Dispute resolution in the oil and gas industry: an appraisal of mediation and litigation procedures.

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Dispute Resolution in the Oil and Gas Industry: An Appraisal of Mediation and Litigation Procedures

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Abstract

The Oil and Gs Industry Resolution originally recognised negotiation and concede to the alternative dispute resolution rather, their litigation. The paper analysed appraised the different alternative dispute resolution, formulae including mediation the doctrinal method of research which analyses all legal in others as applied. All methods relating to the dispute resolution were analysed from the library and it has formed that mediation which involves the process of resolution dispute weather the involvement of litigating is prefer for being use costly and time consuming. Litigation been so expensive and time wasting is not recommence for oil and Gas Industry.

Keywords: Dispute, Resolution, Oil and Gas, Industry, Mediation and Litigation.

1. Introduction

The oil and gas industry[1] has traditionally favoured direct negotiation or outright litigation over any other form of dispute resolution; however, the industry's approach to dispute resolution in recent years has undergone much change. Internationally, recent trend in the industry shows a clear departure from formal litigation/arbitration to mediation as a best forum and approach of resolving disputes. Indeed, the 2015 report revealed that majority of investment dispute before International Centre for Settlement of Investment Dispute in 2015 are oil and gas related disputes. It has now become obvious in the industry that the failure of alternative dispute resolution mechanisms for personal relationships or contract without any other resolution pathway usually lead to litigation which has been inadequate, counter-productive, expensive and slow.

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1 Reference to Industry in this Paper means Oil and Gas Industry unless and until otherwise specifically stated.

This paper will examine the main features of litigation and mediation with the aim of adducing reasons for preferring mediation to litigation as an appropriate forum for resolving dispute in the oil and gas industry. The paper will also examine the usefulness, benefit, analyse the challenges and constraints of mediation procedure etc...

I. Nature of Oil and Gas Dispute

Oil and gas disputes have some notable features, it is *expensive*. For instance, in the recent ,Deep-water Horizon disputes, BP the leading operator contracted with a law firm in Washington and paid the firm $2.5 million USD for only 3 months to run claims settling facility, while another Washington law firm was paid a monthly fee of $850,000 USD[2].

Disputes in the oil and gas industry tend to be *prolonged* due to the multiplicity of parties and interest involved, For instance, the Piper Alpha North Sea disaster occurred on 6 July 1988, but the final judgement in respect of the claims by the Caledonia North Sea Ltd (formerly Occidental Petroleum Caledonia Ltd) and their insurers for indemnities from 24 contracting companies was delivered on 7 February 2002 by the House of lords.[3] The effect of the delay is damaging to the reputation of the company, as it may draw negative publicity... For example, BP has suffered this kind of negative publicity leading to being black-listed by the US government[4].

Furthermore, disputes in the industry are usually between entities and interest with varied nationalities (multi-national companies). For instance, the key companies in the Deep-water Horizon dispute - BP, Transocean, Halliburton, Schlumberger, and Weatherford among others are all multinationals[5]. These features suggest that dispute resolution would be more preferred to litigation in achieving effectiveness.

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2 Jim Snyder and Lizzie O'Leary, 'Feinberg Firm Paid More Than $2.5 Million by BP in 3 1/2 Months' (8th October 2010) Bloomberg online article. Available at: <http://www.bloomberg.com/news/2010-10-08/feinberg-firm-paid-more-than-2-5-million-by-bp-in-3-1-2-months.html.> Last visited 28/10/2014

3 *Caledonia North Sea Limited and Another v British Telecommunications Plc and others*[2002] UKHL 4

4 Jonathan Russell, 'BP banned from new US business over 'lack of business integrity' (28November 2012) the Telegraph Oil and Gas News. Available at: <http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/9709191/BP-banned-from-new-US-business-over-lack-of-business-integrity.html.> accessed on 7 December 2015

