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Employment Disputes and Industrial Relations in Nigeria: The Role of Alternative Dispute Resolution

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Abstract. Disputes are stubborn fact of organizational life. Although disputes are familiar part of our experience in organizations, their value and centrality to organizational theory and functioning has waxed and waned as a result of changing winds of managerial ideology and theory. The landscape of employment disputes resolution has been transformed by the development of alternative dispute resolution. This paper is a review of comprehensive survey of the growing role of alternative dispute resolution in employment disputes and industrial relation. It examines the use of alternative dispute resolution as a means of settling individual workplace disputes; the methods of conciliation, mediation and arbitration; the trends in alternative dispute resolution, and concludes with an advocacy of alternative dispute resolution as a more positive, speedy and cost effective alternative to court proceedings.

Keywords: Disputes, Employment, Resolution, Alternatives, Mediation, Conciliation, Arbitration.

1. Introduction:

Disputes in the workplace between employees and employers, or indeed between employees and their colleagues, inevitably happen from time to time. They can arise out of a whole range of circumstances, including but not limited to simple misunderstandings or mistakes, poor communication and decision making, tension or personal difficulties, breaches of terms and conditions of employment/law, infringements of human rights and so on. Whatever the individual causes of disputes, the consequences are often detrimental to both the employers and the employees.

Disputes carry costs in both monetary and psychological terms. They take time to deal with; they disrupt lives and commercial activities; they are bad for all concerned. Disputes, nonetheless are a fact of life, they will always occur, not all can be prevented or avoided. An attempt to settle industrial dispute amicably may be twofold. Firstly, it must achieve reduction in the numbers of disputes, and secondly, it must mitigate the effects of those disputes which do occur once they have arisen.

Disputes for the purpose of this paper refers to trade dispute which has been defined in Section 48 of the Act as:
"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 of work of any person"

The current statutory dispute resolution procedures have been in place for decades without yielding the desired result of substantial reduction in industrial disputes/litigation. It is high time to have a fundamental re-think about how to deal with disputes using other approaches like the alternative dispute resolution mechanisms i. e a consultation exercise which has been very helpful in establishing key issues that need to be more fully explored through a public consultation.

Although a definitive view has not been expressed about the alternative disputes resolution procedures, some employers as well as employees organizations have suggested that the statutory procedures are inflexible and create unnecessary administrative burdens; hence the need for a systemic change to meet today's challenges in helping both the employers and the employees in avoiding and escalating disputes to a point which they can be amicably resolved.

A narrow definition of alternative dispute resolution (ADR), is the use of third parties engaging in conciliation, mediation and arbitration prior to court proceedings. The ADR can be judicial or non-judicial. It is judicial where it is linked to the judicial process i. e if it involves the appointment of a publicly funded specialist or a private expert on a application before a court, but before a court hearing is fixed, or before a claim has been made. It is non-judicial where it involves social partners in the workplace or sometimes in the region or the sector in providing an avenue for workers to resolve a dispute at the level of employers/employees through a collective bargaining.

The purpose of any employment dispute resolution systems should therefore aim at restoring good employment relations through an effective, efficient and fair resolution of employment disputes. The arrangement should be designed to provide a system of flexible governance and practice that enjoins the confidence of employers, employees, and trade unions alike. Thus the principles applying to any dispute resolution mechanism should focus on promoting good employment relationship; provision of strong employment rights; effective mechanism to prevent and resolve disputes; resolution of workplace disputes close to the point of origin; enhanced capability of all involved in the prevention and resolution of workplace disputes; statutory bodies that provide effective prevention and dispute resolution services to all those involved in workplace disputes; access to non-adversarial alternatives, and efficient and effective appeal system.

This paper asks these questions and seeks to input on where we go from here. What are the positives and negatives about the present statutory procedures for settling industrial disputes? What can be done to make the procedures better (ADR)? What needs to be changed/ what should be retained to reflect local needs and priorities? And so on and so forth.

2. Statutory Procedures for Settling Employment Disputes

Inevitably, there are times when attempt to resolve disputes formally will fail or simply not be appropriate in the circumstances. In these situations, formal procedures set in place by statutes, employer and the employee regulations should normally be used either to settle grievances or begin a disciplinary action.

The statutory procedures vary from one legislation to the other and from one employer to another. All employers are required to have in place procedures which generally as a minimum allow the matter to be put in writing and considered; a meeting to be held about the issue, and an appeal to be held where the matter has not been resolved.

In addition, there is also the consultation process under statutory dispute resolution. The consultation proposes three options in relation to the statutory dispute resolution procedures: these are retention, modification and repeal. This analysis involves retaining the grievance procedure, retaining the disciplinary and

dismissal procedure and taking steps to simplify the procedures.

Section 3 (1) of the Trade Disputes Act, provides for the procedure for settling disputes. it provides that if there exists an agreed means of settlement of disputes, the parties to the dispute shall first attempt to settle it by that means. If no dispute settlement procedure exists the parties are obliged by Section 3(2) to meet under the presidency of a mediator mutually agreed upon with a view to the amicable settlement of the dispute.

