

USE OF COLLECTIVE BARGAINING AND ALTERNATIVE DISPUTE RESOLUTION AS MEANS OF SETTLEMENT OF TRADE DISPUTES IN NIGERIA*

Abstract

Domination and differences in interests and values are still sources of conflict in all industrial institutions and organizations due to social divide, which has favoured employers at the expense of the employees. These phenomena of domination and differences in interests and values therefore call to mind the need for a very cordial means of resolving trade disputes to pave way for a smooth labour and industrial relations. This paper discusses the cordial means of resolving trade disputes through collective bargaining and Alternative Dispute Resolution. It is herein argued that these means of resolving trade disputes through collective bargaining and Alternative Dispute Resolution which already have the backing of our law should be effectively exploited and institutionalized to ensure cordiality in our labour and industrial relations. It concludes with a call for the full institutionalization of Alternative Dispute Resolution technique of the National Industrial Court pursuant to section 254C (3) of the Constitution of the Federal Republic of Nigeria, 1999 as well as ensure compliance with institutional collective bargaining process for settlement of trade disputes in various institutions.

Keywords: Collective Bargaining, Alternative Dispute Resolution, Settlement, Trade Disputes

1. Introduction

In order to manage conflict such that it will not be an agent of disequilibria, disruption and destruction, rules and regulations are made by organizations; laws and policies are also made by nations. These are to create enabling environment for settlement of labour disputes to forestall the breakdown of negotiation and stoppages of work by the workers or closure by management. A responsive and responsible government always takes all necessary precaution to avert national strikes because of their adverse effects on the economy and society at large. In line with this, we have in Nigeria, the Trade Disputes Act,¹ the Trade Unions Act,² the National Industrial Court (NIC) Act,³ and more importantly the Constitution of the Federal Republic of Nigeria, 1999 which have set out the mechanisms for the settlement and resolution of trade disputes in Nigeria.⁴ This paper considers the mechanisms for the resolution of trade disputes in Nigeria through collective bargaining and Alternative Dispute Resolution. It should be noted that the 1999 Constitution under section 254C (1)(j)(i) and section 254C (3)(4), respectively talk about collective agreement⁵ and Alternative

* By **Kenneth Uzor EZE, PhD**, Head of Department of Public and Private Law, Faculty of Law, Nigeria Police Academy, Wudil-Kano, Nigeria;

* **Igwe Chinedu AKAM**, Lecturer, Faculty of Law, Ebonyi State University, Abakaliki, Ebonyi State, Nigeria; and
* **Abdulmalik S. GATUGEL**, Lecturer, College for Legal Studies, Yola, Adamawa State, an Affiliate of University of Maiduguri, Nigeria.

¹ Cap. T8, Laws of the Federation of Nigeria, 2004. This shall be subsequently referred to as the Trade Disputes Act (TDA).

² Cap.T14, Laws of the Federal of Nigeria, 2004. This shall be subsequently referred to as the Trade Unions Act (TUA).

³ National Industrial Court Act, 2006. This shall be subsequently referred to as NIC Act or NICA. The National Industrial Court may be subsequently referred to as NIC.

⁴ The NIC Act substantially repealed the Trade Disputes Act. Section 53 of the NIC Act provides that Part 1 of the Trade Disputes Act is hereby repealed, the other provisions of the Trade Disputes Act shall be construed with such modifications as may be necessary to bring it into conformity with the provisions of the NIC Act if any provision of the Trade Disputes Act is inconsistent with the provisions of the NIC Act, the provisions of the NIC Act shall prevail.

⁵ Section 54 of NICA stated that ‘collective agreement’ means any agreement in writing regarding working conditions and terms of employment concluded between – (a) an organization of employers or an organization representing employers (or an association of such organizations), of the one part; and (b) an organization of employees or an organization representing employees (or an association of such organizations) of the other part. See also, section 48 of the Trade Disputes Act, 2004.

Dispute Resolutions, thereby giving constitutional credence to the use of collective bargaining and Alternative Dispute Resolution for the settlement of trade disputes in Nigeria.

2. What is Trade Dispute?

Trade dispute has been defined in some labour enactments, including the Trade Disputes Act,⁶ the Trade Unions Act⁷ and NICA.⁸ The definitions in the first two enactments are the same, whereas the definition in NICA has a broader sense. Let us examine these definitions. Section 48 of the Trade Disputes Act provides that, trade dispute means any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions or work of any person. Whereas, under NICA,

trade dispute means any dispute between employers and employees, including disputes between their respective organizations and federations which is connected with the employment or non-employment of any person, terms of employment and physical conditions of work of any person, the conclusion or variation of a collective agreement, and an alleged dispute.

From the foregoing, it has been discovered that the definition of ‘*trade dispute*’ under NICA is wider in scope than that of the Trade Disputes Act on three different grounds, namely;⁹

1. While disputes between the ‘*respective organizations and federations*’ of employers and employees is conspicuously absent in the definition in Trade Disputes Act, it is not so in NICA.¹⁰

2. Also, the subject matter of trade disputes under NICA is extended to ‘*the conclusion or variation of a collective agreement, and an alleged dispute*’.

