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Energy Arbitration and Investment Prospects in Nigeria under a Liberalized Market Economy

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Abstract

Nigeria has rich energy profile while market liberalism is the national policy on energy governance, with potential for promoting Foreign Direct Investment (FDI), energy availability and facilitating overall development. However, Nigeria has a dysfunctional justice delivery system that can undermine the prospects for energy trade and investment. Extant literature has not appreciated the nexus between an effective dispute resolution and energy investment with implication for national development in Nigeria. The study therefore, examines how arbitration as an Alternative Dispute Resolution mechanism can promote energy investments and engender energy security under the liberalized market economy in Nigeria. The study adopted the doctrinal methodology, with reliance on national and International regime on energy arbitration such as the Nigerian Arbitration and Mediation Act 2023, Petroleum Industry Act(PIA) 2021, Electricity Act (EA) 2023 and New York Convention 1958. The study finds that the anticipated economic benefits from a liberalized energy economy may be undermined by a dysfunctional justice delivery system. The PIA 2021 and EA 2023, being the major legislations on energy governance have Provisions on arbitration in resolving energy disputes for increased FDI; investment in energy infrastructure and promotion of energy security in Nigeria. Arbitration remains the preferred dispute resolution mechanism with viability for entrenching a robust investment profile that promotes accessibility to energy and engendering overall economic development in Nigeria. The study recommends for a comprehensive national policy in creating a resilient energy arbitration industry as a tool for sustaining a vibrant and liberalized energy economy in Nigeria.

Keywords: Energy Arbitration, Trade, Investment, Market Liberalism, Energy Economy

1. Introduction

Nigeria has a population of more than two hundred million people and accounts for one of the biggest economy in the African continent[1], with a GDP of 477.38 billion dollars as at 2023[2]. The Nigerian state has a rich energy profile with the oil and gas at the upstream sector for exploration, drilling and production of natural gas, as well as the midstream and downstream sectors, with an extensive gas reserve estimated at about 206.53 trillion cubic feet worth over 803,4trn dollars[3]; abundance of renewable energy from a variety of sources, inclusive of hydrogen, bioenergy, wind, solar, marine, geothermal and nuclear. Given her huge untapped energy profile, Nigeria can be described as a haven for energy investments within the African sub region and beyond.

The international flavor associated with energy trade makes the sector one of the commanding heights of the Nigerian economy that is critical to national development. Unarguably, the global economic importance of energy industry has not only influenced the development of energy law as a distinct field of study,[4].it has also shaped the subject of energy governance in the last few

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[1] Nigeria in the Move: A Journey to Inclusive Growth'<worldbank.otherg/curated/en/891271581349536392/pdf/Nigeria-on-the-Move-A-Journey-to-Inclusive-Growth-Moving-Toward-a-Middle-Class-Society.pdf.>accessed on 5 January, 2023

[2] Business Day of October 11, 2023.

[3] Punch newspaper of 29th April 2022

[4] T Kim, 'Internalization of Energy Law'

decades to evolve beyond the purview of national laws into assuming international legal flavor. As a subject of International law, energy transactions have led to the existence of accruable rights and liabilities, thereby creating obligations for both state and non-state actors.[5]

The Nigerian Constitution provides for an open market economy[6] while market liberalism is the national policy on energy governance and investment in Nigeria. Barring constraints like insecurity and dysfunctional institutions, the liberalization policy can provide the enabling environment for attracting foreign investments within the energy sector, with implication for promoting investment in energy infrastructure; enhancing optimum harnessing of energy resources in Nigeria; increasing the revenue base of the nation, promotion of energy security and promoting overall economic development in the most populous black nation in the world.

