

ANALYSIS OF ALTERNATIVE DISPUTE RESOLUTIONS AS A MEANS OF SETTLING INDUSTRIAL DISPUTES IN NIGERIA

By

AGWOR, Charles I. G¹

Abstract

This paper analyzes alternative dispute resolution as a means of resolving industrial/trade dispute in Nigeria. The subject dealt with the key terms identifiable under this study, which includes analysis, alternative, dispute, resolution, settling and industrial disputes respectively. In course of the analysis, some provisions of the National Industrial Court of Nigeria Act, 2006, Trade Disputes Act, 1976, National Industrial Court of Nigeria Civil Procedure Rules, 2017 and the National Industrial Court Alternative Dispute Resolution Center Instrument, 2015 were highlighted. Consequently, the economic effect of settling industrial disputes through ADR mechanisms was considered and course of elucidating that fact, it reveals inter alia that there will be attraction of foreign investment and foreign trade, sustenance of relationship and prevention of wastage as to time and resources. The study summarized the subject matter with findings and concludes with some recommendations.

Keywords: *Analysis, Alternative, Dispute, Resolution, Alternative Dispute Resolution, Settling, Industrial Disputes.*

Introduction

The concept of industrial dispute is a very pivotal one in every society as it majorly affects the economic environment of any nation. It must be noted that industries are the life wire of the economy of any nation, because no nation can earn sufficient revenue when its economic sector does not attract foreign direct investment through production and exportation.

The study seeks to analyze, discuss and establish the fact that alternative dispute resolution (ADR) mechanisms can be a more appropriate means of settling industrial or trade dispute in Nigeria. ADR mechanisms are procedures for resolving contractual and commercial disputes, including labour related conflicts without necessarily resorting to litigation in the regular court of law, this form of dispute settlement is devoid of technicalities and rigidity of law, it is also faster and quicker. The disputants are directly involved in the conflict resolution process, although they are not without rules.

In Nigeria today, due to the privacy in the ADR process and its propensity to possibly preserve and improve the relationship between parties to a dispute. Its use has become very important as conventional court procedures in settlement of industrial disputes are not only slow, but

¹ LLB(Hons), BL, LLM. Phone no: 08037951051, Email: charlesagwor@gmail.com

could become a bane to the economic development of a society, because of delay and technicalities in court proceedings. In addition, it is no doubt that Alternative Dispute Resolution (ADR) is a cost effective, and time efficient method of resolving labour related conflicts, avoiding lengthy and expensive legal litigations, thereby saving the society from adverse economic effects.

Definition of Terms

1. Analysis

Analysis is the act of studying or examining something in details in order to discover or understand more about it. It is also the process of studying or examining something in an organized way to learn more about it.² It can be seen as the detailed examination of anything complex in order to understand its nature or to determine its essential features: a thorough study.³ Similarly, it is the method of prove in which a known truth is sought as a consequence of a series of deduction from that which is the thing to be proved.⁴ It is the process of breaking a complex topic or substance into smaller parts in order to gain a better understanding of it.⁵

The implication of foregoing definitions is that, the term analysis can be said to mean a careful study of something/topic to learn more about it, that is the explanation of the nature and meaning of a topic. It entails a thorough and detailed examination of a subject matter to break it down into easy and understandable units that explains and clarifies an ambiguous topic.

2. Alternative

The term alternative can be said to be a choice made in place of another thing. It has to do with ideas that does not conform to existing standards or protocols. In the context of this paper, the term can be seen as activities reflecting values that are different from those the established legal procedures (litigation). That is the term offers better choices to disputants to settle their disputes amicably and without prejudice.

Alternative can be defined as offering or expression of choice different from the usual conventional, existing or functioning outside the established cultural, social or economic system.⁶ One or the other of two things, giving an option of choice, allowing a choice between two or more things or acts to be done.⁷ A proposition or situation offering a choice between two or more things only one of which may be chosen. Something that is different from else,

²Cambridge Advanced Learner's Dictionary, 'Definition of Analysis' (Cambridge University Press 1981) Available on: <https://www.cambridge.com> accessed 10 April 2022.