Section 4 of the Act, empowers the Minister of Labour and Productivity to apprehend a trade dispute and appoint a conciliator or refer the dispute to the Industrial Arbitration Panel. If the mediator appointed by the employer and the employees is unable to settle the dispute within fourteen days, the dispute shall be reported to the Minister, who shall refer the matter either to the Industrial Arbitration Panel (IAP) or the National Industrial Court (NIC). If 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 either of the parties within three days of the end of the seven days. The report shall be in writing and shall record the points on which the parties disagree and describes the steps already taken by the parties to reach a settlement.

The Minister may appoint a fit person to act as conciliator for the purpose of effecting settlement, who shall inquire into the causes and circumstances of the dispute and by negotiation with the parties endeavour to bring about a settlement. If a settlement of this dispute is reached within seven days of his appointment, the person appointed as conciliator shall report the fact to the Minister and shall forward to him memorandum of the terms of the settlement signed by the parties. If however, a settlement of the dispute is not reached within seven days, the conciliator shall forthwith report the fact to the Minister too.

Within fourteen days of the receipt by him of the report, the Minister shall refer the dispute for settlement to the Industrial Arbitration Panel, who shall consist of a chairman, a vice-chairman, and not less than ten other members appointed by the Minister including persons representing the interest of the employer and the employees respectively. The award of an Arbitral Tribunal shall be made and issued by the Arbitrator. The award must be made within twenty one days of its constitution or such longer period as the Minister may allow. On making its award shall forthwith send a copy to the Minister. The Minister shall cause a copy of the award to be given to the parties or their representatives.in a notice setting out the awards.

If either of the parties objects to the notice of the award, the party objecting shall within seven days give a notice of objection to the Minister. The Minister on receipt of the notice of objection, if he thinks desirable refers the award back to the Tribunal for reconsideration. Where no notice of objection of the award is given to the Minister within the time and in the manner stipulated, the Minister shall published in the government gazette a notice confirming the award, and the award shall be binding on the parties.

If notice of objection to the award of an arbitral tribunal is given to the Minister, in the time and manner stipulate, the Minister shall forthwith refer the dispute to the National Industrial Court. The award of the National Industrial Court shall be binding on the employers and the workers to whom it relates; except where there is an appeal on question of fundamental human rights contained in chapter four of the Constitution. Any person who fails to comply with an award of a Tribunal as confirmed by the Minister shall be guilty of an offences and liable on conviction in the case of an individual to a fine of ₦ 200; or in the case of a corporate body to a fine of ₦2000.

The Act in its Section 18, however, prohibits lock outs and strikes before issue of award of National Industrial Court. It provides that, an employer shall not declare or take part in a lock out and a worker shall not take part in a strike in connection with any trade dispute where, a conciliator has been appointed; the dispute has

been referred for settlement to the Industrial Arbitration Panel; an award by an arbitration tribunal has become binding; the dispute has been referred to the National Industrial Court; the National Industrial Court has issued an award.

Any person who contravenes this section shall be guilty of an offence and be liable on conviction, in the case of an individual, to a fine of ₦100 or to imprisonment for a term of six months; or in the case of a body corporate, to a fine of ₦1.000. in essence, the Act, introduces a regime of compulsory settlement of trade disputes. Thus in the case of *Eche Vs. Sate Education Commission*, in this case, public primary and post primary school teachers in Anambra State proceeded on strike after efforts at mediation failed. The issue turned on whether the strike was lawful. Araka CJ (as he then was) drew the attention to the fact Section 17(1) (i. e Section 18 of the 2004 Act) uses 'or' rather than 'and' in essence where employees have taken any of the steps in Section 3 or 4 they may proceed on strike to press for their claims. He said:
"it is … not correct that if a strike is not to be considered as illegal, all the provisions of the various subsection of 17 Trade Dispute Act must be complied with by the worker. It is sufficient, in my view, if the provisions of only one of the subsections have been fully complied with. That is the effect of the word "or" that has been used after each subsection. If the legislature had intended to make it obligatory for the worker to comply with all the provisions of section 17, it would not have used the word "or" after each subsection. It would rather have used the word "and" and not "or".

Arbitration, conciliation, and adjudication are necessary because interested men charged with emotions cannot judge the merits of their own case. In most cases, Trade Unions are for most of the part too weak to achieve their demands through the tests of economic strength and, therefore must rely on arbitration and adjudication.

The prevailing view remains that any form of strike is prohibited under the Trade Dispute Act. This has however, forced employees to channel their pressure into other forms of more destructive organised and unorganised conflict. Section 40 and 41 of the Act also provides that if any worker employed in any essential service ceases, whether alone or in combination with others, to perform the work which he is employed to perform without giving his employer at least fifteen days' notice of his intention to do so, he shall be guilty of an offence and liable on conviction to a fine of ₦100 or to imprisonment of six months. The provision also extends to persons who have reasonable cause to believe that the cessation of their service can endanger human life; expose property to destruction or injury or cause bodily injury to any person.