Regrettably, Nigeria operates under a dysfunctional justice delivery system that is capable of undermining the ambitious plans for attaining optimum economic benefits under a liberalized energy economy. Therefore, the need for an alternative effective and proactive dispute resolution mechanism to determine potential energy investment disputes within the framework of a liberalized energy economy in Nigeria forms the statement of problem in this study. The study argues that there is a strong relationship between a resilient dispute resolution mechanism and sustained economic activities globally. Contextually, the efficient resolution of energy related disputes is critical to the optimal and sustained cross border investment in the energy industry[7], and could serve as a measure for ensuring stability in the Nigerian financial sector[8].The objective of the study is to, against the background of a dysfunctional justice delivery system in Nigeria, examine the role of arbitration in resolving energy disputes and providing a veritable platform for sustained energy investments, with a view to optimally explore the attendant economic benefits under a liberalized energy economy. The economic imperatives from the liberalized energy market are arguably, a precursor to accelerated national development in Nigeria The study is divided into five sections. Section two deals with legal framework for energy arbitration in Nigeria, Section three of the study takes a swipe on the nexus between arbitration and energy investments in Nigeria. Prospects for energy security in Nigeria under an effective arbitration regime is discussed under section four of the study, while section five, being the conclusive part of the study dwells on summary, conclusions and recommendations.

2. Legal Framework for Energy Arbitration in Nigeria

Our discourse under this section encapsulates the legal framework on arbitration to cover the national legislations on arbitration such as the Nigerian Arbitration and Conciliation Act2004, the Arbitration and Mediation Act of Nigeria 2023 and the Nigerian Investment Promotion Act,1996 International treaties on arbitration such as United Nations Convention on the Recognition and Enforcement Awards (New York Convention) 1958 and International Center for the Settlement of Investment Disputes (ICSID) Rules also form the scope of the discourse. The study further explores relevant provisions on arbitration in the regulatory framework for energy governance in Nigeria to wit; the Petroleum Industry Act 2021 and the Nigerian Electricity Act 2023.

[5]A Bradbrook, 'Energy Law as an Academic Discipline',(1996) 14 *JERL* 193, 194.

[6] Section 16 of the CFRN (1999) as amended.

[7] Nigerian Punch of 2nd March, 2017. <https://punchng.com/efficient-dispute-resolution-key-to-economic-growth-icc/.>accessed 5 January, 2023

[8] Nigerian This Day Newspaper of Thursday, 5th January, 2023. <https://www.thisdaylive.com/index.php/2022/10/05/speedy-trial-will-enhance-sector-stability-improve-investors-confidence-says-cjn/. >accessed 5 January, 2023.

The Nigerian Arbitration and Conciliation Act 2004[9] hitherto, regulated arbitration practice in Nigeria. The Act dealt with some salient provisions like the prohibition on revocation of arbitration agreement by parties or with leave of court[10]; powers of a court to stay proceedings on matters before referring same to arbitration[11], appointment of arbitrators[12], powers of court to order attendance of witnesses to testify; to issue a writ for production of a prisoner to appear and be examined[13], application for setting aside an award,[14] or removing an arbitrator on the basis of misconduct or fraudulent procurement of an award[15] and recognition and enforcement of awards, refusal, and setting aside of both domestic and international awards[16].

The ACA 2004 however, contained some defects that necessitated its repeal in order to bring the arbitration practice in Nigeria at par with global standards. The Nigerian ACA 2004 has been repealed by the Arbitration and Mediation Act, 2023[17] which is the extant legislation on arbitration in Nigeria. The AMA 2023 provides a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and mediation, and makes applicable the New York Convention to the enforcement of any award made in Nigeria or any contracting state arising out of International commercial arbitration. The objective of this legislation is to inter alia, promote fair resolution of disputes by an impartial tribunal without unnecessary delay or expenses[18].

The Act provides for autonomy of parties and finality of arbitral awards on the respective parties, subject to review in the manner as provided by the Act[19]. A major innovation in the AMA 2023 is the introduction of third party funding into the Nigerian Arbitration regime.[20] Third party funding is a process where someone that is not directly involved in a dispute (third party) provides funds to a party to that arbitration in exchange for agreed benefits to the third party.