³Merriam-Webster Dictionary, 'Analysis' Available on: <https://www.merriam-webster.com/dictionry/alternative> accessed 10 April 2022.

⁴Ibid (n 2).

⁵B Michael, *The Stanford Encyclopedia of philosophy*, 'Analysis' (Metaphysics Research Lab Stanford University Summer 2012) 123.

⁶Merriam-Webster Dictionary, 'Alternative' Available on: <https://www.merriam-webster.com/dictionry/alternative> accessed 13 May 2022.

⁷H C Black, *Black's Law Dictionary* (6th edn. ST. Paul Minn West Publishing Co. 1990).

especially from what is usual and offering the possibility of choice.⁸ Denoting a lifestyle, culture regarded by its adherents as preferable to that of contemporary society because it is less conventional, materialistic or institutionalized and often more in harmony with nature.

The foregoing definitions implies that the term alternative is seen as a second opinion, a choice preferred over a former/existing way or pattern. It can also be referred to as a proposition functioning outside the established cultural, social or economic system because it is less conventional, materialistic and in harmony with nature. It is synonymous with “substitute.”

3. Dispute

Various scholars in similar views, have defined disputes; as a conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation: the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.⁹

Obi-Ochiabutor defined the term thus: Disputes generally means to struggle against or oppose, it can be constructive in nature. Managers and workers in many organizations are placed at variances, as the relationship of master/servant make them traditional adversaries.¹⁰ It has also been defined as a disagreement or argument, conflict or controversy: a conflict of claims or rights; and assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other.

It can be described as the subject which issue is joined, and in relation to which jurors are called and witnesses examined.¹¹

The above definitions express the practical meaning of the term under consideration. Simply put; dispute is synonymous with the word contention, controversy, argument, quarrel or disagreement as the case may be. It could mean varying opinions or views resulting into strong argument or debates and conflicts on points of facts or laws that is capable of causing public anxiety or breach of peace, it has often times resulted into litigation. Therefore, it suffices to state that disputes are common occurrence in our society, whether amongst countries, communities, corporate organizations, individuals and groups, including master servant relationship.

4. Resolution

Resolution has been identified and defined by various scholars to mean the means of solving a problem or dispute or difficulty. It has been defined as; the act of finding a way to improve a

⁸Cambridge Advanced Learner's Dictionary, 'Definition of Alternative' (Cambridge University Press 1981) Available on: <https://www.cambridge.com> accessed 13 May 2022.

⁹V Gale and Others, *West's Encyclopedia of American Law*, (2nd edn, Detroit Publishers 2008) Available on: <https://www.legaldictionary.thefreedictionary.com/Dispute> accessed 6 October 2020.

¹⁰ C C Obi-Ochiabutor, 'Trade Disputes Resolution Under Nigerian Labour Law' [2002-2010] (9) *Nigerian Judicial Review*, 71 Available on: <https://www.law.unn.edu.ng/wp-content/uploads/sites/12/2016/08/4> accessed 6 October 2020.

¹¹Ibid (n 8).

difficult situation or ending a problem or difficulty.¹² The action of solving a problem or continuous matter. The act of finding an answer or solution to a conflict/problem.¹³

The word can also mean the process of ending or solving a problem or disagreement. It can also be an answer or solution to a dispute or disagreement. A statement that solves a problem or explains how to solve the problem.¹⁴ Resolution can be defined as the processes that two or more parties use to find a peaceful solution to their dispute.¹⁵ Resolution can be defined as a set of actions used by an organization to solve disagreements.¹⁶ It is the process of settling disagreements between parties.

The foregoing definitions presupposes that resolution is the process or act of solving a problem or to resolve a disagreement. That is, it can mean the processes or procedures employed by disputants to find peaceful solution to their dispute. Resolution is the process taken by organizations to settle disagreements between parties.

5. Alternative Dispute Resolution

The term “Alternative Dispute Resolution” or “ADR” is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale court process. The term can refer to everything from facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini trials that look and feel very much like a courtroom process. Processes designed to manage community tension or facilitate community development issues can also be included within the rubric of ADR.¹⁷ It is also the collective description of methods of resolving disputes otherwise than through the normal trial process.¹⁸

According to Ige, in Nigeria, alternative dispute resolution can be seen as a quick, relatively non-adversarial and objective process for resolving disputes when compared to legal proceedings. In addition, while resolving a dispute using ADR in Nigeria, emphasis is placed on sustaining the mutual relationship that exist between the disputing parties.¹⁹ Nwazi,²⁰ defined alternative dispute resolution (ADR) as a broad range of mechanisms and processes

¹²Ibid (n 7).