By interpretation, it can be said that Section 41 and 42 of the Act, without prejudice to Section 18 of the same Act, exhibits a ground to believe that it does not relate to strike per se, but abandonment of duties and resignation of appointment with payment of salary in lieu of notice. Even where salary in lieu of notice may be paid, the employee must give at least fifteen days' notice before he vacates office to enable the employer employ a substitute for the purposes of continuity of its activity.
Furthermore, it has been held that Section 18 of the Act on lock outs and strikes before issue of an award, elicited an inundation of comments whether Nigerian employees retain a right to proceed on strike? Almost all the leading Labour Law Writers conceded that workers in Nigeria have lost the right to strike. Nwabueze and Akpan, on the other hand suggested that Section 18 of the Act, is void for being inconsistent with Section 34 (1)(c) of the Constitution which prohibits forced as it means holding unwilling workers to labour.

Employees who find themselves saddled with an uncooperative employer can resign. They may only plead that they are forced to work where their right to resignation is inhibited. The tone of Section 34 (1)(c) appeared to be active; it does not extend to a passive thing that negatively impacts on a person to continue his service. Forced labour is emotive, essentially it is limited to compulsion to commence service, not

restrictions upon the method of terminating it. For example, where an employee is by rules and regulation must give a particular length of notice before resignation, and he decides to give a salary in lieu of notice, should not be treated as a forced labour.

Ukuegbe, concludes that the compulsory process of Section 18 of the Trade Disputes Act, violates Nigeria's obligation under the International Labour Organization Convention which enjoins state parties to promote voluntary negotiation between employer and employers' organization and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreement. More so the decision of the Supreme Court of Nigeria in the case of *Abacha Vs. Gani Fawehinmi* amplified the status of the Nigerian worker to strike when read along with provisions of Article 10 of the African Charter on Human and Peoples' Rights, which provides that every individual shall have a right to free association provided that he abides by the law; and the right to work under equitable and satisfactory conditions.

3. Impact of the Statutory Dispute Resolution Procedure

Generally speaking, the informal methods are more suitable for dealing with some situations than others. For instance, where an employer has noticed a minor problem with the conduct of an employee, it would be inappropriate to allow this to escalate into the formal procedures where a quiet word should suffice. It should be noted however that for more serious offences/allegation, it would be better to adhere to the organization's formal processes to ensure that the rights and dignities of all involved are fully and appropriately protected.

Also, decision making processes around disputes are not always clear cut, and an informal approach that may be perfectly fit for one dispute may not be at all helpful in another, ostensibly very similar situation. The statutory procedures have had the effect of allowing formal processes to overshadow or distort informal approaches to the resolution of industrial disputes. The need to follow statutory procedures a time is the eventuality of a legal battle. Thus statutory procedures have had the effect of formalising disputes that would better have been dealt with informally. This is further necessitated by the strong link between the internal procedures and employment court/tribunal proceedings. As a result parties tend to follow all the statutory procedures, lest they are penalised/jeopardized later at the trial before any employment court/tribunal. In essence, the statutory procedures create expectation of the case going to the court/tribunal rather than informal resolution.

Furthermore, the statutory procedures often times create an elevation of process over substance encouraging some parties to go through motions rather than to seek genuine resolution. Statutory procedures are complex and over legalistic, and a lack of understanding of the processes leads to delays and mounting cost of litigation especially money in obtaining legal advice and services. The emphasis on statutory procedures likewise causes parties to begin thinking in legal terms very early on in the process which adversely affects the ability or willingness of the parties to address problem at workplace amicably.

It is should be noted that not all strike are designed to improve conditions of work. Some strikes are in sympathy with others. For example are the solidarity strikes by employees union of related trade unions. Equally right to strike subsist in Nigeria by virtue of common law. This view was premised on the old English case of *Springhead Spinning Co, Ltd, Vs. Riley* that at common law an employee has the right to proceed on strike after giving due notice.

The emerging question is; is an employer obligated to keep an employee's job open for as long as a strike lasts; is he obliged to pay his salary during strike? No such common law right to retain employment ensures in favour of an employee who proceeds on strike. In the case of *Simmons Vs. Hoover* Phillips J (as he then was) opined that:

"that in most cases men are not dismissed when on strike; that they expect not to be dismissed;

that the employers do not expect to dismiss them, and that both sides hope and expect one day to return to work. Sometimes, however, dismissal does take place, and in our judgment they are lawful"

Section 43 of the Trade Unions Act, legalises peaceful picketing. Employees do not picket while working conscientiously; they do only in furtherance of a strike. In effect, the Act recognises that employees can proceed on strike, but the same Act in its Section 4 that every trade union rules book or constitution must contain a provision that no member shall take part in a strike unless a majority of the members have in a secret ballot voted in favour of the strike.

Regardless of the views that are espoused, it is an incontrovertible fact that even where strikes are prohibited or criminalised, workers continue to go on strike. Workers will go on strike, whatever the law may have to say about it. What is needed is a law that would protect employees during strike. As much as possible strikes should be limited to its goal as a means of pervading management for improved conditions of service; it should not be allowed to serve as a tool for political coercion.

4. Current System of Dispute Resolution

The current features of dispute resolution are a visualization of the various stages of resolution mechanisms. This ranges from maintaining good employment relationship between all employers and employees. It also includes any formal and informal attempts to resolve disputes at work; alternative dispute resolution; legal remedy where other options have failed; and appeal process in cases where decision is disputed.