3. As a follow-up, the use of the phrase ‘*and an alleged dispute*’ has even made endless the types of trade disputes conceivable under that definition, provided the dispute is between employees and employers, including disputes between their respective organizations and federations.¹¹ For the purpose of this discussion, the Researchers shall adopt the broader meaning of trade dispute under NICA.

4. In effect, there are three basic elements of the definition of trade dispute: the subject matter of a trade dispute; the parties to it, and its purpose.¹² The subject matter of trade dispute is multi-dimensional; it may involve the employment or non-employment of any person or the terms of employment and physical conditions of any person, or the conditions of work of any person, or the conclusion or variation of collective agreement, or an alleged dispute.¹³ A party to a trade dispute for the purpose of its settlement includes, every person served with notice of or attending any proceeding, has interest in the subject matter of the proceeding as a person named on the record of the proceedings.¹⁴ A party may also be any person or body with juristic personality.¹⁵ The actual parties to a trade dispute are the workers on the one hand and the employer on the

⁶Section 48, Trade Disputes Act.

⁷Section 54, Trade Unions Act.

⁸Section 54, NIC Act.

⁹ See generally, KU Eze, *Adjudication of Trade Disputes in Nigeria under the Law* (Germany: Lambert Academic Publishing, Heinrich-Backing-Str. G-8, GG121 Saarbrucken, Deutschland, 2014) Pp. 26 – 27.

¹⁰ Note the uses of the phrases ‘*between employers and workers or between workers and workers*’; and ‘*between employers and employees, including disputes between their respective organizations and Federations*’, in the Trade Disputes Act and NIC Act, respectively.

¹¹ This definition is very wide as it brings every envisageable labour and industrial dispute under the definition of trade dispute. Hence, it puts a question mark on the definition of trade dispute under the Trade Disputes Act, so that any ‘*labour dispute*’ is a ‘*trade dispute*’. ‘*Labour dispute*’ and ‘*trade dispute*’ may therefore be used interchangeably in this work.

¹²AEmiola, *Nigerian Labour Law* (Nigeria: Ibadan University Press, University of Ibadan, Ibadan, 1979) P.195.

¹³Eze, *Adjudication of Trade Disputes in Nigeria under the Law, op. cit.*, Pp. 27 - 28.

¹⁴Emiola, *Nigerian Labour Law, op. cit.*

¹⁵*Nigeria Union of Pharmacists, Medical Technologists and Professions Allied to Medicine v. Obafemi Awolowo University Teaching Hospital Complex Management Board and 2 Ors*(Unreported) Suit No. NIC/8/2006, ruling delivered on June 25, 2008.

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other or their respective organizations and federations. Thus, the purpose or object of a trade dispute must be to promote the interest of the workers or employers concerned.

A trade dispute may be of interest or right. A trade dispute of interest¹⁶ is concerned with the conflict of interest in collective bargaining arising out of the making of a new agreement on terms and conditions of work, or the renewal of those, which have expired. On the other hand, right disputes are those, which involve alleged violations of rights already established in employment contracts or agreements. These are regarded as legal rights because the claims are based on the contractual relations between the parties. Rights stand in sharp contrast with interest in the sense that the later connotes not entitlement but desire. Disagreements about rights are said to be '*justiciable disputes*'.¹⁷ In other words, they may be adjudicated upon. In respect of disputes over interests, they may be settled by '*haggling out the differences or settling them*'.¹⁸ But because these disputes are non-justiciable, they cannot be disposed of by litigation.¹⁹ Therefore, any discussion of settlement of trade disputes must center on the rights of individuals as opposed to their interests. These rights may be provided to them by statute, by established practice or collective agreement reached by the process of collective bargaining. They are advantages, already achieved to which the individual has definite and guaranteed entitlement.²⁰ Since disputes of interest are non-justiciable and *ipso facto*, cannot be disposed of by litigation, for want of actual legal rights and obligation, collective bargaining and Alternative Dispute Resolution therefore, becomes relevant here for haggling out the differences or settling the conflicting interests.

3. What is Alternative Dispute Resolution (ADR)?

Neither the Acts, including the Trade Disputes Act and NICA nor the 1999 Constitution defined the term, Alternative Dispute Resolution (ADR). We shall therefore have recourse to a definition from a different source. The first recourse shall be to both the NIC Alternative Dispute Resolution Centre Instrument, 2015 and the NIC Alternative Dispute Resolution Centre Rules, 2015. These enactments stated that 'ADR' means Alternative Dispute Resolution which for the purposes of Alternative Dispute Resolution Centre includes mediation or conciliation that involves the use of Mediator,²¹ Conciliator,²² or Neutral²³ who may facilitate the resolution of a dispute before the Centre.²⁴ This means that under these enactments, it is only mediation,

¹⁶ It is often called '*collective disputes*' and involves mostly the settlement of disputes on economic matters resulting from the non-implementation of collective agreement.

