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AN OVERVIEW OF THE INSTITUTIONAL MECHANISMS FOR THE SETTLEMENT OF LABOUR DISPUTE IN NIGERIA

Sunday Akinlolu Fagbemi[*]

This paper is an overview of the institutional mechanisms put in place in Nigeria for the settlement of labour dispute. The paper examines the legal frameworks for these institutional mechanisms. Reference is also made to other jurisdictions for a comparative analysis of the subject matter. The paper concludes with closing remarks.

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INTRODUCTION

In any human relationships, dispute is inevitable. Once dispute is inevitable in human relationships, it is not alien to labour relations. As a matter of fact, dispute in labour relations is more formal than in any other types of relationships. Within the context of labour relations, a pride of place is given to "trade dispute". Section 48 (1) of the Trade Disputes Act[1] defines "trade dispute" as:

> Any dispute between employer and worker 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.

Premised on the above definition, the elements constituting trade dispute include: dispute between employer and workers or between workers and workers. Of course, the dispute must relate to or connect with employment or non-employment of worker and lastly, the dispute may

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[1] Trade Disputes Act, Cap. T8, Laws of the Federation of Nigeria (as amended 2004). *See also* section 54 of the Trade Unions Act, Cap T14, Laws of the Federation of Nigeria (as amended 2004).

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involve the physical conditions of work of any person.[2] The term, trade dispute, will in this paper be extended to all forms of labour disputes.

In reality, the effect of labour dispute or industrial disputes is both social and economic problems. In the words of Anyim et al, industrial or trade dispute, has both costs and benefits to the three social partners and the society at large.[3] These social partners are the government, labour and management. Most affected in term of service delivery and productivity during labour disputes is the society. Thus, in the opinion of Atilola et al, trade dispute has drastic effects on the economy of any nation.[4] For instance, once dispute arise which culminates into strike action, the social and economic fabric of a nation suffers. Trade dispute according to Anyim et al,[5] to a large extent, has great bearing on the smooth and orderly development of the economy and the maintenance of law and order in the society. Trade dispute sometimes arouses sentiment because they usually hurt the public more than the parties involved in the dispute. The cost of strike includes loss of production or out-put; disruption of essential services; capacity under-utilization; scarcity and high cost of essential items; employment and man power contraction amongst others.[6]

One of the cardinal points of the Nigeria National Policy on labour relations is the expeditious or swift resolution of labour dispute by the institutions established for this purpose; however, from experience, labour dispute, from time immemorial, is seldom resolved as quickly as possible. Again, the costs of settling labour dispute are usually expensive and most often than not, unsatisfactory to the parties involved. To expeditiously resolve labour dispute, a number of institutional mechanisms have been put in place in Nigeria. This paper is therefore an overview of these institutional mechanisms. In view of this, the paper examines the legal framework and scope of jurisdiction of these institutional mechanisms and their adequacies. Also to give room for comparative analysis of the subject-matter, reference is made to other jurisdictions having similar institutions for the settlement of labour dispute, the paper concludes with closing remarks and suggestions.

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[2] *See* the case of Attorney General of Oyo State v. Nigerian Labour Congress (Oyo State Chapter) (2003) 8 NWLR (Part. 821) 1. In that case, the Court aptly captured the judicial interpretation of section 48 (1) of the Trade Disputes Act, Cap.T8, Laws of the Federation of Nigeria (as amended 2004).

[3] Anyim Chukwudi Francis et al, *Trade Disputes and Settlement Mechanisms in Nigeria: A Critical Analysis*, Vol.2, Issue 2 INTERDISCIPLINARY JOURNAL OF RESEARCH IN BUSINESS 1 (2012).

[4] Bimbola Atilola and Micheal Dugeri, *National Industrial Court of Nigeria and the Proposed Alternative Dispute Resolution Centre: A Raod Map. Available at* www.nicn.gov.ng/Publications/ARTICLE ON ADR FOR NICN.pdf.