¹³Oxford University Press ‘Lexico.com’ Resolution (lexico.com 2021) Available on <https://www.lexico.com/definition/resolution> accessed 13 May 2022.

¹⁴The Britannica Dictionary (resolution) Available on: <https://www.britannica.com> accessed 13 May 2021.

¹⁵S Katie, Conflict Resolution (Program on Negotiation Harvard School of Law)2021. Available on <https://www.pon.harvard.edu/dailyblog> accessed 14 May 2022.

¹⁶Ibid (n 7)

¹⁷B Scott and Others, *Alternative Dispute Resolution Practitioners Guide* (Technical Publication Series,1998) Available on: <https://www.usaid.gov/files/documents> accessed 13 July 2020.

¹⁸ Alternative Dispute Resolution Act 2010 of Ghana s135.

¹⁹A Y Ige, ‘Alternative Dispute Resolution and Collective Conciliation in Nigeria: A Review of Contemporary Literature’ 2017(12)(8) *International Journal of Business and Management* 261 Available on: <https://www.doi.org/10.5539/ijbm.v12n8p261> accessed 13 July 2020.

²⁰J Nwazi, ‘Assessing the Efficacy of Alternative Dispute Resolution (ADR) in the Settlement of Environmental Disputes in the Niger Delta Region of Nigeria’ [2017] *Journal of Law and Conflict Resolution*, Available on: <https://www.academicjournals.org/JLCR> accessed 12 July 2020.

designed to supplement the traditional courts litigations by providing more effective and faster resolution process.

Aura,²¹ defines (ADR) & (ODR) Alternative Dispute Resolution/Online Dispute Resolution as a commonly accepted acronyms used to describe extrajudicial methods of dispute resolution such as mediation, conciliation or arbitration.²² This is a phenomenon with ancient roots that emerged in recent times-due in part to the growth of new online contexts, also to the severe exhaustion of the overburdened court systems worldwide, slow, rigid and high cost processes are crucial reasons for a general dissatisfaction with court.²³

6. Settling

No doubt, the term settling which is synonymous with resolving is the act of solving a problem or continuous conflicts between two or more groups. It means 'to resolve or reach an agreement about an argument or problem. To end a legal dispute by mutual agreement.²⁴ To reach a decision or an agreement about something to end a disagreement.²⁵ It can as well be said to be a process of ending, solving or resolving a disagreement or conflicts amongst disputants. The act returns back the disputants to their prior state of relationship

7. Industrial Dispute

Industrial conflict is a general term referring to all conflicts arising in the industries or work organizations. It concerns all expressions of dissatisfaction within the employment relationship, especially those relating to employment contract and bargaining process.²⁶ Industrial/trade dispute has been statutorily²⁷ defined in the following words; any dispute between employers and employees, including dispute between their respective organizations and federations which is connected with:

- (a) The employment or non-employment of any person
- (b) Terms of employment and physical conditions of work of any person,
- (c) The conclusion of variation of a collective agreement, and an alleged dispute....²⁸

Per Bolaji-Yusuf, defined trade dispute thus:" by virtue of section 54 of the Trade Unions Act, 1973, as amended by Trade Unions (Amendment Decree 1978 Cap. T14, V.15, LFN, 2004), Trade dispute means any dispute between employers and workers or between worker and workers which is connected with the employment or non-employment or the terms of

²¹A E Vilalta, 'Legal Framework and Harmonization of ADR/ODR Methods' [2010] (2) (7) *Journal of Law and Conflict Resolution* 103-107, Available on: <https://www.academicjournals.org/jlcr>. accessed 12 July 2020.