¹⁷ See EC Iwuji, Settlement of Trade Disputes. In Otobo, D & Omole, M (eds) *Readings in Industrial Relations in Nigeria* (Nigeria: Malthouse Press Ltd, Lagos, 1987) P. 205.

¹⁸ Haggling devices or collective bargaining has been defined as a negotiating method of settling interest disputes over what shall be the working rules for the future. See Paul, FB, Settlement of Disputes Over Grievances in United States (United States of America: Industrial Relations Center, University of Hawaii, 1965) P. 4.

¹⁹ Litigation is an adversarial process where parties to a dispute file their case in court and have the matter heard and determined by a judicial officer. Judicial officer here, means any presiding officer of the court before whom a matter is adjudicated.

²⁰ EC Iwuji, Settlement of Trade Disputes. In Otobo, D & Omole, M (eds.) *Readings in Industrial Relations in Nigeria, loc. cit.* P. 205.

²¹ Here, Mediator is an impartial third party appointed by the President of National Industrial Court in accordance with the Alternative Dispute Resolution Centre Instrument to facilitate negotiation or mediation between or amongst the parties in a dispute and in order to help them to arrive at an amicable and an acceptable settlement. This definition is extracted from Article 10 (2) of Alternative Dispute Resolution Centre Instrument, 2015 and Order 2 Rule 2, Alternative Dispute Resolution Centre Rules, 2015.

²² Here, Conciliator means an impartial third party bringing two opposing sides together to attempt an amicable settlement of dispute between or amongst them in a friendly and win-win situation. This definition is extracted from Article 10 (2) of Alternative Dispute Resolution Centre Instrument, 2015 and Order 2 Rule 2, Alternative Dispute Resolution Centre Rules, 2015.

²³ Neutral means an impartial and unbiased individual appointed by the President of National Industrial Court in accordance with the provisions of National Industrial Court of Nigeria, Alternative Dispute Resolution Centre Instrument, to mediate or conciliate in a dispute or issue referred to the Centre. See Article 10 (2) of Alternative Dispute Resolution Centre Instrument, 2015 and Order 2 Rule 2, Alternative Dispute Resolution Centre Rules, 2015.

²⁴ See article 10 (2) of Alternative Dispute Resolution Centre Instrument, 2015 and Order 2 Rule 2 of Alternative Dispute Resolution Centre Rules, 2015.

conciliation and/or the use of a Neutral that are contemplated as aspects of Alternative Dispute Resolution. Indeed, Article 4(11) of the Alternative Dispute Resolution Centre Instrument, 2015 provides that, ‘The Centre shall serve as a place for conciliation and mediation between parties and not as a court.’

Alternative Dispute Resolution has also been defined as: ‘other processes of resolving disputes outside courtroom litigation.’²⁵ Such processes as enumerated under the above enactments include negotiation, mediation, conciliation and arbitration. Other processes also alluded to include board of inquiry, commission and administrative body. The National Industrial Court shall have appellate or supervisory jurisdiction over the processes or enforcement of the outcome of any of the foregoing processes if it is related to, connected with, arising from or pertaining to any matter of which the National Industrial Court has the jurisdiction to entertain.²⁶ Please, note that contrary to the wide held impression, Alternative Dispute Resolution is not a substitute for litigation. It is not just a solution to the problem of congestion in courts but also the necessary part of any efficient framework for dispute resolution and access to justice. Therefore, even when there are no delays in litigation, Alternative Dispute Resolution is still an important component of justice delivery in any system that seeks to effectively protect and guarantee and protect citizens’ rights.²⁷ The use of Alternative Dispute Resolution for the resolution of trade disputes has become particularly relevant because of its concern with the protection of social and economic rights of which labour issues hinge on. Most of the issues emanating from labour relations cannot effectively be resolved by the application of strict legal principles. The Alternative Dispute Resolution Movement of the 1970s and 1980s was based primarily on promoting alternatives to litigation and court-based resolution procedures. These advocates argued that alternative processes such as mediation and arbitration were more effective and constructive, among other reasons, than litigation.²⁸ By the way litigation works, each party is expected to gather sufficient evidence to prove his case. In a bid to do this, the parties expend enormous time, energy and resources. At the end, victory is determined by ability to present superior evidence. Consequently, the adversarial and competitive nature of litigation breeds hostility, hatred and lack of trust between the parties. By that very fact, where the parties have on-going relationship, litigation tends to destroy or impede that relationship.

4. Collective Bargaining and Alternative Dispute Resolution Processes as Means of Settlement of Trade Disputes

One important aspect of industrial relations is the area that has to do with the methods of settlement of trade disputes or industrial crisis. Method of settlement of trade disputes has to do with the procedure designed to resolve disagreement between workers and their employers. There are two sequential approaches to the settlement of trade disputes in Nigeria. The first is the grievance procedure,²⁹ usually incorporated into the procedural or collective agreement. The second is the statutory procedure, embodied in the Trade Disputes Act and the NICA. In this paper, the Researchers are mainly concerned with the methods of collective bargaining and Alternative Dispute Resolution. We shall discuss these methods in details, starting from collective bargaining.