[5] AnyimChukwudi Francis et al, *op cit.*

[6] *Ibid.*

I. LEGAL FRAMEWORK FOR THE INSTITUTIONAL MECHANISMS FOR THE SETTLEMENT OF LABOUR DISPUTE IN NIGERIA

According to Shaakaa,[7] dispute arises where two or more people co-exist and interactions develop between them. The existence of a dispute or disagreement presupposes that there are parties to the dispute or disagreement. Dispute then requires a minimum of two parties or more. However, in the case of industrial or labour dispute, it usually arises between employers and workers or between workers *inter se.*[8]

In practice, trade or industrial disputes generally originate from interactions within an organized labour market. Government monetary and physical policies also play a significant role in developing this framework.[9] Union activity, such as pension issues and employment conditions usually contribute to the balance of the framework. The role that unions play in negotiating disputes between employers and their members is also a key feature of these relationships.[10] It is the breakdown in this negotiations process that produces postures which leads to dispute, which sometimes are expressed in the strike, lock-out, picketing or any other form of workers' reaction to unfavourable working condition to force the other party into submission.

In Nigeria, the mechanisms put in place for the resolution of labour dispute generally is dynamic and has root in the English adjudicatory process as a result of colonization of Nigeria by the Britain.[11] Hence, the mechanism long adopted for dispute resolution is mainly through judicial or arbitral processes; these mechanisms accord recognition to both negotiated settlement and litigation as means of resolving labour dispute. For instance, the statutory framework through collective bargaining put in place for the peaceful resolution of trade dispute is provided for under section 4 of the Trade Disputes Act. The section in principle entails a mandatory arbitration by statutory compulsion. However, before the mandatory arbitration, parties

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[7] Akkarren Samuel Shaakaa, *The Legal Regime for the Settlement of Investment Disputes in Nigeria: A Legal Periscope*. *Available at* http://dspace.Unijos.edu.ng.

[8] *See* the definition of trade dispute in section 48 (1) of the Trade Disputes Act (as amended) *op cit.*

[9] Andrew Obinna Onyearu, *The National Industrial Court Regulating Dispute Resolution in Labour Relations in Nigeria*. *Available at* http://www.metinpoynt,com/article/the-national-industrial-court-regulating-dispute-resolution-in-labour-relations-in-nigeria.

[10] *Ibid.*

[11] Akkaren Samuel Shaakaa, *op cit.* Note further that section 18(1) of the Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria (as amended 2004) out rightly prohibit strike action or lock-out and made such action punishable under section 18(2)of the same Act. However, in reality, there has been strike and this has in deed proved to be a strong weapon in the hand of workers to force their employers to accede to their demands.

are enjoined to attempt a voluntary resolution. Once a dispute is declared, the parties are required to resort to any agreed means of resolving the conflicts in the absence of which they are expected to appoint a mediator to resolve the issue. On failing to resolve still, the matter should be referred to the Minister of Labour and Productivity, who in turn in normal circumstance may appoint a conciliator, who tries to conciliation parties in the most peaceful manner.

Matters referred to the Minister and which cannot be resolved by the conciliator are to be referred to the Industrial Arbitration Panel (IAP) within 14 days.[12] In sum total, in Nigeria, settlement of labour dispute could be accomplished through reference to Industrial Arbitration Panel (IAP), a formal adjudicatory process by means of litigation before the National Industrial Court of Nigeria (NCIN) or through any window of Alternative Disputes Resolution (ADR) mechanisms. In Nigeria at the moment, the statutory legal frameworks for the settlement of labour dispute are the Trade Disputes Act of 1976 as amended, the National Industrial Court Act of 2006 and the Federal Republic of Nigeria Constitution (Third Alteration) Act of 2010. The institutions are discussed hereunder.

II. Industrial Arbitration Panel

Prior to 1976, trade disputes in Nigeria were treated as part of the common law of contract and were accordingly dealt with in the ordinary civil law courts. However, due to the oil boom and the consequent rapid growth in commercial and industrial activities, labour problems became more complex than the ordinary courts which could satisfactorily cope with and consequently, government decided to set up a separate machinery for settling labour disputes.[13] The Trade Disputes Act deals with internal resolution of conflicts among parties while the external machinery is covered by legal provisions in the Act, however, the external disputes procedures are expected to be voluntarily pre-agreed and self-imposed undertaking by the parties to resolve grievances through specified machinery without resort to any form of industrial action at the commencement of the dispute. To this end, section 18 of the Trade Disputes

[12] *See* section 9 of the Trade Disputes Act.