Maintaining good employment relations involves a sound management practice and good relations between employers and employees, managers and trade union officials in preventing disputes and mitigating their effects if and when they do occur. Of course, good practices will not eliminate disputes, there will always be situations in which grievances or disciplinary matters arise. However, where good employment relationship prevail and sound employment practices are followed, the conditions which gives rise to dispute are less likely to be present, and when difficulties do arise, systems, attitudes and the general culture of the workplace will be better attuned to taking proactive, positive steps to address the issues from the outset.

The health culture of an organization's employment relation, has a significant bearing on disputes frequency and their potential to escalate. An organizational culture built on clearly defined management, a willingness on all sides to be flexible and effective system for addressing problems constructively when they arise can all contribute to good employment to good employment relations and thereby, the prevention of disputes and the resolution of disputes when they arises.

It is also worthy of emphasis that a problem in the workplace does not necessarily equate to a dispute. As part of normal good management practice, a manager may note that an employee is not meeting targets, may then have quiet word with the employee, identify any issue and agree on an approach to deal with it. Likewise, an employee may feel aggrieved about a particular event, talk informally to a manager about it and have the difficulty addressed quickly to his or her satisfaction. Acceptable outcomes can be achieved without significant differences of opinion in many cases.

Given that events are conditioned by the circumstances in which they arise, it is worthy asking whether there are ways in which government can better support the development of environment more favourable to dispute prevention and the informal resolution of disputes. of course the government could assist through the passage of legislation which will encourage minimum standard of good practice by having in place fundamental employment rights and responsibilities, but the encouragement of best practice cannot be achieved alone through legislation.

Most effective relationships between employers and employees are very often founded not upon legislation, but on spirit of accommodation

derived from positive relationships, attitudes and expectations that are established over time by management and employee representatives.

Formal and informal attempts signify a situation where dispute do arise, in most cases it is good practice to attempt to resolve them informally. It may be counter-productive to formalize a complaint where the issue is one that could be worked out in a low key manner and by providing reassurance, clarification, making minor changes to workloads, correcting errors that have been made, and so on. Workplace disputes can of course, arise from a huge range of causes, and it is unrealistic to imagine that a single process can be applied across the board to resolve them. Nonetheless, many issues can be addressed at or near their point of origin through informal engagement between those involved. In the early stages, the problem will often not have had time to aggravate and get out of hand, but a clearing of the air or an adjustment to the way in which an individual or a team works may be sufficient to deal with the problem.

However, where informal approaches fail or inappropriate, formal processes can be used to try to address the problem. Many employers operate a detailed formal system which include verbal and written communication with varying levels of formality, but even employers who do not operate advance procedures are required by law to have in place at least three basic steps form use in most grievances or disciplinary situations; i. e initial communication of the problem in writing; a meeting to discuss the issue; and if necessary, an appeal meeting. Formal procedures remain an important part of the process for resolving disputes and any system that is set in place will have to ensure that they are used in a timely and appropriate way.

5. Alternative Dispute Resolution

It is clear that, from ones perspective, the word *alternative* refers to looking outside the court room setting to resolve some disputes. In other words, parties involved in civil disputes should be encouraged to explore whether their dispute can be resolved by agreement either directly or with the help of a third party mediator/conciliator, rather than by proceeding to a formal winner vs. loser decision by a court.

Alternative dispute resolution on the other hand is the name given to a range of processes that aim to bring the disputing parties together in a neutral environment to develop a solution to the problem at hand. Some employers operate a ADR as an integral part of their systems for dealing with disputes, bringing an independent third party who will hear both sides of the story and make recommendations. An independent umpire attempts to broker settlement between the parties using processes known as mediation, conciliation and arbitration (to be discussed in details later).

In other words, it is a broad spectrum of structured processes, including mediation and conciliation, which does not include litigation though it may be linked to or integrated with litigation, and which involves the assistance of a neutral third party, and which empowers parties to resolve their own disputes.

In brief, legal remedy is obtainable where it has proven impossible to resolve a dispute in another way. This involve a recourse to the full rigour of the law through a judicial process, for instance the National Industrial Court or Employment Tribunal, who provide a legal means for addressing workplace disputes under employment laws. The National Industrial Court consists of a legally qualified judge versed in employment relations. The Court has extensive powers to seek evidence and examine witnesses and will reach a legal determination at the end of the proceedings. Claimants and Respondents can represent themselves or call upon the services of a legal practitioner.

An appeal, generally speaking, it is possible to appeal against a tribunal ruling on the grounds that the court/ tribunal misapplied the law rather on factual grounds. An appeal is to the Court of Appeal.

Alternative dispute resolution involves both parties agreeing to their case being heard and determined by a neutral third party. Hearings are quick and confidential, the remedies available to the parties are the same as at an industrial court/tribunal, and the arbitrator's decision is binding. The process is designed to help both

parties better understand their position and the prospects of their case from the outset.

Current ADR processes are carried out very much on a voluntary basis; it is a process that must be agreed to by both parties in the full knowledge that it is so. Note that parties are not required to use ADR and there are no penalties if they do not, other than the cost expended with a missed opportunity to resolve the disputes.