One of the benefits of a third party agreement is that a person involved in any arbitration dispute will not be incapacitated from pursuing same on grounds of non-availability of funds. It is a provision that is intended to raise the bar of arbitration and encourage this dispute resolution mechanism. Thus the inclusion of third party funding in the arbitration practice in Nigeria is a welcome development, as it stands to remove the limitation with respect to funding the arbitration process by parties who may have legitimate claims but may otherwise be inhibited by the absence of funding.

The Nigerian Investment Promotion Act**[21]** contains clauses for the resolution of disputes arising between an investor (Nigerian or foreign) and any Government of the federation of Nigeria. The Act encourages alternative dispute resolution as first option and subsequent resort to arbitration by providing that in the event of any dispute between an investor and any Government of the

[9]Enacted by a military decree in March 1988.Hereinafter referred to as 'ACA'.
[10]Section 2 of the Act.
[11]Sections 4 and 5 of the ACA.
[12]Section 7, ibid.
[13]Section 23, ibid.
[14]Section 29, ibid.
[15]Section 30, ibid.
[16]Sections 31, 32,48, 51 and 52 of the Act.
[17] Cap A 18 laws of the Federation of Nigeria 2004. Hereinafter referred to as 'AMA'.
[18] Section 1(1) of AMA.
[19] Section 55, ibid.
[20]Sections 61 and 62, ibid.

[21] Cap 117 LFN 2004

Federation in respect of an enterprise, all efforts shall made through mutual discussions to reach an amicable settlement. However, in the event that an amicable settlement cannot be reached, the aggrieved party can proceed to arbitration[22].

A major departure initiated by the Act is in the way and manner of initiating arbitral proceedings as stated in other legislations, by providing for a multi-tiered process towards resolutions of disputes, where parties are expected to conclude agreements that will ensure a multi-tiered process of initially adopting an amicable and peaceful means of settling disputes before adopting the instruments of arbitration.

With specific reference to the energy sector, the study asserts that arbitration has long been one of the preferred means of resolving disputes, owing to the copious provisions on arbitration in virtually all the major legislations regulating energy governance in Nigeria. For instance, in the petroleum sub sector, the first post-colonial legislation regulating petroleum governance was the Petroleum Act 1969. The Act provided for the application of arbitration in the settlement of disputes[23]. in the same spirit, the Nigerian oil pipelines Act[24] was enacted to make provisions for the granting of licenses to aid the establishment and maintenance of pipelines incidentals and supplemtary to oil fields and oil mining in Nigeria. The Act provided that in the event of any dispute between the petroleum minister and a licensee, the dispute was , if it could not be resolved amicably, be determined by arbitration[25]

The Nigerian LNG (Fiscal Incentives, Guarantees and Assurances) Act 1989, enacted for the purpose of inter alia, conferring pioneer status on the Nigerian LNG limited. Additionally, the Act is intended to provide guaranteed assurances of the Federal Government of Nigeria by the spirit and letters of the Act, in the event of any dispute, provision is made for the resolution of same through arbitration under circumstances where amicable resolution had failed. These disputes may erupt with respect to any substantial matter arising from the interpretation of the Act, between an aggrieved share holder and the company[26].

The Petroleum Industry Act 2021 is the extant legislation regulating the Nigerian oil and gas industry. The PIA established the legal, financial, and regulatory framework for the Nigerian petroleum industry. The Act dramatically alters the Nigerian petroleum business by adopting special regulations intended to liberalize and attract investment in the petroleum sector. The objectives of the Act' include the creation of a transparent, accountable, and commercially focused national petroleum company as well as the development of a strong institution to ensure effective governance in the sector.[27]

In appreciation of the fact that investment disputes like every other human endeavor is fraught with likelihood of disputes, the Act provides for the inclusion of arbitration as one of the clauses to be included in a model license or model lease contracts[28]. Similarly, the minister is empowered under the Act to revoke a petroleum prospecting license or petroleum mining lease if the licensee among