[13] Borishade, M. A., *Dispute Machinery and Settlement Procedures*. Text of lecture delivered at an Industrial Relations Workshop Organized by ASSBIFI at the University of Lagos Conference Centre in August (1990). The paper was referred to by Francis C. Anyim, et al in the paper titled *The Effect of Statutory Sanctions on Management of Trade Disputes in Nigeria: A Critical Appraisal*, Vol. 2, No. 4, International Journal of Business Administration, 157 (2011). *Available at* www.sciedu.ca/ijba.

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Act in strong term prohibits strike or lock-out during labour dispute.[14]

In Nigeria, in order to allow for appropriate steps to be taken during labour dispute, it is compulsory for the management and labour union to include in their collective agreement the means for the settlement of any dispute that may arise in the course of their relationship. Invariably, under section 4 of the Trade Disputes Act, the parties are expected to refer the dispute to a mediator mutually agreed upon and appointed by or on their behalf. However, where parties fail to settle their dispute within seven days after the dispute had been referred to a mediator, the dispute shall be reported to the Minister of Labour and Productivity who shall refer the dispute to a conciliator, the conciliator is expected to reconcile the parties.

Conciliation is a process of peace-making in industrial relations. Its main aim is to bring about speedy settlement of dispute without resort to strike or lock-out, it hastens the termination of work stoppages when these have occurred. Matter referred to the Minister and which fail to be resolved by the conciliator are to be referred to the IAP within 14 days. Although, IAP is not expected to adopt formal proceeding like ordinary courts, however its proceedings are patterned along the lines of courts. For instance, the parties are allowed to be represented by persons of their choice to present their case. At the end, the panel arrives at decisions called "award". The award is therefore forwarded to the Minister who will thereafter release it to the parties.

Under the provisions of Trade Disputes Act, litigant cannot by themselves go directly to the panel; rather matters are referred by the Minister to the panel, which in turn submit its award to the Minister. Obviously, the Minister weird so much power under section 8 of the Trade Disputes Act, hence, the tendency to manipulate the process. Criticizing the absolute power of the Minister of Labour and Productivity as contained in section 8 of the Trade Disputes Act, Aturu was of the opinion that it is unsafe to entrust such maximum power to one person. However, in order to checkmate the Minister's absolute power within this context, the award from AIP and power of the Minister are subject to an appeal to the National Industrial Court.[15]

When the National Industrial Court hears an appeal from the award made by the Arbitrary Tribunal, the National Industrial Court has power to draw any inference of fact and confirm, vary or set aside the judgment,

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[14] Section 43 of the Trade Disputes Act provides that any worker who takes part in strike is not entitled to any wages or other remuneration for the period of the strike and the period of the strike shall not count for the purpose of reckoning the period of continuous employment. The section further provides that any worker locked out by an employer shall be entitled to wages for the period of the lock-out.

[15] *See* section 7 (a) of the National Industrial Court Act (2006).

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award or order of the tribunal; the court may order a rehearing and determination on such terms as court may deem fits to make in the circumstances; order judgment to be entered for any party or make a final or order on such terms as the court may think fit to ensure the determination on the merits of the matters.

III. NATIONAL INDUSTRIAL COURT OF NIGERIA

In labour relations, the basic interest of employer and employees is usually diametrical in nature. For instance, the disputes may take various forms and dimensions which may result into protest, demonstration, lock-out, retrenchment, strike action and ultimately dismissal from work. Sometime, the disputes may result into one or more combination of the foregoing dimensions and forms.

Due to the staggering effects of labour disputes, countries all over the world have advocated expeditions mean of resolving labour dispute before it goes out of hand. However, in the event the disputes could not be resolved through arbitration or conciliation as discussed above, the alternative mechanism for the resolution of labour dispute is a judicial process.