²²*Ibid.*

²³*Ibid.*

²⁴Merriam-Webster Dictionary, 'settling' Available on: <https://www.merriam-webster.com/dictionary/alternative>. accessed 10 April 2022

²⁵*Ibid.*

²⁶N Yusuf, 'Conflict and Conflict Resolution in Industrial Organizations [2012] *Studies in Political Sociology* Available on: <https://www.researchgate.net/publication/341879139> Accessed 21 January, 2021.

²⁷NICA 2006.

²⁸*Ibid.*, s54(1).

employment or conditions or work of any person.²⁹ Per Awotoye JCA, what is a Trade dispute? Section 48 of the Trade Disputes Act 2004, define it as follows; “Trade dispute” means any dispute between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment and physical conditions of work of any person.³⁰ Trade/Industrial dispute means any dispute between employers and workers, or between workers and workers, which is connected with the employment or non-employment, or the terms of employment or condition of work of any person.³¹

ADR as Means of Settling Industrial Disputes in Nigeria

Fapohunda,³² while analyzing the prospects of ADR in resolution of industrial conflicts, observed that:

The American Arbitration Association (AAA) in 2004, reported that labour contracts usually contain provisions calling for the arbitration of grievances that cannot be settled. The disputes arbitrated involves issues in such areas as discipline, discharge, demotion, promotion, productivity, pension and seniority. Trade associations and professional societies in many specialized fields use the ADR services to resolve disputes. Procedures and rules are developed to meet their needs. Panels of neutrals that are familiar with the field and technical questions involved are recruited and trained. These third parties are neutral and have no vested interest in the outcome of the resolution and are not directly involved in the disagreement.³³

The implication of the foregoing is that agreements creating labour or industrial relationship should also include an ADR clause, which compel parties to such labour contracts to submit to ADR in event of any conflict arising from the relationship created by the agreement. Statutorily, the Nigerian labour jurisprudence has developed a strong foundation wherein industrial related conflicts can be resolved amicably without necessarily resorting to litigation in the conventional courts.

²⁹*Eze & Ors v Udeh & Ors.* (2017) LPELR 42716 CA 9,10.

³⁰*PHCN Plc & Anor v AG Sokoto State & Anor* (2014) LPELR 23825 CA 33.

³¹TDA 2004, s54.

³²T M Fapohunda, ‘The Prospect of Alternative Disputes Resolution Mechanisms in the Resolution of Industrial Conflicts in Nigeria’ [2009] (7) (1) *Multidisciplinary Journal of Empirical Research* 94 Available on: <https://www.researchgate.net/publication/261715769> accessed 12 July 2021.

³³*Ibid.*

(a) Trade Disputes Act 1976

Under the Trade Disputes Act, the disputants are allowed to utilize the services of an expert mediator jointly engaged by the parties to an industrial dispute. Section 4 of the Act³⁴ provides thus:

If the attempt to settle the dispute as provided in subsection (1) of this section fails, or if no such agreed means of settlement as are mentioned in that subsection exists, the parties shall within seven days of the failure (or, if no such means exists, within seven days of the date on which the dispute arises or is first apprehended) meet together by themselves or their representatives, under the presidency of a mediator mutually agreed upon and appointed by or on behalf of the parties....³⁵

The implication of the provision reiterated above is that parties to an industrial or trade dispute can apart from resolving their conflicts through a collective agreement referred to in subsection (1) of the above section, they can as well by themselves or through their representatives adopt the use of mediator as provide for under the Trade Disputes Act. The effect is that ADR mechanisms is actually applied in the process of resolving industrial disputes in Nigeria

Furthermore, any set of disputants who believes that mediation process cannot resolve their conflicts or who have tried to resolve their conflicts through mediation as prescribed by the Trade Disputes Act and the disputes is not resolved. Any of the parties or both parties can take further steps to resolving the conflicts by adopting the conciliation process as provided for in sections 5 and 8 of the Trade Disputes Act, to wit; “Such steps as the Minister may, pursuant to this section, take may include, the appointment of a conciliator under section 8 of this Act...”³⁶ The Minister may for the purposes of section 7 of this Act appoint a fit person to act as Conciliator for the purpose of effecting a settlement of the dispute. The person appointed as a conciliator under this section shall inquire into the causes and circumstances of the dispute and by negotiation with the parties endeavour to bring about a settlement.³⁷

Although the Trade Disputes Act mandates the Minister in charge of labour to appoint a Conciliator for the parties. However, it does not preclude the parties to an industrial conflict from appointing a third party who is expert in the field as a conciliator for the purpose of amicably resolving their conflicts. The section emphasizes that the person to be appointed must be fit, that means the person must not only be knowledgeable, but must be neutral to be able to meet the standard. In effect, application of ADR in this sense envisages that parties look beyond

³⁴Ibid (n 30).