Collective Bargaining

The concept of collective bargaining is a combination of two broad words, ‘*collective*’ and ‘*bargaining*’. It is called ‘*collective*’ because both the employer and the employees act as a group rather than as individuals. And it is called ‘*bargaining*’ because the method of reaching an agreement involves negotiation of proposals and counter-proposals, offers, acceptance or compromise. Collective bargaining is the method whereby

²⁵KN Nwosu, Role of Traditional Rulers and Community Leaders in Criminal Justice Administration in Nigeria, In: KN Nwosu (ed), *Dispute Resolution in the Palace* (Nigeria: Gold Press Limited, Ibadan, 2010) vol. 2, p. 183. Cited in Dankofa, Y & Odoh, BU, Integrating the Teaching of Alternative Dispute Resolution (ADR) into the Legal Education in Nigeria, *Nigeria Police Academy International Journal of Clinical Legal Education* (Nigeria: Ahmadu Bello University Press, Zaria, 2015) vol. no. 1, p. 3.

²⁶ See section 254C (3)(4), Constitution of the Federal Republic of Nigeria, 1999 (as amended).

²⁷Nwosu, Role of Traditional Rulers and Community Leaders in Criminal Justice Administration in Nigeria, *loc. cit.*

²⁸B Stephen, EAS Frank *et al*, *Dispute Resolution: Negotiation, Mediation and Other Processes* (Boston: Little Brown and Company, 1992) 2nd Edition, Pp. 6 - 8.

²⁹ The parties to resolve all grievances through collective bargaining without resorting to industrial action often refer to this to as the internal machinery because it is a pre agreed and self-imposed undertaking. This procedure is called collective bargaining in its broader sense.

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workers organize themselves together to meet, converse and negotiate upon the work conditions with their employers, normally resulting in a written contract setting forth the wages, hours and other conditions to be observed for a stipulated period. It is the practice in which labour and management representatives meet to negotiate a new labour contract. In various national labour and employment law contexts, collective bargaining takes on a more specific legal meaning.³⁰ In a broader sense, however, it is the coming together of workers and employers to negotiate the employment terms and conditions. The parties often refer to the result of the negotiation as a Collective Bargaining Agreement or as a Collective Employment Agreement. In Nigeria, it is simply referred to as Collective Agreement.³¹ A collective agreement is simply a labour contract between an employer and one or more workers union or unions. Our laws recognize the use of collective bargaining in settlement of trade disputes. For instance, under the Trade Disputes Act, there is an obligation to deposit collective agreements with the Minister of Labour and the use of such agreements first in settling trade disputes before having resort to other methods.³² The International Labour Organization defines the 'freedom of association and the effective recognition of the right to collective bargaining' as an essential right of workers.³³ The Universal Declaration of Human Rights identifies the ability to organize trade unions as a fundamental human right³⁴. Above all, the right to organize or unionize is enshrined in the 1999 Constitution.³⁵ Collective Bargaining is a highly flexible system of settling trade disputes, as it involves the balancing of the two great social powers of labour and management from time to time. With this method, the discretion of employer in the area of unilateral decisions affecting the welfare of workers will be restricted, hence, ensuring workers industries which in turn ensure industrial democracy³⁶.

The methods used in collective bargaining are of two types, namely:³⁷Contractual Method, and Institutional Method. Contractual method is static. Here, the representatives of the employer and workers meet to negotiate for the purpose of settling trade disputes. They bargain and if they succeed, they come up with a collective agreement. It is static because after the conclusion of the agreement, it remains the only agreement that binds the parties. It remains static even when the situation or circumstances surrounding agreement changes. This is especially so when the agreement has been deposited with the Minister of Labour and he has made an order making the agreement binding on the employers and workers to whom the agreement relates and failure to abide by that order is punishable.³⁸ Institutional method is dynamic. Here, labour and management come together to set up an institution and a constitution. The institution or body will consist of an equal number of representatives from labour and management. It is dynamic because any bilateral agreement or resolution reached by it is always open to interpretation or modification; hence, it is an open-ended agreement. Besides, a time limit is usually not fixed for its operation.

³⁰ The Trade Disputes Act did not define Collective Bargaining. But, it could be found under section 91, Labour Act, Cap. L1, Laws of the Federation of Nigeria, 2004. There, it means the process of arriving or attempting to arrive at a Collective Agreement.

³¹ 'Collective Agreement' means an agreement in writing regarding working conditions and terms of employment concluded between an organization of workers or an organization representing workers (or an association of such organization) of the one part; and an organization of employers or an organization representing employers (or an association of such organization) of the other part. See section 91, Labour Act. Cap.L1, Laws of the Federal of Nigeria, 2004 or section 48, Trade Disputes Act, Cap T8, Laws of the Federal of Nigeria, 2004.