In Nigeria, there are in the past several courts of coordinate jurisdictions handling labour and industrial disputes. Such courts include the Federal High Court of Justice, the State High Court of Justice and the Federal Capital Territory, Abuja High Court of Justice.

The major problem with the aforementioned courts is that their jurisdictions apart from labour related matters extended to other civil causes and matters. Due to this, proceeding before these regular courts take years before they are resolved. This singular fact led to the agitation for the establishment of specialized courts to handle industrial and labour dispute expeditiously due to the monumental effect which labour dispute can have on the economy.

While contributing to the debate on this matter, the President of the National Industrial Court, Honourable Justice Babatunde Adejumorightly observed that a nation desirous of rapid industrialization and social-economic development could not afford to be bogged down by such procedures and delay.[16]

Taking cue from countries such as: Trinidad and Tobago, America, India and Kenya, the Nigeria government established the National Industrial Court with the mandate to prevent and settle industrial relations and trade

[16] Honourable Babatunde Adeniran Adejumo, *The National Industrial Court of Nigeria: Past, Present and Future*. *Available at* http://nicn.gov.nji.phi.

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disputes in Nigeria. Historically, the National Industrial Court was established during the Military government under the Trade Disputes Decree No. 7, of 1976.[17] At the inception, the court has to contend with a lot of problems, which impacted negatively on the ability of the court to deliver on its mandate as a specialized court. For instance, the Court was established as Superior Court of Record; however, it was not recognized as such in the Constitution of Nigeria. This was unconnected with the fact that it was established by the Military government. The court also at the inception enjoys concurrent jurisdiction with other Superior Courts of Records.[18] The status of the National Industrial Court at the inception led to the confusion as to its original jurisdiction.[19]

In order to find a lasting solution to the teething problems of the National Industrial Court of Nigeria, the first pragmatic step taken by the Nigerian government in the year 2006 was the enactment of the National Industrial Court Act, 2006. To avoid conflicting problem, the National Industrial Court Act repealed Part II of the Trade Disputes Act and re-established it as a Court of Superior Record.[20] In spite of the step taken by the government, litigant continued to file their cases at the Federal High Court, the State High Court as well as the Federal Capital Territory, Abuja High Court of Justice instead of the National Industrial Court. To put an end to this seeming confusion on the part of litigants, the Nigeria government like it was done in Kenya amended her constitution wherein the status and jurisdiction of the National Industrial Court was reinforced and reaffirmed through the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010.[21] Section 254 (c) of the 1999 Constitution (as amended) now confers exclusive jurisdiction on the National Industrial

[17] Due to the succeeding democratic government, this Decree has been re-enacted and now called the Trade Disputes Act, Cap. T8, Laws of the Federation of Nigeria (2004).

[18] For instance in the case of Attorney General of Oyo State v. Nigeria Labour Congress (2003) 8 NWLR (Part. 821) 1 at 53, The Nigeria Supreme Court held that "the Federal High Court of Justice, State High Court of Justice and Federal Capital Territory Abuja, High Court of Justice have concurrent jurisdiction with the National Industrial Court."

[19] For other similar problems bedeviling the National Industrial High Court at the inception, *see* generally Honourable Babatunde Adeniran Adejumo, *op cit*. Arowosegbe O. O, *National Industrial Court and Quest for Industrial Harmony and Sustainable Economic Growth and Development in Nigeria*, Vol. 5, No. 4 LABOUR LAW REVIEW 8-10 (December 2011).

[20] The Act was signed into law by Chief Olusegun Obasanjo on the June 14, 2006.

[21] *See* section 254 (A) (1) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act (2010). The Kenya Government had established Kenya Industrial Court in 1964 under the Kenya Trade Disputes Act. The Court was made a Superior Court of Record in 2007 under the Kenya Labour Institutions Act, No. 12 of 2007 and was listed in the Kenya Constitution as Superior Court of Record by the Constitution of Kenya (2010). *See generally* James Rika, *The Proper Role and Jurisdiction of the Industrial Court*. *Available at* http://www.kenyalaw.org/FORUM/?p=2333.

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Court of Nigeria to adjudicate on labour and industrial relations matter.