There is an argument that more needs to be done to encourage parties seriously to engage with ADR processes. Indeed there are those who go as far as to suggest that ADR should be compulsory, that parties should be required to attempt it before any tribunal claim can proceed. This approach does have its advocates, but they are in a minority. As critics have pointed out, it carries the danger of turning ADR from a useful process into a procedural obstacle. ADR is meant to resolve problems, not create them.

Parties who did not object to ADR would attend a meeting chaired by a person with significant employment relations and ADR experienced. The independent individual would attempt to broker a settlement between the parties by drawing upon a range of ADR techniques including conciliation, direct mediation, and early neutral evaluation. A decision on which technique to use, and when, would be determined on a case by case basis. Even where prospect of mutual agreement appeared slim, the meeting could still be useful in providing opportunity for an advisory or early case management discussion with the parties, possibly involving preparation of a schedule of loss where appropriate to quantify the value of the case and establish in the parties minds whether it was worth pursuing before a court/tribunal.

If a settlement was not reached through ADR process the case could be referred for arbitration. Should either party be dissatisfied with the decision, there would remain an absolute right to take the matter to a court/tribunal. In the alternative, the parties could adopt a '*fast track'* means of determination of simple cases. The fast track procedure is usually adopted where the issue at stake is simple monetary claim and the facts are not in dispute, relatively straight forward, i. e unlawful deduction from wages, breach of contract, redundancy pay, holiday pay and the national minimum wage. The procedure requires both parties to give their consent to the determination of the dispute by an employment judge sitting alone and determining the case without hearing, on the basis of the paper before him.

The most common practice for the aggrieved individual worker to access ADR is to apply to the appropriate ADR mechanism in place in his jurisdiction. Where the person is a trade union member, the union will often assist in the application process. Normally, trade unions would not provide this service to non-members, who are required to join to avail of trade union support. The trade unions handle matters in bilateral negotiations or in the works council. In some case, especially those involving mediation, the employer may institute proceedings, but only with the agreement of the employees.

In some jurisdictions, the employee is required to have tried to resolve the matter by suing the internal company grievance and disputes procedures and conciliation first before applying to the court. In others there are no restrictions. Also, it may be highly necessary for internal procedures that meet certain prescribed standards to be used first to encourage early resolution before matter formalised and often rigid. It is often harder to resolve an individual dispute once an application had been made to a court, and it is frequently the case that, by this stage. Individual has resigned or been dismissed from employment in the company that is party to the proceedings. It should be noted that a dispute cannot be considered by the court until the standard rules for handling industrial disputes have been exhausted and failed to resolve the matter.

On the other hand, it is often a fundamental right for an individual to be able to make a claim to a court concerning breach of statute law or what is sometimes called a '*conflict of right'*. In most cases, the aggrieved worker will be accompanied or represented in ADR processes. However this is not a universal practice. In some workplace, the worker may be represented by the trade union. The conciliation will normally have a written submission from the worker, although in some instances the employer may invite the employee to attend. The aim is to get those attending to speak freely and explore their

feelings and emotions in a non-confrontational manner.

Where the services of legal representation are too expensive, the employee may get legal aid. For instance in dismissal cases in organization over criminal allegations like sexual harassment or bullying, the employee has absolute right to legal representation.

At the end of the ADR process, whether prior to or during a hearing, a question will arise over whether the applicant must withdraw the case from court if the ADR is successful? For a claim to be successfully resolved through ADR, and for the employee to continue to take it to court, raises the problem of double jeopardy. For instance, employers may be inhibited from settling the matter at ADR for fear of it being re-opened and thus incurring further expenses. While the employee may believe it to be possible to get a better outcome, especially compensation from the court, the attraction of ADR is that it is generally quicker and cheaper for the parties than a court hearing.

The general practice is that to apply that once an agreement is reached, the case should be withdrawn. Once the agreement is registered, it is likely to be legally enforceable in the event of failure to apply it.

Conciliation: In this type of ADR, the third party acts only as a facilitator by maintaining the two-ways flow of information between the conflicting parties, and encouraging reconciliation between their antagonistic positions. The third party listens to each side, usually in person or by phone, and seeks to find an acceptable solution. Such solutions can include compensation, or alternative measures to be taken at the work place. The conciliator does not make a judgement or suggest a solution, but works with the applicant and the employer to find an acceptable outcome, which is then recorded. In some countries, the law requires before the matter can be heard in a labour court or tribunal, the applicant must use the services of a Conciliator. If an agreement is reached, it would be normal for the case to be withdrawn from the tribunal and registered as being settled.

The Nigeria Arbitration and Conciliation Act, recognises the right of the parties to any agreement which may seek amicable settlement of any dispute in relation to the agreement conciliation. A party who wishes to initiate conciliation shall, send a written request to the other party, containing a brief statement of the subject of the dispute.

Where the request to conciliate has been accepted, the parties shall refer the dispute to a conciliation body, consisting of one or three conciliators to be appointed jointly by the parties. The conciliation body shall, acquaint itself with the details of the case and procure information necessary for the settling the dispute. The parties may, appear in person before the conciliation body and may have legal representation.

After the conciliation body has examined the case and heard the parties, it shall submit its terms of settlement to the parties. If the parties agree to the terms of settlement, the conciliation body shall draw up and sign a record of settlement. Where the parties do not agree to the terms of settlement submitted, they may submit the dispute to arbitration in accordance with any agreement between them; or take any action in court as they may deem fit.