³² See sections 3 and 5 Trade Disputes Act, Cap. T8, Laws of the Federation of Nigeria, 2004.

³³ Item 2(a) of the International Labour Organizations Declaration on Fundamental Principles and Rights at Work. See also Convention No. 98, Concerning the Application of the Principles of the Right to Organize and Bargain Collectively; and Convention 151, Concerning the Protection of the Right to Organize and Procedure for Determining Conditions of Employment in the Public Sector.

³⁴ Article 23, Universal Declaration of Human Rights of 1948.

³⁵ Section 40, Constitution of the Federal Republic of Nigeria, 1999.

³⁶ JAM Audi, *Strikes and the Law in Nigeria*, (1993) 2 *Ahmadu Bello University Law Students' Journal*, P. 75.

³⁷ *Ibid*, Pp.75 – 76.

³⁸ Section 3(3) (4), Trade Disputes Act, Cap. T8, Laws of the Federal of Nigeria, 2004.

5. Selected Alternative Dispute Resolution Processes for the Settlement of Trade Disputes

The Trade Disputes Act³⁹ provides for other methods of settlement of trade disputes in Nigeria in the case of failure of collective bargaining. As we proceed in this discussion, the point should be made here that the Alternative Dispute Resolution processes which we are about to discuss as provided under part I of the Trade Disputes Act have been preserved under section 7(3) of NICA which provides that, '*Notwithstanding anything to the contrary, any matter under subsection (1)(a) of this section may go through the process of conciliation or arbitration before such matter is heard by the court.*' Moreover, section 7(4) of NICA deals with an appeal lying to the court from the decisions of an arbitral tribunal. Also, Order 24, Rule 1 of the NIC Rules, 2017 provides that, the President of the National Industrial Court or a Judge of the Court may refer for amicable settlement through conciliation or mediation any matter filed in any of the Registries of the Court to the Alternative Dispute Resolution Centre established within the Court premises. Above all, the combined effect of section 254C (3)(4), Constitution of the Federal Republic of Nigeria, 1999 equally gives authenticity to the use of Alternative Dispute Resolution in the resolution of labour disputes. The Researchers have selected and discussed only a few of these Alternative Dispute Resolution processes. Those selected include mediation, conciliation, arbitration, and board of inquiry. Thus, without ignoring important points on the other side of the same coin, this paper will give more emphasis to the Alternative Dispute Resolution mechanisms under Part 1 of the Trade Disputes Act, 2004. The reason for this is not far-fetched. It is to enable us see some of the inadequacies of that dispute resolution mechanism and to expose the need to do away with it in favour of the Alternative Dispute Resolution Centre of the National Industrial Court. This will not only save cost but will ensure a more coordinated and independent process of resolving trade disputes through an Alternative Dispute Resolution process that is devoid of government influence or manipulation. These mechanisms are hereby discussed as follows:

Mediation

Both the NIC Alternative Dispute Resolution Centre Instrument, 2015 and the NIC Alternative Dispute Resolution Centre Rules, 2015 stated that: '*Mediation*' is a dispute resolution technique in which an impartial third party, the mediator, or conciliator, neutral appointed by the President of the National Industrial Court facilitates negotiation or mediation between or amongst the parties in a dispute, and in order to help them to arrive at an amicable and acceptable settlement.⁴⁰ Under the Trade Disputes Act, if the attempt to settle the trade dispute through collective bargaining fails or if no such agreed means of settlement exists, the parties shall within seven days of the failure or where no such means exist, within seven days of the date on which the dispute arises or is first apprehended meet together either by themselves or through their representatives, under the presidency of a mediator mutually agreed upon and appointed by or on behalf of the parties, with a view to amicable settlement of the dispute.⁴¹ This notwithstanding, where a trade dispute is apprehended by the Minister, he may in writing inform the parties of his apprehension and the steps he intends to take in order to resolve the dispute.⁴² Any of such steps could be by bypassing the process of mediation to refer the dispute for conciliation or arbitration or to board of inquiry.⁴³ However, if the dispute remained for mediation and within seven days of the date on which a mediator is appointed, the dispute is not settled, the dispute shall be reported to the Minister by or on behalf of either of the parties within three days from the end of the seven days. The report to the Minister shall be in writing and shall record the points on which the parties disagree and describe the steps already taken by the parties to reach a settlement.⁴⁴ The Minister may further proceed to exercise any such of his powers under sections 8, 9, 17 or 33 of the Trade Disputes Act as may appear to him appropriate.⁴⁵ The use of mediation in the settlement of trade disputes depends on the discretion of the

³⁹*Ibid*, sections 4 -19.

⁴⁰See article 10 (2) of Alternative Dispute Resolution Centre Instrument, 2015 and Order 2 Rule of Alternative Dispute Resolution Centre Rules, 2015.