[22]Section 26 of the Act.
[23] Section 11, ibid.
[24] Laws of the Federation of Nigeria 1990.
[25] Section 17(5) of the Nigerian oil pipelines Act.
[26] Section 22 of the Nigerian LNG (Fiscal Incentives, Guarantees and Assurances) Act 1989
[27] Section 2 of PIA.
[28] Section 76(1) (f), ibid.

other things, fails to abide by any expert determination of oil arbitration award or judgment arising from the dispute resolution provisions as set forth in a license.[29]

The Electricity Act 2023 is the extant legislation regulating the Nigerian electricity industry. The Act, like other legislations on energy governance in Nigeria, has recognized the possible application of arbitration as a dispute resolution mechanism, subject however to the fact that any person aggrieved by the outcome of an arbitral or mediation shall as a first option, apply to the Nigerian Electricity Regulation Commission for review[30] The Act provides recourse to amicable settlement of disputes by way of negotiation, mediation and conciliation as a first line of action failing which any aggrieved person may resort to the court[31]. Although the Act has made no express reference to arbitration under the dispute resolution mechanism, the reference to negotiations, mediation and conciliation as amicable means of resolving disputes seems to suggest that arbitration, being a more cohesive method of determining disputes is categorized under the court system of dispute resolution in context.

It is submitted that a combined reading of sections 51 and 184 of the Act gives impetus to this opinion with further hindsight that arbitration by the voluntary arrangement of parties involved, forms one of the dispute resolution mechanism under the Act. This is in furtherance of the objective of providing the needed environment and institutional framework for investment in the Nigerian electricity market. This underlying philosophy with underpinning for inter alia, creating a functional dispute resolution mechanism can unarguably, not be at variance with the adoption of arbitration being a dispute resolution system with international appeal to potential investors in the Nigerian electricity industry.

The international framework on arbitration is also relevant and readily comes handy in our discourse. The United Nations Convention on the Recognition and Enforcement Awards (New York Convention) 1958, was adopted by the United Nations convention on International Commercial Arbitration convened by the Economic and Social council of the UN. The convention has rendered both the Geneva Convention and protocols redundant with respect to the recognition and enforcement of arbitral awards made in the geographical space of a state outside states where the recognition and enforcement of the awards are sought, through innovations that make it peculiar in terms of enforcements.

One of these innovations includes the elimination of judicial approval of the arbitral awards from the issuing country and limiting that responsibility to the state where the award is sought to be enforced. Secondly, the convention has removed the burden of proof on the party seeking recognition by stating that grounds for rejection or recognition and non-enforcement of such awards lie on the person against whom it was made. The convention, which comprises of sixteen articles, provides rules for National Courts to adhere to, with respect to the recognition and enforcement of foreign arbitral awards and validity of arbitration agreements subject to specified exceptions[32].

The convention deals with two main issues; the recognition and enforcement of arbitration agreements and foreign awards. By Article 2 of the Convention, the enforcement of arbitration agreements is addressed by setting out the requirements for a valid arbitration agreement and

[29] Sections 96(1) (l), 120(1) (g),ibid.
[30] Section 151of Electricity Act 2023.
[31] Section 184, ibid.
[32]See Articles 2- 4 of the Convention.

compliance by national courts of contracting states. By Article 2(3) of the Convention, national courts of contracting states are under obligation to, when seized of an action in a matter, shall at the request of one of the parties, refer same to arbitration except when it is obvious that such an agreement is inoperative, null and void and incapable of being performed. By Article 3 of the convention, arbitral awards are binding and should be treated as such. The convention also makes provisions for the procedure for the enforcement of arbitral awards[33], grounds for non-recognition of arbitral awards[34] etc. Nigeria acceded to the New York Convention in 1970 and domesticated it vide the enactment of the Arbitration and Conciliation Act 1988. Pursuant to section 54 of the Act, the New York Convention entered into force in Nigeria.

The United Nations Commission on International Trade Law (UNCITRAL) Model Law 2006 is an International commercial Arbitration law prepared by the United Nations Commission on International Trade and adopted by the UN in June 1985. In 2006, it was amended to contain more detailed provisions. It is designed to assist States in reforming and modernizing their laws on arbitral procedure, taking into consideration the particularities and needs of International Commercial Arbitration. Similarly, the UNCITRAL Arbitration Rules [35] sets the model for Nigeria's arbitral process.