Mediation: in this form of ADR, an impartial third party '*the Mediator*' helps two or more people in dispute to attempt to reach an agreement. There are two types of mediation. One type is similar to conciliation, whereby the mediator meets the parties, or sometimes reviews their written submissions, with a view to finding an acceptable solution, and then issues a non-binding decision or recommendation. This is often done in writing. This process is similar to the well-established principles of mediation in collective labour disputes. The second type of mediation is similar is referred to as a relational mediation. This is based on the principles of collaborative problem solving, with the focus on the future and rebuilding relationships, rather than on apportioning blame. The mediator guides the parties towards finding their own solution by getting them to explore different and new ways of thinking and acting. This approach has its origins in family mediation. Relational mediation is usually conducted without representatives or lawyers being present and no written decision is issued.

The growth of mediation has extended to other areas such as family and commercial issues. This has also led to the development of specialist centres in recent years. Some authorities like the government or the Ministry Justice hold lists of approved mediators in order to ensure minimum standards are complied with to ensure quality, experience and sometime legal knowledge of those on the list is appropriate.

It is generally considered that conciliation and mediation must be taken in private to be successful. The skill of a conciliator and a mediator involves getting the parties to consider alternatives and brokering a settlement. It usually considered that this can only be effectively done in confidence; else the parties involved will be inhibited for fear of public disclosure in court.

Arbitration: in this case, the third party hears the case presented by each person and makes a binding ruling on the outcome. The Arbitration and Conciliation Act, provides every arbitration agreement shall be in writing or other form of communication contained in a document signed by the parties, in an exchange of points of claim and of defence. An arbitration agreement shall be irrevocable except by agreement of the parties or by leave of the court.

The Act provides in it Section 6 that the parties to an arbitration agreement may determine the number of arbitrators to be appointed, not more than three. The Act further provide for the procedure to be followed during an arbitral proceeding. The Arbitral Tribunal shall have jurisdiction in respect of questions pertaining to the validity of an arbitral agreement. The parties shall be accorded equal treatment and opportunity to present his case.

The Arbitral Tribunal shall decide whether the arbitral proceedings shall be conducted by holding oral hearing, or on the basis of documents or materials. The parties shall be given sufficient notice of hearing. The Arbitral Tribunal may appoint one or more experts to report to it on a specific issue to be determined by the Arbitral Tribunal.

The Arbitral Tribunal is expected at the end of the day to make an award by a majority of all its members, but if during the arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the arbitral proceedings, and shall if requested by the parties, record the settlement in the form of an arbitral award on the agreed terms. However, Section 29 of the Act allow a party who is aggrieved by an arbitral award, to within a period of three months from the date of the award, by way of an application for setting aside, request the court to set aside the award.

An arbitral award shall be recognized as binding upon application in writing to the court, be enforced by the court; and may by leave of the court or a Judge, be enforced in the same manner as a judgement or order to the same effect.

Labour Inspector or Ombudsman: some jurisdictions use specialist experts known as labour inspectors and/or ombudsman to settle labour disputes. For instance, countries like Hungary, Netherlands, Norway, and Romania. Equally, some private companies sometimes appoint ombudsman to deal with individual disputes inside their workplaces. In most cases, the ombudsman is appointed by the state to deal with particular types of disputes based on discrimination on race, tribe or religion. In practice, many labour inspectors provide the usual range of conciliation and mediation services by preventing and resolving individual employment related conflicts. If an issue goes to court, it can take over a year to be heard, but Labour Inspectors are meant to provide ADR through tri-partite conciliation and mediation. Relevance is therefore placed on Labour Inspectors. The Inspectors are authorized to intervene in a conciliatory manner in order to resolve any individual or collective labour disputes that may arise and to enforce administrative sanctions. In practice, once a complaint is made, the Labour Inspector will convene a three party meeting between the Inspector, employer and employee. Where the local Inspectors are unable to resolve the matter, experts from the central staff of each concerned trade union and the employer organization will get involve, taking over the negotiation or assist in the conflict resolution. Only when the matter remains unresolved will it be taken to court.

6. Benefits and Limitations of Alternative Dispute Resolution

As highlighted earlier on, ADR covers both judicial and non-judicial procedures for handling industrial disputes. This broad approach allows government as well as social partners to focus on areas where the resolution of individual worker's disputes can be advanced.

ADR ensures the avoidance of disputes at work place through encouraging the most appropriate procedures for handling grievances and discipline and, by implication improving management practices and behaviours.

Also, it provides a conducive atmosphere where management and trade unions, or other representatives, meet to seek to resolve individual disputes. A conciliator or mediator may be involved at this stage depending on preference.

Furthermore ADR is provided by experts as part of pre-court application or hearing. Although ADR can take place at any stage, the clear intention is to try to resolve the matter as soon as possible. In general, the earlier the matter is dealt with, the easier it is to resolve the issues and the cheaper the process. Some types of individual worker disputes are more amenable to resolution through ADR than others. ADR would appear to be most successful where the matter considered is ambiguous, multi- faceted and complex, with competing sources of evidence. Questions of unfair dismissal, discrimination in its various guises and relational matters such as maltreatment fall into this category. In contrast, factual disputes concerning alleged failure by the employer for instance, regarding the payment of wages, granting of holidays or provision of equipment; are less amenable to resolution through ADR, but by no means irresolvable.