⁴¹ Section 4(2), Trade Disputes Act, Cap. T8, Laws of the Federal of Nigeria, 2004.

⁴²*Ibid*, section 5(1).

⁴³*Ibid*, section 5(3).

⁴⁴*Ibid*, section 6.

⁴⁵*Ibid*, section 7(2).

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Minister as he may, as earlier noted, decide to by-pass this method.⁴⁶ This has rendered mediation as a means of settlement of trade dispute under the Trade Disputes Act, a mere statutory provision.

Conciliation

Both the NIC Alternative Dispute Resolution Centre Instrument, 2015 and the NIC Alternative Dispute Resolution Centre Rules, 2015 stated that: ‘*Conciliation*’ means bringing two opposing sides together to attempt settling the matter without proceeding to trial. It is also a process of an amicable settlement of disputes in a friendly and win-win situation.⁴⁷ Having been provided for under the Trade Disputes Act, the mechanism of conciliation has been preserved under section 7(3) of NICA whereat the National Assembly may by an Act prescribe that any matter under section 7 (1)(a) of NICA⁴⁸ may go through the process of conciliation before such matter is heard by the NIC. Under the Trade Disputes Act, the Minister of Labour shall if not satisfied that the requirements for mediation have been substantially complied with, issue to the parties a notice specifying those requirements and may specify in the notice the time within which any such steps must be taken.⁴⁹ If the time given in the notice expires or if no period is given, after the expiration of fourteen days, the dispute remains unsettled and the Minister is satisfied that the steps specified in the notice have been taken or that either party is refusing to comply,⁵⁰ he shall appoint a fit person to act as a conciliator for the purpose of settlement of the dispute.⁵¹ The conciliator is expected to inquire into the causes and circumstances of the dispute and effect its settlement within seven days. After settlement, the conciliator shall report to the Minister and forward to him the memorandum of the terms of settlement signed by the representatives of the parties. Such memorandum shall be binding on the employers and workers to whom it relates from the date it was signed or such other date as may be specified therein.⁵² If the conciliator did not reach settlement within seven days of his appointment, he shall forthwith report the matter to the Minister of Labour, who may in turn refer the dispute to arbitration tribunal. The Trade Disputes Act did not define who may be a fit person to act as a conciliator and did not give any room for the parties to participate in choosing such a fit person. The appointment of a fit person to act as a conciliator is solely within the whims and caprices of the Minister of Labour. The Minister too, may even wish to by-pass the conciliation method to refer the matter for arbitration.

Arbitration

The Trade Disputes Act established the Industrial Arbitration Panel which shall consist of a chairman, a vice chairman and not less than ten other members all of whom shall be appointed by the Minister. Having been provided for under the Trade Disputes Act, the mechanism of arbitration has been preserved under section 7(3) of NICA whereat the National Assembly may by an Act prescribe that any matter under section 7 (1)(a) of NICA⁵³ may go through the process of arbitration before such matter is heard by the NIC. A trade dispute may be referred to the Arbitration Tribunal under sections 5, 7 and 9 of the Trade Disputes Act. It is the duty of the chairman of the Industrial Arbitration Panel to constitute the Arbitration Tribunal.⁵⁴ The Arbitration Tribunal shall make its award within twenty-one days of its constitution or such longer period as the Minister may in any particular case allow.⁵⁵ The Arbitration Tribunal shall not communicate its award to the affected parties but shall make a copy available to the Minister who may consider it desirable to refer the award back to the tribunal. This puts a question mark on the credibility of the award as the Minister may continue referring the matter back to the Arbitration Tribunal until the award reflects his expectation. However, the

⁴⁶ This may have contributed to the conspicuous absence of mediation in section 7(3) of the NIC Act, which provides for conciliation and arbitration only.

⁴⁷ See article 10 (2) of Alternative Dispute Resolution Centre Instrument, 2015 and Order 2 Rule of Alternative Dispute Resolution Centre Rules, 2015.

⁴⁸ Such matters include matters relating to – (a) labour, including trade unions and industrial relations; and (b) environment and conditions of work, health, safety and welfare of labour, and matters incidental thereto.

⁴⁹ Section 7(1), Trade Disputes Act, Cap. T8, Laws of the Federal of Nigeria, 2004.

⁵⁰ *Ibid.*, section 7(2).

⁵¹ *Ibid.*, section 8(1).

⁵² *Ibid.*, section 8(3).

⁵³ Such matters include matters relating to – (a) labour, including trade unions and industrial relations; and (b) environment and conditions of work, health, safety and welfare of labour, and matters incidental thereto.

⁵⁴ Section 9(1) (2), Trade Disputes Act, Cap. T8, Laws of the Federal of Nigeria, 2004.

⁵⁵ *Ibid.*, section 9(3).

idea of referring back the award to the tribunal is only possible if the matter has not been referred to the NIC for adjudication. In the case of *Academic Staff Union of Universities v. Federal Government of Nigeria*,⁵⁶ the court held that the Minister of Labour has an absolute discretion to refer an award back to the Industrial Arbitration Panel for reconsideration, provided he had not referred the matter to the NIC for adjudication.