5 National Commission on the BP Deep-water Horizon Oil Spill and Offshore Drilling, 'Macondo: The Gulf Oil Disaster' (Chief Counsel's Report. 2011). Available at: http://cybercemetery.unt.edu/archive/oilspill/20121211004835/http://www.oilspillcommission.gov/sites/default/files/documents/C21462-408_CCR_for_web_0.pdf accessed 7 May 2014

2. AN APPRAISAL OF MEDIATION AND LITIGATION PROCEDURES

2.1 Litigation

Litigation is the process of taking a case through court and most common in civil lawsuits. There are certain features of litigation which should be noted in the present context and more relevant to the objectives of this paper. Thus, litigation is:

- securely inhibited by rules of law and of courts
- Parties to court proceeding have minimal or none influence on the conduct of their dispute;
- litigation is slow and potentially very expensive;
- access to the court can be highly restricted, normally to barristers, additionally, representation by each of Solicitor and Barrister leads to communication difficulties and increased cost;
- Parties to litigation do not own the dispute in any material way[6].

There are, of course, a considerable number of other features of litigation that worth mentioning here and/or analysed further. However, the above brief and non-exhaustive list focuses on those features showing most distinction between litigation and mediation that of essence to the nature of oil and gas disputes.

2.2 Mediation

Mediation is perhaps the best-known and most widely utilised form of ADR techniques in international commercial transactions[7]. Mediation is an informal, non-binding dispute resolution process; it employs the use of a neutral third person called Mediator to guide and sometimes lead the disputants to a mutually voluntary agreement and acceptable settlement of dispute[8]. It is classified among 'assisted collaborative non-binding processes' in dispute resolution[9] and its non-binding nature refers to the liberty of the parties to opt out of the process at any time[10]. In the industry, mediation will often be influenced by the parties' desire to have an outcome that can lead to the completion of projects rather than just being

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6 Tamara Relis, *Perceptions in Litigation and Mediation: Lawyers, Defendants, Plaintiffs and Gendered Parties* (University of Cambridge Press 2009) 33

7 William F. Fox, 'The Wisdom of International Commercial Mediation and Conciliation' (2012) 10 (1) *OGEL*

8 Karl Mackie, David Miles et al, *The ADR Practice Guide*, (Tottel Publishing, 2007)

9 Margaret Ross, 'Dispute Management and Resolution', in Greg Gordon et al, *Oil & Gas Law – Current Practice and Emerging Trends*, (2nd Edition Dundee University Press 2011)

10 Nancy F. Atlas, Stephen K. Huber and Wendy E. Trachte-Hubuer, *Alternative Dispute Resolution – The Litigator's Handbook* (ABA Publishing 2000) 5

sanctioned according to courts technicalities[11].Mediation process benefits from mediator's role, i.e. ironing out the grey areas, finding out the parties' interests, discussing with each party its strong points confidentially, guiding and helping the parties to reach a mutually accepted solution[12].The outcome of the mediation is however binding and enforceable as a contract between the disputants.

2.3 Appraisal of Mediation and Litigation procedure

With the above noted nature of disputes in the oil and gas industry and the matters of essence in their resolution, there appears to be a strong case for resolution of disputes in the industry by means other than courts. Litigation through courts does not offer solution to the nature of disputes discussed above. One feature of litigation in any jurisdiction that makes it inappropriate for oil and gas dispute is the fact that, the parties before the court have no control of the process[13]. Therefore, matters of *speed and flexibility* are out of their control. In any event, court processes are fundamentally time consuming and hence expensive in the long run[14]. Moreover, courts are open to extensive *publicity* hence jeopardizing the parties' business reputation. For instance, one classical example of negative publicity is the one suffered by BP in deep-water horizon disaster that led it being blacklisted by the US government has said earlier.