So, the undoubted advantage of mediation and conciliation is the ability to get speedy access to a process that may produce a satisfactory outcome for the parties in a short space of time. Any long delay in the court process involve clear barrier to justice: justice delayed is indeed justice denied. In addition, parties' autonomy and respect for confidentiality is guaranteed.

ADR offer a solution to the triple problems of access to justice faced by citizens i. e: volume of disputes brought before the courts; the increasingly lengthy proceedings; and the cost incurred by such proceedings are increasing too.

In addition to benefits that are not available through the litigation process, is the flexibility offered by ADR, which is an important aspect of civil justice system in its widest sense. For example, ADR processes may lead to a meeting between parties where an apology is offered. They can also facilitate an aggrieved party to participate in the creation of new arrangements or procedures to prevent a recurrence of the incident in dispute.

Mediation and conciliation constitute an integrated part to dispute resolution in the sense that it complements the role of the courts in resolving dispute by allowing the court based dispute resolution process from continuing to play a positive role in resolving disputes by agreement. This can be through the long established practice of intervening at a critical moment in litigation to suggest resolution by agreement.

The benefits of ADR were aptly summed up Winkler C.J:
"If litigants of modest means cannot afford to seek their remedies in the traditional court system, they will be forced to find other means to obtain relief. Some may simply give up out of frustration. Should this come to pass, the civil justice system as we know it will become irrelevant for the majority of the population. Our courts and the legal profession must adapt to the changing needs of the society that we serve"

Conversely, ADR is not a panacea for all disputes; it has its limitations and it not always appropriate. Indeed, opponents of mediation argued that it is a *soft justice;* nothing more than an additional cost layer cost of costs in the litigation stream and a process fundamentally at odds with the role of the court as decision

maker. Furthermore, the potential benefits of mediation and conciliation, including the cost and time effectiveness of the processes, must be balanced against the reality that mediation and conciliation can also be seen as an additional layer on civil litigation especially where it does not lead to a settlement and that every step along the way drives up the costs of litigation.

Apart from these above, there are number of cases which do not lend themselves well to ADR. For instance, for those disputes involving allegations of illegality or impropriety; cases based on allegation of fraudulent conduct or illegal behaviour, are not conducive to mediation because of their criminality. Moreover, they often placed the mediator in an impossible ethical position.

ADR may also not be appropriate in some cases where power imbalances may exist which put the parties on an unequal footing, allowing one party to place undue pressure on the other. The result may be that one party may impose their solution on the other side. Also, there may be uncertainties in the law which need to be clarified. More so, ADR does not admit of the principle of judicial precedent which may be relied upon to establish future cases. Any case in which a party is motivated to engage in an ADR process, but only for improper tactical reasons, is not one appropriate for resolution through ADR.

Conclusively, the view expressed that not all cases are suitable for resolution by ADR also goes for the fact that court based adversarial process is equally not suitable for all cases. The decision to use ADR should be made on the basis of a range of factors including how best to serve the specific interests of the parties and how best to ensure that justice is accessible, efficient and effective for the parties involved.

7. Conclusion

In no country is one method relied on to the exclusion of others. A clear finding of this is the complexity of provision and the use of multiple methods of ADR at the level of workplace, sector or region. A time the distinction between conciliation and tradition forms of mediation is often difficult to draw. This complexity often makes it hard to give a round picture of ADR. The type of ADR arrangements in use is strongly influenced by the wider arrangements for structuring employment relationship within a particular jurisdiction.

Elsewhere, declining levels of trade union membership and the emergence of non-union sector with no tradition of collective bargaining have led to the emergence of new approaches to ADR, i. e the non-judicial forms of ADR, thus linking the emerging patterns to the social, economic and legal historical context of each country. This involves a kind of social partnership engaging in joint efforts to resolve industrial disputes through negotiation and use of grievance and disciplinary procedures.

A meaningful conclusion of trade dispute resolution must include reference to the 1968 Royal Commission on Trade Unions and Employers' Associations in Europe, which produced the *Donovan Report* highlighting the need to make available to employers and employees a procedure which is easily accessible, informal, speedy and inexpensive, and which gives the best possible opportunities of arriving at an amicable settlement of their differences. The general perception is that employers sometimes agree to resolution actions, but subsequently fail to follow them through. Bad experiences have led some employers to assert that current systems discourage entrepreneurship and job creation.
Equally too, it must be appreciated that over the years, employment relations have shifted away from a broadly collectivist and voluntarist model towards a greater individualization of the employment relationship; with an emphasis on legal entitlements and responsibilities. With the decline of collectivism, human resources management has developed and grown as a profession likewise the scope and complexity of employment law.

The reasons for these changes vary and are complex. It may have been occasioned by changing workforce demographics, refocusing of the economic activity away from the old industrial manufacturing base towards a

knowledge based and service economies. This is further strengthened by the increase of more women in the workforce, more ethnic minorities and migrant workers taking up more managerial and skilled positions in the labour market.