It provides a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship and are widely used in ad-hoc and institutional arbitration. The main objective was to create a unified, predictable procedural framework for International arbitration without stifling the informal and flexible character of such dispute resolutions mechanism. The Rules covers all aspects of the arbitral processes, providing a model arbitration clause and the conduct of arbitral proceedings.

The International Center for the Settlement of Investment Disputes (ICSID) Rules regulates the conciliation and arbitration of investment disputes between contracting States and nationals of other Contracting State. Thus only such disputes which have been submitted to ICSID by the mutual consent of the parties will be settled under the Convention. ICSID also regulates its arbitral proceedings through the ICSID Arbitration Rules. Nigeria deposited its instruments of ratification on 23rd August, 1965 and the Convention entered into in Nigeria on 14th October, 1966. The Convention was domesticated as a local legislation and thus referred to as the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act. The Act provides that an ICSID award shall be enforced in Nigeria as if it were an award contained in a final judgment of the Supreme Court if a copy of such an award, duly certified by the Secretary General of the Centre is filed in the Supreme Court by the party seeking its recognition and enforcement

The African Continental Free Trade Area Agreement ("the AfCFTA"), unveiled in March, 2018 in Kigali, Rwanda, is considered the world's largest free trade area constituted by 54 countries merging into a single market of 1.2 billion people with an estimated combined GDP worth trillions of dollars. Generally, the Agreement is expected to create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of "An integrated, prosperous and peaceful Africa" enshrined in Agenda 2063; create a liberalized market for goods and services.

[33]Article 4, ibid.
[34]Article 5, ibid.
[35] UNGA Resolution31/98 1976.

Notably, the Agreement provides for establishment of a Dispute Settlement Mechanism which shall apply to the settlement of disputes arising between State Parties[36].

The Dispute Settlement Mechanism is to be administered in accordance with the Protocol on Rules and Procedures on the Settlement of Disputes[37]. In addition, the Protocol on Rules and Procedures on the Settlement of Disputes is to establish, inter alia, a dispute Settlement body[38].The Protocol on Rules and Procedures on the Settlement of disputes provides for the use of consultations, mediation, dispute settlement board and arbitration to settle disputes arising from the Agreement[39]. Notably, the Protocol provides that the dispute settlement board will only hear disputes from State Parties to the AfCFTA Agreement[40]. The foregoing Protocol provides for arbitration as an elective process for State by specifically provides that under given circumstances where parties to a dispute consider it expedient to have recourse to arbitration as the first dispute Settlement Avenue, the parties to a dispute may proceed with arbitration as provided for in Article 27 of this Protocol[41]. It is submitted that Nigeria is signatory to the African Continental Free Trade Agreement, as such in the event of the eruption of energy related investment disputes between state parties in the treaty, such disputes can be resolved through arbitration if the parties so choose.

The foregoing is an appraisal of the national and International regime on energy arbitration. The scope of the regulatory framework on arbitration shows the importance attached to this method of dispute resolution especially when it comes to investment related disputes or disputes concerning private investors and host states. Preference for arbitration is unarguably, attributed to presumed absence of prejudices that may be imputed when these disputes are brought before national courts other advantages like speed, party autonomy and confidentiality associated with arbitration further gives impetus to it as the preferred destination in resolving investment disputes.

In appreciation of the dynamics of arbitration in the resolution of energy disputes, the regulatory framework on energy governance has provided that parties may have recourse to arbitration in the event of any energy related disputes. the study submits that the inclusion of arbitration in the major legislations regulating energy governance in Nigeria has prospects for sustaining the investments in the liberalized energy economy in Nigeria.