Furthermore, as oil and gas industry is a capital intensive business that requires *fast and cost effective* dispute resolution process, mediation can be considered appropriate to this circumstance. Thus, a recent study conducted in three major jurisdictions – United Kingdom, Canada and United States shows that, mediation saves businesses significant money and reduces conflict in the workplace[15]. While, another study revealed that, it is much cheaper than litigation and arbitration[16].It was also reported that, mediation costs is 'about 15-25% of total litigation cost –

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11 Thomas W. Walde, 'Mediation/Alternative Dispute Resolution in Oil, Gas and Energy Transactions: Superior to Arbitration/Litigation from a Commercial and Management Perspective' (2003) 2 *OGEL*

12 **Brooke L.J** in *Dunnett v. Railtrack* [2002] ECWA Civ. 303

13 Mohammad Alramahi, 'Dispute Resolution In Oil And Gas Contracts' (2011) *I.E.L.R* 3

14 Ibid

15 Sarah Vander Veen, 'A Case for Mediation: The Cost-Effectiveness of Civil, Family and Workplace Mediation' MediateBC Dispute Resolution & Design January 2014, available at: <http://www.mediatebc.com/PDFs/1-52-Reports-and-Publications/The-Case-for-Mediation.aspx.> accessed on 01/11/2014

16 Eileen Carroll and Karl J. Mackie, *International Mediation - The Art of Business Diplomacy* (2nd Edn, Kluwer Law International 2006)

without account being taken on 'indirect and hard-to-quantify costs' in litigation[17]. Another study has certainly shows that, Mediation can cost less than 5% of the cost of an arbitration dealing with a similar dispute and less than 15% of the time of arbitration with almost 85% success rate[18].

Moreover, oil and gas industry is an interdependent community where its members significantly value the relationships they have gradually been building all along, hence, adjudicating their disputes in an adversarial style is certainly not the most favoured approach. Therefore, when relationships are important to disputing parties, mediating their conflict is a favoured approach to the resolution of their disputes. In comparison to litigation, the mediation forum is not adversarial in nature as there is no casting of blame or apportionment of faults; it is voluntary and non-binding, involving decisions made only by the parties themselves, not by the mediator and is more confidential in nature.The mediation outcome is consensual and reflects a mutual ground between the parties thereby reducing the chances of future disputes[19]. This approach is in anyway welcome in the industry where a certainty and long-term partnership is a key.

The guarantee of confidentiality in mediation also has the effect of safeguarding business secrets and therefore lessening prospects of imminent conflicts stemming from the information exchanged during the process[20]. However, this cannot be said of litigation which due to court and attendant publicity cannot guarantee non-disclosure[21] and thus, in the industry which is characterised by multiplicity of parties and interconnected contracting, such exposure can be disastrous and

17 Thomas J. Stipanowich and Ryan J. Lamare, 'Living with ADR: Evolving Perceptions and Use of Mediation, Arbitration and Conflict Management in Fortune 1,000 Corporations' Pepperdine University Legal Studies Research Paper No. 2013/16

18 Tim Martin, 'International Dispute Resolution – A Report Submitted to Independent Petroleum Association of America and Association of International Petroleum Negotiators' (2011), available at:<http://www.ipaa.org/wp-content/uploads/downloads/2012/01/2011-IPAA-DisputeResolution.pdf.> accessed on 15 April 2014

19 Jean Francois Guillemin 'Reasons for Choosing Alternative Dispute Resolution' in Arnold Ingen-Housz (ed) *ADR in Business: Practice and Issues across Countries and Cultures*, (Kluwer Law International 2011) 13

20 Richard Burnley and Greg Lascelles, 'Mediator Confidentiality: Conduct and Communications' (2013) available at: <http://www.cedr.com/library/articles/Mediator_confidentiality_SJBerwin.pdf.> accessed on 8 May 2014

21 Simon Roberts & Michael Palmer, *Dispute Processes: ADR and the Primary Forms of Decision-Making*, (Cambridge University Press, 2005)

damaging[22].Likewise, *unlimited autonomy* enjoy by parties to mediation proceedings offer parties to an oil and gas dispute utmost liberties and freedom to set and revise the form of the proceedings or even opt out at will and as when the situation demands, this cannot be said of litigation. For example, if the parties so wish and where the situation demands it, the parties can secure the use of oil and gas expert as mediator in resolving their dispute[23].