³⁵Ibid (n 30) Section 4(20).

³⁶Ibid (n 30) Section 5(2) (a).

³⁷Ibid (n 30,) Section 8(1) & (2).

what responsibility the Minister has in resolving their dispute and ensure the techniques are personally applied to their advantage.

It is important to observe that the phrase negotiation as mentioned in subsection (2) of section 8 of the Trade Disputes Act, is very key to the subject which is the resolution of labour related conflicts. It is a forum wherein disputants are allowed to by themselves put their conflicts on the table and discuss same with the intention to shift grounds on their claims or employ the services of expert Negotiators to assist them in resolving their dispute peacefully, easily and faster for the overall interest of the society's economic development. Still on this point, the TDA also initiated another avenue to ensure that labour related conflicts are amicably resolved through ADR processes. Subsection 2 (b),³⁸ provided thus; "A reference of the dispute or any matter relating thereto for settlement to the Industrial Arbitration Panel under section 9 of this Act..."³⁹

The foregoing points to the fact that labour related disputes can actually be resolved peacefully through the ADR process. Although these methods referred to under the section is to be regulated supervised by the Minister in charge of labour and employment matters. However, it does not also exclude the possibilities and/or legality of the disputants jointly appointing or employing the services of expert Arbitrators, who may form an arbitration panel for the purposes of resolving their conflicts. Under the TDA when a report is submitted to the Minister reflecting the steps taken to resolve dispute which proved abortive. The Minister is under an obligation to refer such dispute for settlement to the Industrial Arbitration Panel officially established by this section.⁴⁰ Upon such referral, the IAP seats and work in collaboration with the disputants to ensure the conflict is amicably resolved.

Similarly, the TDA in a bid to ensure a rancor free industrial sector provided for a Board of Inquiry, which shall be responsible in resolution of dispute.⁴¹ Section 33,⁴² provides thus ... the Minister may refer any other matter connected with industrial conditions in Nigeria to a Board of Inquiry appointed for the purposes by the Minister; and the board shall inquire into the matter referred to it and report thereon to the Minister.⁴³

It must be noted that, application of ADR mechanisms became necessary, because the Constitution⁴⁴ envisaged that labour conflicts can cripple the nations' economy, like it has always been.

³⁸*Ibid* (n 30), Section 8.

³⁹*Ibid*, Section 5(2) (b).

⁴⁰*Ibid* (n 30), Section 9(1).

⁴¹*Ibid*, Section 5(2)(c).

⁴²*Ibid*, Section 9(1).

⁴³*Ibid*, Section 33(2).

⁴⁴Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The introduction of ADR mechanisms has received a judicial backing. In the case of *Adebayo & Ors. v Ondo Rugipoly & Anor.*⁴⁵

The court expressed that; organized labour is the bedrock of the nation. Dispute arising from such labour or trade needs to be settled as quickly as possible, because failure to do so might grind to a halt the economy of the nation. This is the reason why the Constitution intends the expeditious trial/settlements of matters before the NIC.⁴⁶

It is observed that; “a closer consideration of ADR mechanisms in Nigeria reveals that within the Nigerian context, ADR is seen as a quick, relatively non-adversarial and objective process for resolving conflict when compared to litigation. Under the TDA, the first stage in the process of labour dispute settlement is for the disputants to explore all internal procedures made available within the organization, or between the parties.”⁴⁷

(b) National Industrial Court of Nigeria (Civil Procedure) Rules 2017

Section 36 of the NICA⁴⁸, empowers the President of the court to make rules for carrying into effect the provisions of this Act⁴⁹ The foregoing provisions gave rise to the establishment of order 24 of this Rules,⁵⁰ which reiterated thus; the President of the court or a judge of the court may refer for amicable settlement through conciliation or mediation any matter filed in any of the Registries of the court to Alternative Dispute Resolution Centre (hereinafter referred to as the Centre) established within the premises of the court pursuant to section 254c (3) of the 1999 Constitution.⁵¹ It suffices to state that the establishment of the Centre is to further enhance the ADR practice as to fast track speedy resolution of industrial related conflicts.