3. Nexus between Application of Arbitration and Energy Investments in Nigeria

Nigerian has a huge energy profile that includes both conventional and transitional sources with potential for impacting on her national economy. At the oil and gas sector, Nigeria has a huge deposit of crude oil which has been a major source of her national budget. The country has an extensive gas reserve estimated at about 206.53 trillion cubic feet worth over 803,4trn dollars as at 2022[42]. There are abundant sources of renewable sources from a variety of sources inclusive of hydrogen, bioenergy, wind, solar, marine, geothermal and nuclear sources.

[36] Article 20 (1), African Continental Free Trade Area Agreement.
[37] Article 20 (2), ibid.
[38] Article 20 (3), ibid.
[39]Articles 4-27, Protocol On Rules And Procedures On The Settlement Of Disputes.
[40] Article 3 (1), ibid.
[41] Article 6(6), ibid..
[42] Punch newspaper of 29th April 2022.

The rich energy profile notwithstanding, the Nigerian energy landscape is bleak and under the perpetual cloud of endemic energy poverty. Different policy reforms have been introduced to address the energy problem in Nigeria ranging from nationalization, commercialization, state monopoly to the present liberalization of the Nigerian energy sector. Regardless of these initiatives, energy poverty has persisted. Market liberalism is the extant national policy on energy governance in Nigeria. The policy is intended to provide the legal and institutional framework for energy governance and investment in Nigeria.

The Petroleum Industry Act 2021 and the Electricity Act 2023 are the major legislations regulating the Nigerian energy sector, encompassing the oil and gas as well as the conventional and renewable electricity sub sectors. The liberalization policy adopted in the respective legislations provides enough motivation for potential investors, both local and foreign in the sector with prospects for investment in the different components of energy investments. At the core of these potential investments is the need for a reliable and resilient dispute resolution mechanism.

The imperatives for a functional and robust commercial dispute resolution mechanism in facilitating cross border trade cannot be emphasized. Such a system, with capacity for enforcing International and domestic contracts is essential for economic growth and sustained development. Unarguably, economic and social progress cannot be achieved without respect for sanctity of contracts and rule of law within the framework of an efficient dispute resolution mechanism that is predictable and accessible to the public without hindrance[43]. Such a system has the propensity of expanding trade, improving business climate[44] and attracting direct foreign investments as well securing revenue for the state.

Globally, there seems to be consensus that an effective dispute resolution mechanism in any jurisdiction has correlation with economic growth and investment security. For instance, a study in Argentina and Brazil found that firms located in provinces with effective dispute resolution system have greater access to credit facilities,[45] and can attract more business investments[46]. In the state of India, research shows that firms and Industries that are capital intensive tend to locate in regions with good contract enforcement mechanisms.[47]

In a similar pattern, firms in Brazil, Peru and the Philippines report their willingness to invest more in areas where they have greater confidence in the dispute resolution process.[48] Again, a study in the transitioning economies of Eastern Europe and the former Soviet Union between 1992 and 1998 reveals that reforms in corporate bodies notwithstanding, when the institutional framework for dispute resolution are not effectual, much cannot be achieved in the corporate world.[49]. What this entails is that a functional dispute resolution system is critical to economic development globally.

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[43]K W Dam, Kenneth, 'The Judiciary and Economic Development'' JM Olin, Law and Economics working paper 287(second series) university o Chicago Law School, Chicago.

[44]I Roumen '' Do More Transparent Governments Govern Better?'' Policy Research Working Paper 3077, World Bank, Washington. DC.

[45]World Bank development Report 2005; A Better Investment Climate for Everyone. New York Oxford Press.

[46]Ibid.

[47]C B Pavel, "Judicial Quality and Regional Firm Performance; the case of Indian states' (2016) 44 (4) *Journal of Comparative Economics*, 902-18

[48]C Armando and C Cabral, 'Credit Markets in Brazil; The Role of Judicial Enforcement,' In M Pegano and OAttansio, Defusing Default; Incentives and Institutions; Inter-American Development bank, Washington DC.

[49]P Kathrina, M Raiser and S Geifer,'Law and Finance in Transition Economies',(2000) 8 (2) Economics of Transition, 325-68.