Furthermore, as opposed to litigation, parties to mediation process may adjust the proceedings to meet cross-border demands where the dispute takes on an international character. For example, parties to an oil and gas disputes may decide to set up various mediation sittings in different jurisdictions depending on where each element of the dispute is prominent or occurred[24]. Its flexible nature also allow the parties to agree on contractual enforcement of the outcome abroad without reliance on a convention or statutes as is the case with arbitration[25]. Similarly, where there is an unexpected change in commercial circumstances in the industry e.g. changes in world oil prices or government policy, the parties can realign the proceedings accordingly[26].For instance, they may decide to expedite, suspend or prolong the process so as to meet the demands of such prevailing circumstances.

Moreover, in choosing dispute resolution process, disputants in the industry usually take into account the fact that the subject and procedure of their disputes will most likely have trans-boundary elements. To this end, it can be argued that, mediation just as arbitration is gradually considered as having predictable legal framework, addressing in particular cross-border flexibility. The example of this can be traced from the European Commission commitment to encouraging mediation. The European Union (EU) has adopted a Directive on mediation[27],

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22 Paul A. Gelinas, 'Profile of the Neutral in International Business' in Arnold Ingen-Housz (ed) *ADR in Business: Practice and Issues across Countries and Cultures,* (Kluwer Law International 2010) 327-335

23 Roberts & Palmer (n 22)

24 Alramahi (n 14)

25 Gelinas (n 23)

26 Hew R. Dundas, 'Expert Determination: Recent Developments and Effective Way Forward in Energy Disputes' [2008] *IELR* 162

27 Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of Mediation in Civil and Commercial Matters of 21 May 2008, the key elements focused upon and to be given effect through the implementation of national legislation by 2011 included: Encouraging quality control, training and a code of conduct for mediators, Ensuring *settlement agreements* following mediation are enforceable by a court judgement or order. Submissions and disclosures remaining *confidential* in any subsequent legal proceedings, *Protecting mediators* from being compelled to give evidence in subsequent legal proceedings and Providing that *time spent* on mediation on any claim will result in it being statute barred for limitation purposes.

designed to encourage mediation over litigation in cross-border commercial disputes only, however Member States may decide to apply its provision on other aspects[28]. The EU has been rigorously supporting mediation forum as demonstrated by their recent funding and support for survey into the actual cost of intra-community commercial litigation vis-à-vis ADR techniques led by the ADR CENTRE, the European Company Lawyers Association and the European Association of Craft, Small and Medium Sized Enterprises[29].

Lastly, mediation can also be argued to be more appropriate in resolving dispute in the industry than litigation since it targets the disputants' interests rather than their positions. Its idealness can be more pronounce where the dispute take a vertical structure, for example, where the dispute is between an influential entity and a relatively weaker one (e.g. dispute between operator and a service company). Consequently, since the mutual and agreeable resolution of such disputes often does not necessarily hinge on strict legal rights, therefore, the parties may resolve the dispute in such a way that enables each party especially service company to carry on its business unhindered[30].Similarly, disputes that mostly arise as a result of operations between oil companies and communities of the oil producing areas (like dispute between Niger-Delta oil region of Nigeria and Shell oil company) are also example of vertical dispute making them best suited for resolution through mediation[31]. In 2010, a research was carried out by Delta State University in Niger-Delta region of Nigeria, concerning the possibility of using litigation, negotiation or mediation in resolving disputes between local communities and oil companies and the outcome of the research is that, mediation method was appropriate as perceived by majority of the respondents[32].