For avoidance of doubt, Sections 251, 257 and 272 of the 1999 Constitution of the Federal Republic of Nigeria which were hitherto invoked by courts as well as litigants to contest jurisdiction with the National Industrial Court are now made subject to Section 254 (c) (1) of the Constitution (Third Alteration) Act, 2010. In addition to the foregoing, National Industrial Court of Nigeria is now listed under Section 6 (5) (cc) of the 1999 Constitution (as amended) as one of the Superior Courts of Record in Nigeria. Although, the National Industrial Court of Nigeria is still a court of coordinate jurisdiction with the Federal High Court, the State High Court and the Federal Capital Territory Abuja High Court. However, by virtue of Section 254 (c) (1), its jurisdiction is now exclusive to it and cannot be concurrently exercised or shared among the other High Courts in the same pedestal of authority or power.

Furthermore, in order to secure the jurisdiction of National Industrial Court of Nigeria to entertain labour and industrial causes and matters, Section 11 of the National Industrial Court Act, 2006 by fiat abates the jurisdiction of the Federal High Court, the State High Court and the Federal Capital Territory, Abuja High Court to entertain labour or industrial dispute or any matter related thereto save where such matter is part-heard.[22]

In addition to the exclusive jurisdiction confers on National Industrial Court in civil cases and matters by Section 254 (c) (1) of the Constitution, the National Industrial Court of Nigeria also has power to deal with any matter connected with or pertaining to the application of any International Convention, Treaty or Protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith. With this provision, it is observed that the court can now compete favourably with its foreign counterpart in term of wide power to deal with bilateral agreement between Nigeria and foreign countries on labour and industrial relations. Central to this is the labour relations within the confine of the International Labour Organization (ILO).

Speaking in the same vein visa-vis the role of the Kenya Industrial Court to apply international law to the Kenya domestic labour market, James Rika argued that the ILO looks up to Industrial Courts to implement the International Labour Standard. James Rika further argued that the Industrial Court has a role to promote and protect International Labour Standards and as such must not endeavour to lose touch with the ILO various agenda on labour relations.[23]

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[22] *See* section 11 (2) of the National Industrial Court Act (2006).
[23] James Rika, *op cit.*

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Nigeria is a member of the ILO and signatory to some of its conventions and agendas. Hence, it is suggested that the foregoing is apposite to the National Industrial Court of Nigeria if its decisions are to be acceptable amongst the commit of Nations.

IV. ALTERNATIVE DISPUTE RESOLUTION MECHANISM

As stated previously in this paper, there are several options available to the parties in labour dispute. One of the parties may decide to take unilateral action by way of self-help, or may seek legal remedy in court; alternatively, both parties may work together and search for a solution to their problem. However, due to the fact that unilateral actions are usually either prescribed or result in unsatisfactory outcome, litigation and more recently, Alternative Dispute Resolutions (ADR) offer more acceptable options for dispute resolution.[24]

ADR is not a new phenomenon in Nigeria, as a matter of fact, due to the uncomplicated values of the early society; disputes were often resolved through parties' agreement to refer their disputes to a jointly appointed arbiter. According to Oyekunle, a respected person is selected for his wisdom and known integrity, either in the rural community, within the village heads or among city merchant circle. Such person will act as an umpire and will render some binding decisions on fairness and justice, without any specific rules of law or legal procedures rules.[25]

There is no gain say that ADR is a compound word used to describe various range of mechanisms designed to assist disputing parties in the resolution of their dispute without the need for formal judicial proceedings. In the word of KehindeAina, ADR is those mechanisms which are used in resolving disputes-faster, fairer without destroying on-going relationships.[26]

At the initial stage, the most common forms of ADR are negotiation, mediation and arbitration; however, there have been several hybrid forms and these include med-arb, mini-trials, summary jury trials and so on. The

[24] Nwosu. K. N., *Overview of ADR Process*, Lecture prepared for Association of Professional Negotiators and Mediators on ADR Professional Foundation Course. *See also* Asonibare A. S., *A Comparative Critical Overview of Negotiations*, CONCILIATION, MEDIATION AND ARBITRATION 2 (2011).