Another relevant issue is the enforcement of an award made during ADR. For instance, where a party is required to pay a sum and the party does not do so, the party in whose favour an award has been made may be left with no other option than to pursue the enforcement through the court system. This carries with it associated cost which are high when weighted up against the payments owed to the applicant, with the result that some do not decide to pursue the matter.

Despite its critical Importance, the impact of the changing nature of workplace relations in shaping conflict and dispute resolution has been given little consideration in the contemporary policy discourse. Instead, attention has been focused on reducing what the current government sees as the burden placed on business by employment regulation. The current employment tribunal system encourages weak speculative claims that employers are forced to settle to minimise expenditure on legal advice, representation and management time.

Also, in order to avoid legal action, employers are reluctant to adopt common-sense, informal approaches to resolving disputes within the workplace. The current legislation has done little to radically reform the way in which employment claims are heard and decided. Instead, it has sought to reduce the legal exposure faced by employers when ending the employment relationship through measures including new provisions for settlement agreements; and a cap on compensatory awards.
An increasing proportion of organization are moving beyond the occasional and pragmatic use of ADR mechanisms and adopting more strategic and pro-active approaches to managing conflict. In addition, while mediation and arbitration remained the most widely used, new forms have also emerged, such as early case assessment and peer review (a process by which disputes are adjudicated by a panel of co-workers. Perhaps the biggest incentive for employers to develop new approaches is the extremely high cost of litigation through the civil court system. This suggests a robust relationship between the risks associated with employment litigation and innovation in conflict resolution. Akin to this, is the use of conflict management strategies to resolve disputes at the earliest possible stage and to provide a greater role for front-line managers.

8. Recommendations

It is evident from the foregoing discussions that there are opportunities for a greater number of disputes to be resolved internally through the use of ADR processes. It is recommended that ADR should be introduced into an organization's internal grievance and disciplinary procedures and conflict management system. If done, it would bring about a number of benefits ranging from greater transparency within the workplace, procedural flexibility, efficiency and confidentiality which would in turn provides privacy for the parties and the protection for the organization's reputation.

Further, clauses incorporating the use of ADR (mediation and conciliation) should be included in employment documentation and employment contracts. This is argued would reinforce the commitment to ADR as mandatory attendance prior to the commencement of a legal claim.
In addition to, it is recommended that ADR (mediation and conciliation) with its unique ability should be entrenched in future Trade Union rules and regulations as it is capable of taking both the employer and the employees on a journey of discovery, unpicking misunderstandings, gaining insight into how behaviour is interpreted and providing a safe process to slowly rebuild trust and communication in the organization.

It is also recommended that the ADR should not be interpreted as permitting any mediation or conciliation process to negate or avoid any rights or obligations in respect of which the parties are not free to decide for themselves under the relevant applicable laws. For instance, mandatory constitutional provision (fundamental rights); or the principles or provisions of

international conventions under the International Labour Organization (ILO).

The Writer also recommends that mediation and conciliation communications including statements and proposals that are either made orally through conduct, or in writing or other recorded activity should be subject to a form of privilege, and not made a subject of report or comment by the Minister of Labour as the case may be, or subject of litigation in another legal claim or proceedings in case negotiation fails, as contained in the Trade Disputes Act; for instance evidence of apology or admission. This is argued would create a more peaceful and harmonious atmosphere for a fruitful negotiation.

As part of the attributes of ADR, in order to make it lesser expensive, it is recommended that the financial cost of mediation and conciliation should be borne by the parties, which should be reasonable and proportionate to the importance of the issues at stake and to the amount of work carried out by the mediator and conciliator. Consideration should also be given to extending the cost of prosecuting an ADR to Legal Aid provisions in case of indigent employee/employees by providing legal representation where necessary and applicable.

Also worthy of recommendation is the dear need to make more pragmatic the issue of enforcement of awards made by mediator, conciliator or an arbitral tribunal just as we have in the respective rules of court. More so the mediator, conciliator, or an arbitral tribunal should be vested with the powers to charge and try for contempt/perjury comparable to the courts system. These recommendations are necessary in order to ensure that disputes dealt with by these bodies can be of considerable significance. And also it is important to protect the authority of the mediator, conciliator or the tribunal. After all, the reputations, of individual employers/employees, future attitudes, actions, and performance can all rest on the tribunal's ability to make a decision with as sound an evidential basis as possible.

The Writer also advocate for the inclusion of ADR mechanisms in the Rules of Practice and Procedure of our courts of law as part of the proactive role of the courts in allowing parties the opportunity of an out of court settlement. In this regard, the Writer wishes to commend the bold step of the present Chief Judge of Borno-State, which provides pre-trial conferences and scheduling. This is salutary. Order 1 Rule 2 (c) provides that the court shall promote amicable settlement of a case or the adoption of alternative dispute resolution.

The Order provides further that pre-trial conference or series of pre- trial conferences shall be completed within three months of its commencement, and the parties and the legal practitioner shall cooperate with the judge in working within the time frame. After a pre-trial conference or series of it, the judge shall issue a report. However, Order 6 of the Act provides that any judgement given may be set aside upon an application made within seven days of the judgement or such other period as the pre-trial Judge may allow not exceeding the pre-trial conference period.

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