Therefore, in recognising the importance of mediation to the disputants, the industry has gradually adopted mediation as a preferred mode of dispute resolution as shown in some of the oil and gas industry standard contracts and often supported by negotiation from the start and court/arbitration as the last resort. Moreover, a time, it may not just be the choice of the parties to do so, rather, obligation under contract, a requirement of law or as a result of incentives

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28 Ibid, preamble 8

29 ADR Centre, 'Civil Justice 2007 – 2013 Survey: The Cost of Non ADR – Surveying and Showing the Actual Costs of Intra-Community Commercial Litigation' available at: <http://www.adrcenter.com/international/cms/?page_id=67.> accessed on 20/10/2015

30 Ugo C. Ilegbune, 'Mediating Community/Company Environmental Disputes In The Oil And Gas Industry: A Guide for Promoting Environmental Mediation in Emerging Economies- Focus on Nigeria' (CEPMLP, Dundee, March 2004)

31 Ibid

32 Umunadi, Ejiwoke Kennedy. 'The Efficacy Of Mediation And Negotiation Methods For Dispute Resolution In Delta State' (2011)1(2) *Sacha Journal of Policy and Strategic Studies*

accorded to it as discussed above. An example of this can be found under the *Australian Mining Petroleum Law Association* Model of Joint Operation Agreement[33]. The model provides that, the Chief Executive Officers of the disputing companies must negotiate in good faith with a view to resolving the dispute within 14 days of it being referred to them, failing which, the dispute may be immediately referred by any party by notice to mediation or expert determination[34].

However, for other industry contracts, disputants are permitted to choose mediation as an alternative from a variety of ADR processes, example of this can be found in the dispute resolution clause of the Association of International Petroleum Negotiators (AIPN) Model that is widely used in different jurisdiction including Nigeria. The clause specifically creates an optional clause for mediation as an alternative to expert determination[35]. Similarly, clauses in the Joint Operating Agreement model of the Canadian Association of Petroleum Landsmen provide for dispute resolution through negotiation, mediation or arbitration[36], see also Nigerian Oil and Gas Industry Content Development Act passed into law by the federal Government of Nigeria in 2010. Mediation as a multi-step ADR process has also featured in some government contracts. For example, the Kurdistan Model Production sharing contract requires parties before embarking on Arbitration to seek settlement by Mediation in accordance with the London Court of International Arbitration mediation procedure[37].

Furthermore, the Logic Model Contract[38], which is largely, used in the United Kingdom Continental Shelf sets out an escalated structure as a filtering process that should encourage the parties to reach a negotiated settlement[39]. The model put it as condition precedent for referral of disputes to the courts that, parties should resort to negotiation and mediation first, failing which, the parties can take

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33 AMPLA, 'Model Petroleum Joint Operating Agreement', available at: <http://www.ampla.org.au/documents/item/164.> accessed on 13 December 2015

34 Ibid clause 19.2 (d)

35 AIPN, 'Model Contract – International Dispute Resolution Agreement' (2004), available at: <http://www.aipn.org/mcvisitors.aspx.> accessed on 15 December 2015

36 Nkaepe Etteh, Joint Operating Agreements: Which Issues Are Likely To Be The Most Sensitive To The Parties And How Can A Good Contract Design Limit The Damage From Such Disputes? (2011) *CEPMLP Annual Review* 14.

37 Kurdistan Regional Government, ' Model Production Sharing Contract for Exploration and Production in Kurdistan', article 41.2

38 Logic 'Standard Contracts for the UK Offshore Oil and Gas Industry (Logic Edition 2, 2003) General Conditions of Contract for Services on- and offshore

39 Anthony Connerty. 'ADR as a "filter" mechanism: the use of ADR in the context ofinternational disputes' (2013) 79(2) *Arbitration 120*

appropriate action in the courts to resolves the disputes[40].Even though, prescribing mediation as pre-arbitration or litigation was criticised by some commentators as been non-binding obligation under the contract particularly under English law as supported by many court decisions because it raises the questions of parties'. commitment to it[41]. Nevertheless, the decision in *Cable & Wireless plc v IBM UK Ltd*[42]affirmed that, mediation as part of a multi-tiered dispute resolution process is a binding contractual obligation, consequently, a stay of proceeding was granted notwithstanding the refusal by the party.