[25] Oyekunle. T., *The LMDC and the Bar: A Success Story*, Paper presented at the Workshop on the Lagos Multi-Door Court House: The Procedure and Promise. Held at the High Court of Lagos, Lagos 5 (September 30, 2003). *See generally* the Report of Albert I. O. at on Amicable Settlement of Disputes among the Yoruba, in Albert I. O. et al, *Informal Channels for Conflict Resolution in Ibadan* 25 (Nigeria, Ibadan, IFRA 1995).

[26] KehindeAina, *Alternative Dispute Resolution*, Vol. 2, No. 1 NIGERIA LAW AND PRACTICE JOURNAL 169 (March 1998).

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advantages of the mechanism over the traditional litigation system have greatly contributed to its adoption by countries all over the world in recent times. For instance, litigation in the court of law is concerned primarily with applying "public policy" and adhering strictly to the law of the land laid down to the finest detail. Unlike with many non-court dispute resolution methods, a judge normally has little time for flexibility to consider what might be "fair treatment" between the parties.

The Trade Dispute Act hitherto in force in Nigeria clearly excludes court action in trade disputes and even criminalizes any attempt by litigant to go to the law court for the purpose of resolving trade disputes.[27] The mechanism for the settlement of trade disputes under the Act is stipulated in sections 4, 5, 6, 7, 8 and 9 of the Act. Under these sections, whenever there is any trade dispute pursuant to any agreement between organizations representing the interest of employers and organization of workers or any other agreement the parties shall attempt to settle it by that means, failing which the parties shall meet together by themselves or their representatives under the presidency of a mediator mutually agreed upon by them with a view to settle the dispute amicably.

However, where parties cannot resolve their dispute under the presidency of a mediator appointed by them, they shall report the matter to the Minister of Labour and Productivity in writing stating the steps already taken by them to reach settlement.[28] Upon the receipt of the report, the Minister will consider the report and he is not satisfied with the steps taken so far by the parties, he shall direct by a notice to the parties the proper steps they should take as required under sections 4 and 6 of the Trade Disputes Act with date for compliance. Once the time for compliance come to an end, the Minister may proceed to do any of the following: He may appoint a conciliator,[29] he may refer the matter to Industrial Arbitration Panel appointed by him[30] or he may refer the matter to the National Industrial Court once he was of the opinion that the reference of the matter to an arbitration tribunal would not be appropriate.[31] The Minister may ultimately appoint a board of inquiry to inquire into the causes and circumstances of the dispute with a view of receiving information as to the cause of the

[27] *See* section 2 of the Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria (2004).
[28] *See* section 7 of the Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria (2004).
[29] *See* section 8 of the Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria (2004). *See also* the note on the Industrial Arbitration Panel (supra).
[30] *See* section 9 of the Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria (2004).
[31] *See* section 17 of the Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria (2004).

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dispute.[32]

The above cumbersome procedures for the resolution of labour dispute were what obtained in Nigeria under the Trade Disputes Act with a slight modification under the National Industrial Court Act. For instance, section 7 (3) of the National Industrial Court Act, 2006 provides thus:

> Notwithstanding anything to the contrary in this Act or any other enactment or law, the National Assembly may by an act prescribe that any matter under section 7 (1) (a) of this section may go through the process of conciliation or arbitration before such matter is heard by the court.

With the above provision, the National Industrial Court Act only prescribed what may appear to be a mandatory reference of labour or industrial disputes to conciliation or arbitration before the matter is litigated in the court of law. However, the use of the word "may" in that section actually makes reference to arbitration optional, the reason being that, when the word "may" is used in an enactment or rules of court, it implies "liberty" or "permission" thus giving the party involve the discretion to either enforce the provision or refuse to enforce it.[33]

Premised on the foregoing, the Nigeria National Assembly is commendable for making far reaching amendment on the jurisdictions and structure of the National Industrial Court of Nigeria through the Constitution of the Federal Republic of Nigeria (The Third Alteration) Act, 2010. Section 254 (c) (3) of the Constitution (The Third Alteration) Act, 2010 now permits National Industrial Court of Nigeria to establish within its premises an Alternative Dispute Resolution Center to aid it in the speedy disposition of cases coming to the court within the confinement of its jurisdiction.