Energy investments are transnational such that the mechanism adopted in the resolution of energy investment disputes should possess universal appeal. Among other compelling factors, arbitration transcends the jurisdictions and prejudices that may be associated with national courts, with advantages to include confidentiality; less reliance on technicalities; quick dispensation of justice; availability experts as arbitrators with perfect grasp over the subject matter arbitrated upon; flexibility in the conduct of arbitral proceedings; cross border enforcement of arbitral awards and autonomy of parties.

The Nigerian Arbitration and Mediation 2023 Act provides a wide spectrum of matters that can be arbitrated upon Arbitration may be explored in the settlement of disputes resulting from various commercial transactions including trade in goods and services, distribution contract, commercial representation, agency, factoring, leasing, construction, engineering work, licensing, investment, financing, banking, insurance, concession agreements, industrial or business cooperation, carriage of goods persons by air, rail, road or sea. There are specific processes and procedures that regulate the commencement, proceedings and termination of energy arbitration in Nigeria. As a condition precedent for commencement, parties in question must have agreed on arbitration when the dispute arose or may have included arbitration clauses in the contract which forms the basis of the transaction that eventually led to a controversy. Such arbitration clauses must be in witting[50].

The essence of reducing arbitration clauses into writing as stipulated under the Arbitration Act is intended to ensure willingness on the part of parties to voluntarily resort to arbitration. Arbitration clauses can also be inferred from written correspondences between parties or from exchange from their wordings. Similar provisions providing for the voluntary application of arbitration by parties are provided in the Petroleum Act of 1969 now repealed, the Oil pipeline act and the Nigerian LNG (Fiscal Incentives, Guarantees and Assurances) Act 1989

Another form of commencing arbitration under Nigerian law is when a particular law or statute has so prescribed. A case in point is the provision in the Nigerian Investment Promotion Commission (NIPC) Act which states that any foreigner who registers under the Act is automatically entitled to arbitrate in the event of any dispute. This form of arbitration is treaty based arbitration and related to the ISCID. In the energy sector, the Petroleum Industry Act provides for compulsory arbitration clauses to be provided in some instances like

With respect to procedures, the Arbitration Act provides for the guidelines for a successful arbitral process. By the provisions of section 15(1) of the Act, the applicable rules in any arbitral proceedings shall be in accordance with the Arbitration rules of law that is chosen by the parties as applicable to the substance of the dispute. The Act provides for the autonomy of parties to the extent that the mandatory provisions of the rule have been made subject to the agreement of parties. The flexibility in the Act also gives discretion on whether or not to make confidential the arbitral award. By the provisions of the Act, the publication of an arbitral award is subject to the agreement of parties in the proceedings. In the same spirit, where an arbitral agreement has been made by parties, they are bound by it and same can only be revoked by the subsequent express agreement of the parties or by leave of court[51].

4. Prospects for Energy Security in Nigeria under an Effective Arbitration Regime

The liberalized market economy in Nigeria is presumed to provide the expected environment for energy investment with prospects for solving the energy poverty in Nigeria and transforming the

[50]Section 2, AMA.
[51]Section 2 of AMA

national economy. Investments in the sector through the deployment of technology and provision of robust infrastructural base can lead to optimal utilisation of the vast energy resources in Nigeria. An instance is the Nigerian gas sector that has been left dormant for decades due to lack of infrastructure and technology to harness same. Available data indicates that Nigeria has 5.91 trillion cubic metrics of proved natural gas reserves as at 2022.[52] And worth over 803.4tillion US dollars as at 2023[53] but has not been developed majorly due to the absence of technology and infrastructure. This has not only hindered s gas utilization but the entire economic development as Nigeria losses over 2,5, billion dollars annually to gas flaring.[54]