Whereas, commentators who argued in favour of resorting to mediation as first alternative viewed that, it works as a filtering process which should encourage the parties to reach a negotiated settlement[43]. Similarly, it was also observed that, the increasing acceptance and attachment of importance of mediation as a mandatory part of prescribed multi-tiered procedures by the English courts is characteristic of the growing trend to recognise the pre-eminence of erstwhile side-lined ADR procedures such as Mediation and Negotiation. An alternative approach is to make mediation one among the ADR options that the oil and gas disputants have to choose from.

As now deeply rooted into the industry's dispute resolution process, mediation aim at achieving consensual resolution of dispute while reducing the unnecessary litigation costs and sustains relationships. Mediation is base on party autonomy, its advantages include a dose of reality, cost and time saving, interest-centred, flexibility, preservation of relationships etc[44]. In contrast, the logic of litigation intensifies mutual antagonism, cost escalation and resource demand; inevitably soon escalate beyond all estimates as the intensity of the dispute increases[45].

Consequently, taking the whole discussion into perspective, one will not be out of point to say that, mediation is the most appropriate forum of resolving dispute in the industry. It has even become obvious in the industry when parties resort to

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40 Ibid Logic Contract, Clause 30.3 and 30.4

41 *Paul Smith v. H & S International Holding Inc.* [1991] 2 Lloyd's Report 127 and also see *Veronique Buehrlen, 'The Continuing Pitfalls of Enforcing Multi-tiered ADR Clauses', (21st December 2012), available at:* <http://offshore.clydeco.com/litigation-and-contracts/the-continuing-pitfalls-of-enforcing-multi-tiered-adr-clauses/#_ftn2> *accessed on 27/11/2015*

42 [2002] EWHC 2059 at 1326

43 Michael McIlwrath (Senior Counsel-Litigation, GE Oil and Gas Italy), 'Can Mediation Evolve into a Global Profession?' (2009) *International Mediation Institute*

44 Lars Kirchhoff and Gabriele Scherer, *Arbitration and Mediation in International Business* (2nd Edition Kluwer Law International 2006) 203

45 Thomas W. Walde, 'Pro-active Mediation of International Business and Investment Disputes Involving Long-term Contracts: From Zero-Sum Litigation to efficient Dispute Management' (2003) 4 *OGEL*

litigation; it is usually as a result of failure of alternative disputes resolution mechanisms, for personal relationships or a contract that does not provide any other resolution pathway. Formal and adjudicative procedures have therefore proven to be inadequate and counter-productive, on top of being expensive, public and slow. However, mediation is highly considered effective and appropriate only where the disputants are determined to mediate in good faith. In general, it has many advantages over other methods of ADR and litigation. Mediation as one of the dispute resolution forum provides increased access to justice and lessens the burdens on over-crowded court systems. With the aforementioned problems associated with litigation, mediation has been gradually embraced as a favoured approach of resolving almost all international commercial disputes not only oil and gas industry and can therefore be aptly considered as a set of processes more desirable than litigation in the resolution of disputes in the oil and gas industry.

3 Challenges of mediation

A more thoughtful difficulty with mediation is that, the outcome is normally a settlement agreement which is no more than another contract between the parties involve, enforceable according rules of local courts. Hence, in practice the whole process leads parties into a co-operative and settlement-oriented frame of mind with the consequence that it is understood that a high proportion of settlement agreements are indeed honoured[46]. Therefore, by recourse to court for performance it may be argued that, one of the vital features of the mediation is jeopardise, this is because, once in court, there is no guarantee that the terms would be kept confidential[47]. Thus, situation may arise in which one party may require performance of the settlement and if not adequately manage may lead to escalation of another dispute. A time, foreign settlement may not be easily enforceable under local laws.