The Industrial Arbitration Panel has power to enforce its award and may commit for contempt any person or a representative of a trade union or association who does any act or omission which in the opinion of the panel constitutes contempt of the panel.⁵⁷ However, such power of committal is incomplete as the chairman of the Industrial Arbitration Panel is expected to commit such a person for trial in the High court. The Minister of Labour is expected upon receipt of a copy of the award of the Arbitration Tribunal to immediately cause to be given to the parties or their representatives with a stipulation that within not more than seven days, either party to the dispute may object to the award. If there is no objection within the seven days given, the Minister may then confirm the award by publishing in the Federal Gazette a notice to that effect. It should therefore be noted that the award is binding on the parties only when it has been confirmed by the parties. An interesting case in this respect is the case of *National Headquarters of Nigeria Union of Civil Service Typists, Stenographic and Allied Staff v. Federal Branch of Nigeria Union of Civil Service Typists, Stenographic and Allied Staff*,⁵⁸ where the appellant had objected to an Industrial Arbitration Panel award for which the Minister of Labour referred the matter to the NIC. The act of objecting to the award meant that the Minister of Labour could not confirm the award. At the hearing of the matter, the appellant applied to withdraw the matter from the court. Counsel to the respondent did not oppose the application, and so it was granted. It later dawned on the Respondent's Counsel that the effect of the withdrawal of the appeal is to have a non-binding award since it was neither confirmed by the Minister of Labour nor sanctioned by the court. It was then that the Respondent had to apply for a consequential order of the court to either enter the award as judgment of the court or order the Minister of Labour to confirm it given that the appeal in respect of it has been withdrawn.

Board of Inquiry

Another mechanism for resolving trade disputes is the power of the Minister of Labour to constitute a Board of Inquiry.⁵⁹ Please, note that Alternative Dispute Resolution has been defined above as: 'other processes of resolving disputes outside courtroom litigation.'⁶⁰ It refers to processes for resolving disputes outside litigation. In other words, they are processes that help parties resolve their differences without recourse to the court. Alternative Dispute Resolution processes represent an affirmation of the fact that not all disputes are about legal rights and wrong. Accordingly, litigation may not be appropriate in the resolution of certain types of disputes. It is under this sense that the mechanism of Board of Inquiry may be considered as an Alternative Dispute Resolution for settlement of trade disputes since it is done outside courtroom litigation. This mechanism of Board of Inquiry is rarely used, most probably because of the statutory limitation implicit in constituting the Board of Inquiry. For instance, under section 33(1) of the Trade Disputes Act, the Board of Inquiry set up by the Minister is statutorily expected to only inquire into the causes and circumstances of the trade dispute in question and report thereon to the Minister. The Statute is silent as to what may be made of the report by either the Minister or any other authority. It therefore, means that if such a report is simply filed away, this will be perfectly lawful and valid.⁶¹

⁵⁶*Ibid*, section 13(1) (a).

⁵⁷*Ibid*, section 23.

⁵⁸ (Unreported) Suit No. NIC/8/2003, delivered on April 23, 2008.

⁵⁹ Sections 33 and 34, Trade Disputes Act.

⁶⁰Nwosu, Role of Traditional Rulers and Community Leaders in Criminal Justice Administration in Nigeria, In: Nwosu (ed), *Dispute Resolution in the Palace* (Nigeria: Gold Press Limited, Ibadan, 2010) vol. 2, p. 183. Cited in Dankofa, Y., Odoh, BU, *Integrating the Teaching of Alternative Dispute Resolution (ADR) into the Legal Education in Nigeria*, *Nigeria Police Academy International Journal of Clinical Legal Education* (Nigeria: Ahmadu Bello University Press, Zaria, 2015) vol. no. 1, p. 3.

⁶¹BB Kanyip, *The NIC: Current Dispensation in the Resolution of Labour Disputes*, a paper presented at the Refresher Course for Judges and Kadis, organized by the National Judicial Institute, which held from March 12-16, 2007 at Abuja, P.19.

Finding

It is important to point out here that the Alternative Dispute Resolution Centre envisaged under section 254C (3) of the 1999 Constitution operates independently from the Alternative Dispute Resolution mechanisms (including negotiation, mediation, conciliation, arbitration and board of inquiry) envisaged under Part 1 of the Trade Disputes Act, 2004. The only connecting point between these two aspects of Alternative Dispute Resolution is that the National Industrial Court has been empowered to exercise overriding jurisdiction over the decisions and awards of any such Alternative Dispute Resolution mechanisms. The Researchers, however, considers these two aspects of Alternative Dispute Resolution for settlement of trade disputes as a duplication and *ipso facto* dare to suggest that the Alternative Dispute Resolution mechanism under Part 1 of the Trade Disputes Act, 2004 should be abrogated to give way to the sole operation of the Alternative Dispute Resolution Centre of the National Industrial Court. This is because of the above shortcomings of the Alternative Dispute Resolution mechanism under Part 1 of the Trade Disputes Act, especially as it relates to being highly susceptible to manipulations by the government through the Minister of Labour. The Alternative Dispute Resolution Centre of the National Industrial Court is more independent and by being court-based, it would accommodate the interest of the weaker party or the common man. It has been further observed that law contributes less in the settlement of trade disputes. It is one thing to make law and another to observe it to the letter. The effect of implementation of the law is also another issue. Collective bargaining has not fully been utilized in the resolution of trade disputes in Nigeria to bridge this gap created by less contribution of the law in this area.