The above trend, it is observed, is in tandem with the global trend. For instance, countries like Lesotho, South African, Swaziland and Kenya have integrated ADR mechanism within their dispute resolution system to fast track quick and expeditious resolution of labour dispute. Thus, one area where there has been significant development arising out of the relationship

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[32] *See* sections 33 and 34 of the Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria (2004).

[33] *See* the case of Ajayi Farms Ltd. v. NACB Ltd. (2003) FWLR (Part 172) 1864 at 1888/1889. In that case, the Supreme Court held that "The word 'may' is defined in Black's Law Dictionary as follows: An auxiliary verb qualifying the meaning of another verb by expressing ability, competency, liberty, permission, possibility, probability or contingency. In construction of statutes and presumably also in construction of Federal rules word 'may' as oppose to 'shall' is indicative of discretion or choice between two or more alternative, but the context in which word appear must be the controlling factors". *See further* Bryan A. Garner, Black's Law Dictionary, *op cit,* the case of Ilobi v. Uzoegwu (2005) ALL FWLR (Part 285) 595 at 612, Ejiogu v. Onyeogocha (2004) All FWLR (Part 204) 26 at 42.

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between ADR mechanisms and the court system is in the creation of the Multi-Door Courthouse (MDC).[34] Similarly, the ADR concept had been introduced into the justice delivery process in the United States of American, Canada, Britain, Uganda, Nigeria and few other countries through the establishment of the Multi-Door Courthouse Initiative,[35] in which different aspects of resolution of disputes could be placed under the umbrella of a single Courthouse.

Multi-Door Courthouse was first conceived in the United State of American. The concept was first put forth in 1976 by Harvard Law School Professor Frank E. A. Sander at the Conference on the Causes of Popular Dissatisfaction with the Administration of Justice.[36]

Professor Sander envisioned one large Courthouse with multiple dispute resolution doors or programs. The programs could be located inside or outside of the Courthouse, and cases could be diagnosed and referred through the appropriate door for resolution. Hence, it was otherwise called Court-connected ADR or Court-annexed ADR. After the Pound conference, quite a number of pilot projects began to emerge. Different states within the United States began to issue legislation to accommodate the project with its judicial structures. For instance, within United State of America in 1984 and 1985, with the support of the American Bar Association, four States were chosen as the initial sites for the concept. States within these categories are Washington D.C., Houston, Texas and Oklahoma. Furthermore, the Washington D.C. Superior Court Multi-Door Resolution Division became operational in 1989. It was described as "an idea whose time had come" by David Micheal.[37] What began as a recommendation that the Court system should provide litigants access to an array of dispute resolution options which has today become a reality in many countries across the globe. For instance, the use of ADR and Multi-Door Courthouse has gained ground in European countries such as United Kingdom. The practice of ADR vide the Multi-Door Courthouse is still emerging in Nigeria with only a few states of

[34] Barendrcht, *Understanding the Market for Justice* 2 (2009). http://ssrn.com/abstract=1416841.

[35] Goodluck O. O., *An Overview of the Modus Operandi of the MULTI-Door Courthouse in Alternative Dispute Resolution and some Contemporary Issues*, Legal Essay in honour of Hon. Justice Ibrahim Tanko Mohammed CON 281 (Aliyu, I. A. ed., Faculty of Law, Ahmadu Bello University, Zaira, M.O. Press and Publishers Ltd., Kaduna 2010).

[36] In 1976, the ABA sponsored the Popular Dissatisfaction with the Administration of Justice Conference (referred to as "Pound Conference"), bringing together Judges, Attorney, Social Scientist and Mediators to discuss the possibilities of ADR in the U.S. The Conference took place in April 7-9, 1976 in Minneapolis with some 200 Judges, Legal Scholars and leaders of the Court Systems and their Administrator in attendance. http://www.pon.harvard.edu/news/2002/sanderreflections.php3.