In order to get round this shortcoming, mediation-arbitration mechanism (that is popularly called Med-Arb) might be a possible alternative. It envisages a process that starts as a mediation and finishes as arbitration, the only difficulty being to manage the transition. The process combines both mediation and arbitration features, it involves having the parties execute an arbitration agreement and then agree to suspend arbitration proceedings while mediation follows[48].An Ohio United States' court in *Bowden v. Weickert*[49]opined that, Med-Arb proceedings

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46 Hew R. Dundas, 'Dispute Resolution in the Oil & Gas Industry: An Oilman's Perspective' (2004) 2 (3) *OGEL*

47 Ibid

48 Herbert Smith, 'Med-Arb – an Alternative Dispute Resolution Practice' (2012) 113 *Japan Dispute Avoidance Newsletter*

49 No. S-02-017, 2003 WL 21419175 (Ohio App. 6 Dist. June 20, 2003)

when properly executed are innovative and creative way to further the purpose of alternative dispute resolution'. In complex cases, the parties may also require that their dispute be first reviewed by a mediator, arbitration will only follow where the parties failed to settle at the mediation stage[50]. While Med-Arb process is widely utilised in United States as a remedy to mediation shortcoming, the process cannot work in all jurisdictions. For example, in Nigeria and England; once the settlement has been reached and was reduced into agreement, there is no continuing dispute between the parties and therefore, nothing to arbitrate. Thus, this makes Med-Arbprocess difficult in England and other jurisdiction with similar rules with that of England and Wales.

Therefore, there is a need for an alternative process that can survive in Nigeria, England and other jurisdiction where Med-Arb proved difficult, and this process is called Arbitration-Mediation(Arb-Med)[51].Thus, the process is essentially similar with Med-Arb, however, what differ them is that, this process starts with an arbitration proceeding, after which a non-binding arbitration award may either issued or withheld and then , the parties work with a mediator to attempt to resolve their conflict. In other word, usually, arbitration is conducted in the normal manner and, on its conclusion; the arbitrator issues his award but does not release it to the parties immediately. Instead, he then convenes mediation between the parties with the award, in a sealed envelope. The principle and idea behind Arb-Med is that, the risk of the award proving unsatisfactory to each of the parties if release is enough to persuade them to mediate with commitment[52]. It was reported that such mediation is almost perpetually successful for that reason[53].

4 Conclusion

Mediation as a mechanism of alternative dispute resolution has enormous advantage. There is every reason to believe that it will deliver superior justice, superior speed and reduced cost. A few observations can be made with a high degree of certainty that, the litigation system has no special claim to delivering justice, or even truth. Secondly, the litigation system only bothers about

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

51 The process emerged from US and widely help sustains Mediation See Harvard Law School Library – Alternative Dispute Resolution Research, available at: <http://guides.library.harvard.edu/content.php?pid=442479&sid=4396465.> accessed on 30/11/2014

52 Edna Sussman, 'Developing an Effective Med-Arb/Arb-Med Process' (2009) 2 (1) *New York Dispute Resolution Lawyer*

53 Martins C. Weisman, 'Med-Arb: The Best of Both Worlds' (2013) 19 (3) *American Bar Association Section of Dispute Resolution Magazine*

establishing what is "right" than doing "justice" which is the ultimate result. It is extremely slow, expensive, negative publicity, complexity and inherent delay while imposing heavy monetary and non-monetary costs on the litigants. While on the other hand, mediation provides expedient, confidential, flexible and cost-effective extrajudicial resolution of disputes in both civil and commercial matter through processes designed to the needs of the parties. Similarly, agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits also become even more pronounced in situations involving international nature of the oil and gas industry. Therefore, since this process is available to remedy the hardship inherent to litigation, it ought to be given a chance to succeed.