbuigwe, Legal Issues in the Niger Delta Resource Dilemma (Nigeria: Anpez Center for Environmental and Development, 2018) 182.

shown in the case study. Government officials should ensure that the right things are done whether or not supervised.

iv. The Arbitration institutions should be careful in attempting to build mechanisms that will favour a particular party in pursuit of future case. Arbitration is a consensual process which ought to protect both parties in the arbitration process. It is fundamental for parties to do the needful and ensure that the other party is not taken for granted.

5. Prospects of Arbitration

Notwithstanding the challenges facing arbitration in the resolution of commercial transactions in Nigeria, quite a lot of prospects abound in the choice of arbitration in the settlement of disputes. One of such prospects is the designation of Lagos State as the seat of Arbitration in International Commercial Arbitration for West Africa. By this, the difficulty parties had in settling commercial disputes in Nigeria with regards to venue no longer poses a challenge. The designation of Lagos as the centre of Arbitration for West Africa by the International community was an effort to make available easy access, user friendly and fair financial terms for dispute resolution in Nigeria. This is a step in the right direction. Unfortunately, the P&ID case was not decided in Nigeria. The implementation of the National Policy on contract entered in Nigeria and that seat shall be in Nigeria calls for adequate attention. There is need for a specialized court with experts to handle such commercial disputes. The justice sector needs to be transformed by the training judges and legal practitioners to have the right attitude in the dispensation of justice. This will go a long way to make Nigeria and indeed Africa a hub for the settlement of arbitral disputes.

Also, the ratification and domestication of ICSID Convention is a welcome development in the enforcement of ICSID award. Nigeria ratified the International Centre for Settlement of Investment Dispute (ICSID) Convention as far back as August 23, 1965. The ICSID Convention has been implemented in Nigeria through the International Centre for Settlement of Investment Disputes (Enforcement of Award) Act.[25] The Act provides for the enforcement of ICSID award directly at the Supreme Court of Nigeria as a court of first instance. The Arbitration and Mediation Act is topnotch in the dispensation of justice in the commercial sector.

It is also worth stating that arbitration will have the tendency of offering investors an avenue of settling disputes with their host communities without tampering with any cordial relationship that had already exist between the parties. Arbitration is quick, less expensive to parties and erodes the possibility of technical justice.

6. Recommendations

1. Advocating for an African Dispute Settlement

So much evil has been recorded and perpetuated by evil cabals in government in the last two decades. The culprits in the P&ID case should not be mere scapegoats, exposed because they are dispensable. Nigeria needed to expose the allegations of fraud to overturn the arbitration awards which posed a significant challenge. There is a dire need to sanitize the entire corrupt Nigerian system as part of the significant lessons to be drawn in this study. The attitude of government officials placed at the helm of office towards the broader issues of economic

[25] Cap I 20 LFN 2004.

injustice led to this scandal. With cross-sections of the Nigerian populace expressing their frustration at the rising incidence of corruption by government officials, the P&ID scandal might be a watershed moment that may tilt the scale in favour of the vulnerable masses. However, any meaningful and lasting change will require greater vigilance from the general public and Civil Society Organizations (CSOs).

Planning for disputes that arise from international agreements is essential for the long-term success of an international energy project of a nation.[26] To have foreign tribunals handle cases involving sovereign states plagued by endemic corruption can create problems if those tribunals do not factor in the public interest considerations of the home countries that may likely bear the brunt of the consequences of fraudulent deals. The uncertainty about how foreign courts will decide these sensitive disputes involving sovereign states (including Nigeria's main challenge against the P&ID arbitral Award) raised a lot of fundamental issues over the dependence of African countries on foreign courts and arbitration tribunals as a forum for settling their disputes with foreign investors. More needs to be done in ensuring that Nigeria and Africa generally become international attraction for the settlement of international disputes.

2. Experts Drafting Formidable Agreement

The Nigerian government should set up a high-powered team of patriotic experts to review all such cases. Also, public officers who negotiate commercial transactions on behalf of Nigerians should be made to face stiff sanctions if found to have committed any form of fraud or found to have done anything contrary to the benefit of the nation.

3. The Need to Protect the Nigerian Economy

The High Court's finding in P&ID application could serve as a deterrent for parties who think that foreign courts are less likely to engage in judicial activism in similar cases that involve a conspiracy to defraud vulnerable communities and citizens of developing countries.

From the outcome of the P&ID case, proponents of the National Arbitration Policy argued that having Nigeria as the seat of arbitration would provide several benefits to Nigeria. Olisa Agbakoba, a Senior Advocate of Nigeria and vice-president of the Nigerian Institute of Arbitration, offered arguments supporting a National Arbitration Policy which will help protect Nigeria's national interests in commercial relations especially contracts entered in Nigeria and backed by government guarantees and contracts from private commercial relationships with foreign investors.

4. Intensive Continuous Training of Judges and Judicial Officers

The role that the justice sector plays in the ADR sector is imperative. There is an overwhelming need for court-connected ADR for the settlement of commercial disputes. Intensive training of Judges, Lawyers and judicial staff responsible for the settlement of international trade disputes should be made mandatory. The training should be on a

[26] Timothy Martin A, 'Dispute Resolution in the International Energy Sector: An Overview' (2011) 4 (4) *Journal of World Energy Law and Business.* 332.

continuous basis by highly qualified personnel and world-class ADR institutions. It is also needful to educate stakeholders and investors on the benefits of resolving commercial disputes in Nigeria. This will go a long way in igniting interest, awareness and greater participation of citizens and would-be stakeholders in adopting varying modules of ADR in settling their conflicts. As obtained and practised in the United Kingdom (UK), Judges appointed for commercial courts should be designated Commercial Court Judges. This, not only defines and earmarks them with specialty, but as well, delimits the kind of matters to be handled in their courts. Thus, over time, a system of localized and cost friendly commercial Procedure Rules would evolve.

For instance, the enforcement of an Arbitration Award is crucial for international investors. A lot of the achievement of alternative dispute resolution revolves around what the court will do, and this conduces to accuracy, transparency and stability. It does not matter what legislation is put in place if there are Judges or Adjudicators who are not aware of their responsibilities in ADR and who are not experts in the field of settlement of commercial disputes in Nigeria, it will affect the justice system. We hereby appeal and request that government should use the lessons learnt in this case for the development of the society by being proactive with issues that concern foreign investors.