[37] David Micheal was the former Division Director of Washington D.C., Superior Court Multi-Door Resolution Division. www.dcappeals.gov/internet.superior/org-multidoor.main.jst.

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the Federation having institutionalized the practice of ADR through the concept of the Multi-Door Courthouse.

To give impetus to the system, the idea of settling dispute through ADR has been given constitutional backing in the Constitution of Nigeria. Section 19 (d) of the 1999 Constitution as amended provides for the settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication. The constitutional status accorded arbitration and other forms of ADR for the settlement of disputes has now gone beyond international disputes to either civil or criminal disputes. For instance, several States in Nigeria have taken steps to incorporate the MDC concept into their rules of Court.

The Multi-Door Courthouse in Africa started in Lagos. Nigeria is called the Lagos Multi-Door Courthouse (LMDC). The Court was launched on the June 16, 2002 and commissioned by the then Lagos State Chief Judge, Honourable Justice Ibitola Sotuminu. However, the statutory framework for the operation of the LMDC was not passed into law until 2007. Furthermore, in order to provide for the practice and procedure of the centre, a practice direction for the operation of the Lagos Multi-Door Courthouse was made by the Lagos High Court in 2008. The practice direction was endorsed by the then Chief Justice of Lagos State, Honourable Justice A. Ade Alabi.

On coming into operation of the LMDC Law, the centre was established within the administrative structure of the High Court of Lagos State. Follows hard in the heel of the Lagos Multi-Door Courthouse, the Abuja Multi-Door Courthouse (AMDC) was established on October 13, 2003. At present, there are six States in Nigeria operating the Multi-Door Courthouse System and they are: Lagos, Abuja, Kano, Abia, Kaduna and Akwa-Ibom States. Other states within the federation of Nigeria have started taking steps towards incorporating the MDC concept into their rules of Court.

It is worthy of note that the National Industrial Court Act did not provide for the establishment of MDC Centre into National Industrial Court. However, by virtue of Section 254 (3) of the Constitution (The Third Alteration), Act, 2010, the Court is enjoined to establish the ADR Centre within the Court Premises on matters in which jurisdiction is conferred on the Court by the Constitution or any Act or Law. This provision is observed as laudable, hence, it is suggested that the same provision be inserted into the National Industrial Court Act by way of amendment. This step is very necessary in view of the fact that the National Industrial Court Act is the primary statutory framework for the operation of the National Industrial

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Court of Nigeria jurisdiction for the settlement of labour dispute. Hence, doing this will bring its provision in conformity with the provision of the Nigeria Constitution in this matter.

CONCLUSION

The need for the promotion of effective institutional mechanisms for the settlement of labour and industrial dispute as tools for the maintenance of harmonious relations between employers and employees cannot be overemphasized. It is in this connection that one cannot commend various steps taken by the Nigerian government to put in place various institutional mechanisms for the settlement of labour disputes. Although, each of these institutional mechanisms, as it were, can adequately handle labour disputes if the parties involve employ wisdom. However, the few grey areas highlighted in this paper require amendment and improvement to enable the institutional mechanisms discussed in this paper meet their mandate and free them from apparent lopsidedness and officialdom.

For avoidance of doubt, the provisions of Section 8 and 9 of the Trade Disputes Act should be amended to give parties to labour disputes the right to appoint their own conciliator and have a say in the constitution of Industrial Arbitration Panel. The present position whereby the Minister of Labor and Productivity is the sole authority to appoint a conciliator and constitute Industrial Arbitration Panel is prone to manipulation and biases. After all, the parties to labour disputes are stakeholders in the disputes; hence, their fate should not be left in the hand of a Minister who is a state official and subject to the dictate of government whenever government is a party to labour disputes.

Furthermore, as mentioned in this paper, few states in Nigeria have adopted and amended their Rules of Court to incorporate the practice of Court Connected Alternative Dispute Resolution Mechanisms in Nigeria. It is suggested that other States within the Federation of Nigeria as well as the National Industrial Court which has not done so should amend their Civil Procedure Rules to incorporate Multi-Door Courthouse Mechanism to fast track quick dispensation of justice in all their sphere of authorities

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