6. Conclusion and Recommendations

As the topic of this article suggests, this research is simply a critical quick look into the use of collective bargaining and Alternative Dispute Resolution as methods of settlement of labour disputes in Nigeria. Based on the foregoing discussion, it is clear that apart from adjudication which is a more prominent means of settlement of labour disputes between employers and employees or their respective organizations and federations, there also exist such other mechanisms of preventing and/or resolving labour disputes through collective bargaining and Alternative Dispute Resolution mechanisms. As seen above, these mechanisms have the backing of the law but have been duplicated and left in the hands of both the Minister of Labour and the National Industrial Court. This scenario does not help matters but only leads to waste of time and money. In line with the preamble to the National Industrial Court Alternative Dispute Resolution Centre Instrument, 2015, the Alternative Dispute Resolution technique of the court is aimed at assisting parties in dispute to arrive at mutually acceptable agreement in less costly, speedy and efficient manner thereby preserving and engendering industrial peace and harmony, providing a veritable platform for economic development, and more beneficial interpersonal relationship between parties. Hence, the Researchers hereby call for the sole institutionalization of Alternative Dispute Resolution Centre of the National Industrial Court pursuant to section 254C (3) of the Constitution of the Federal Republic of Nigeria, 1999 as well as compliance with institutional voluntary collective bargaining processes of various institutions and organizations. These will in no small measure ensure cordial industrial relations and curtail trade disputes in Nigeria to pave way for a viable economy.

Based on the above finding, it is strongly recommended that Part 1 of the Trade Disputes Act should be abrogated to give way to the sole operation of the Alternative Dispute Resolution Centre of the National Industrial Court. In addition to the reasons already given above, this recommendation has become more pertinent because the Alternative Dispute Resolution mechanisms of Part I of the Trade Disputes Act, it is submitted, have already been reflected in the adjudication process of the NIC under sections 20, 30 - 35 of the NIC Act. Section 20 provides that in any proceeding in the court, the court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof, while sections 30 - 35 provide for the *modus operandi* of references of cases to officials, special referees and arbitrators.

The question may then be posed thus: Are these references under NICA not equivalent to and so a replacement of references under Part I of the Trade Disputes Act 2004? The answer is in the affirmative, and the outcome of the Alternative Dispute Resolution processes of the NIC are even more powerful and authoritative as well as binding, because unlike the reports of a mediator, conciliator, arbitration tribunal and board of inquiry, the reports under sections 30 - 35 of NICA may be adopted as the orders or judgment of the NIC or be considered as equivalent to the findings of the court. Thus, article 4(28)(29)(30) of the NIC Alternative Dispute Resolution Centre Instrument, 2015

is to the effect that upon receipt by the court of a report of settlement of the matter referred to the Alternative Dispute Resolution Centre for mediation or conciliation, the parties or their counsel may adopt the terms of settlement and the court shall enter same as judgment of the court and the said judgment shall be binding on all the parties involved in the matter.⁶² Flowing from the foregoing provision of the NIC Alternative Dispute Resolution Centre Instrument, 2015, Order 24, Rule 4(2) of the NIC Rules, 2017 equally provides that, '[a] report of any matter referred to the Centre by the President of the Court or a Judge of the Court which has been amicably resolved shall be submitted to the President of the Court or the Judge of the Court who made the referral, to be entered as the Judgment of the Court.'

Another important advantage of the Alternative Dispute Resolution mechanism of the National Industrial Court is that while the conciliator and arbitrator under Part 1 of the Trade Disputes Act are appointees of the Minister, the official, special referee or arbitrator under section 31 of NICA are people chosen upon agreement by the parties, thereby making it more participatory. It therefore, boils down to the effective utilization of the Alternative Dispute Resolution Centers of the National Industrial Court, pursuant to the NIC Alternative Dispute Resolution Centre Instrument and Rules, as well as sections 20, 30 - 35 of NICA.

⁶² See also, Order 4 Rule 25 of the Alternative Dispute Resolution Centre Rules, 2015 which provides that: 'Where a mutual and amicable settlement is reduced into writing, same shall be transmitted by the Director of the Centre to the President of the Court or the Judge of the Court who referred the matter for adoption and to be entered as the judgment of the Court.'