The Nigerian gas sector can add value to the national economy if it is properly harnessed. With the enormous resources wasted due to gas flaring, bringing investors to utilize these resources can impact meaningfully on the energy economy. The market opportunities in the renewable are limitless given the right environment and incentives for investors .Therefore, the policy on market liberalization in the sector, if complemented with an efficient and reliable dispute resolution mechanism, provides the needed motivation for investment that can attract foreign direct investment in the energy sector and influence robust infrastructural development as well as promoting energy security y in Nigeria Given the fact that energy poverty remains the bane of development in Nigeria, the application of arbitration in the resolution of energy related disputes, with a corresponding impact on increasing direct foreign investment in the sector, undoubtedly has implication for economic and political imperative whose utilitarian value cannot be over emphasized

5. Conclusion and Recommendations

Nigeria has a huge energy profile that can meet the energy needs of the country and accelerate national development. Nigeria has adopted market liberalism as the national policy for energy governance, with the objective of promoting the right environment for energy trade and investment. For a country that operates a one-dimensional economy with heavy reliance on the energy sector, the successful operation of the liberalized energy economy that allows for optimum utilisation of the enormous energy resources seems to be agate way for sustained economic growth and development for the Nigerian state. The Petroleum Industry Act 2021 and Electricity Act 20923 are major legislations on energy governances in Nigeria. These legislations provide the regulatory framework for the liberalized energy economy in Nigeria, with the objective of promoting FDI and investment in energy infrastructure. Other objectives include; to optimally harness the energy resources; diversification of energy sources and ultimately achieving energy security in Nigeria. Energy investments, like any human activity is fraught with disputes which ought to be resolved. Regrettably, Nigeria operates a dysfunctional justice delivery system that is averse to energy trade and investment and capable of undermining the ambitious economic opportunities anticipated from the liberalized energy economy in the country.

The study finds that an efficient justice delivery system has correlation with, and can facilitate sustained economic activities globally, with energy investments inclusive. Furthermore, Nigeria has a robust framework on arbitration including relevant provisions on the subject matter under the PIA 2021 and EA 2023. These legislations need to be leveraged upon to institutionalise a robust arbitration industry to manage energy related investment disputes in Nigeria. Actualizing this feat can facilitate the realization of enormous economic benefits from a liberalized energy economy that may otherwise be undermined by a dysfunctional justice delivery system. The

[52]<https://www.statista.com/statistics/1387331/proved-natural-gas-reserves-in-nigeria/;>accessed 24February2024.
[53]<https://punchng.com/nigerias-proven-gas-reserves-worth-over-803-4tn-fg/>accessed24February 2024.
[54]<https://africa-energy-portal.org/news/gas-flaring-nigeria-loses-25bn-yearly>accessed 24th of February, 2024.

economic prospects of establishing a resilient arbitration system include increased FDI; robust investment in energy infrastructure and promotion of energy security in Nigeria.

Moreover, the study finds that the AMA 2023 has made provisions for third party funding in the practice of arbitration in Nigeria. Third party funding practice will provide some form of financial assistance to potential energy investors with legitimate claims who would otherwise have been impeded by financial constraints. Under this funding practice, such persons can be funded by third parties based on agreement for some financial rewards in future. The third party funding is a novel practice but will go a long way in promoting the practice of energy arbitration in Nigeria. From these findings, the study concludes that barring constraints like unnecessary court intervention in arbitration proceedings, institutional deficiencies and lack of personnel knowledgeable in this method of dispute resolution, Arbitration remains the preferred dispute resolution mechanism with viability for entrenching a robust investment profile that promotes accessibility to energy and engendering overall economic development in Nigeria under a liberalized energy economy.

Recommendations:

Against the backdrop of the attendant economic benefits associated with the application of arbitration in the resolution of energy disputes in Nigeria, the study recommends for a comprehensive national policy on energy arbitration aimed at developing an institutional framework that takes into consideration possible constraints in the application of arbitration, with a view to facilitating a smooth operation of energy arbitration, as a measure for sustaining a robust liberalized energy economy in Nigeria. In furtherance to the above, the national arbitration policy should be included in the curriculum for legal professionals, scholars and jurists as a means of producing the needed manpower with requisite capacity to handle arbitration proceedings in the Nigerian energy sector.