(c) National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre Instrument, 2015

For the ease and peaceful resolution of labour related disputes, the President of the National Industrial Court of Nigeria, in the exercise of power vested in him under the 1999 Constitution and the National Industrial Court Act, 2006, established the NIC ADR Centre. The Centre was established by Article 2 of the Instrument,⁵² to wit:

⁴⁵(2017) 4 NWLR (pt.1555) 264 at 291.

⁴⁶Ibid (n 44).

⁴⁷O V C OKene, *Labour Law in Nigeria: Selected Essays* (1st edn, Faculty of Law, RSU Port Harcourt) 51.

⁴⁸Ibid (n 26).

⁴⁹Ibid, Section 36(1).

⁵⁰NICN CPR 2017.

⁵¹Ibid (n 49) Ord.21(1).

⁵²NICN ADRCI 2015.

There is hereby established an Alternative Dispute Resolution Centre in the premises of the National Industrial Court of Nigeria, hereinafter referred to as “the centre” The Headquarters of the Centre shall be within the premises of the Headquarters of the court in the federal capital territory, Abuja ... the Centre shall be responsible for the resolution of disputes by applying mediation and/or conciliation mechanisms of alternative dispute resolution, under the overall supervision and control of the President of the court, who shall assign and designate or direct the assignment and designation of a Director and other staffers to the Centre....⁵³

The foregoing is an indication that ADR is being accepted as tool for easy and efficient resolution of labour related conflicts and a paradigm shift from protracted industrial or trade dispute to a peaceful atmosphere in our labour sector. The Headquarters of the Centre shall be within the premises of the Headquarters of the court in the Federal Capital Territory, Abuja.⁵⁴

The Centre was established to promote alternative dispute settlement in the Nigerian Labour and Trade sector, in order to foster peace and ensure amicable and speedy dispensation of justice for the enhancement of our nation’s economic development. ADR has been argued to be the best method of dispute resolution in a business environment especially, since it is devoid of bitterness and acrimonies. Also in it, the parties are moderate or guided to resolve their difference most time by themselves.

...there shall be established ADR Centre in each of the zones, which shall be located at the Judicial Divisions indicated as follows:

- 1) North – Central Zone: Abuja ADR Centre situate in Abuja Judicial Division
- 2) North-East Zone: Gombe ADR Centre situate in Gombe Judicial Division.
- 3) North-West Zone: Kano ADR Centre situate in Kano Judicial Division.
- 4) South-East Zone: Enugu ADR Centre situate in Enugu Judicial Division
- 5) South-South Zone: Warri ADR Centre situate in Warri Judicial Division

⁵³*Ibid*, Art.2(2) 8 (4).

⁵⁴*Ibid* (n 49).

6) South-West Zone: Ibandan ADR Centre situate in
Ibandan Judicial Division.⁵⁵

The foregoing implies that ADR Centre have been established in the premises of NICN in all the Geo-political zones in Nigeria apart from its headquarters which is situate at the premises of NICN, Abuja, to ensure that justice is brought closer to the people, particularly, causes arising from employment, non-employment or wrongful termination and/or every industrial relation. The Centre mostly deploys the mediation and or conciliation mechanisms in the dispute resolution.⁵⁶ President of the NICN has the overall supervisory control and he assigns directors and other staffers to the different Centre.⁵⁷ Finally, on this point, it is observed that the president of the Court makes rules that governs the practice and procedure of the Centre.⁵⁸ Article 3 (1) provides that... the members of the staff of the Centre are part and parcel of the members of staff of the Court. It follows that the president of the court has the power to deploy members of staff of court duly appointed by the federal judicial services commission in accordance with the statutory requirements and directors of the commission.⁵⁹

Article 4 of the NICN provides for the mandates and functions of the Centre, thus; ... to enhance and facilitate quick, efficient and equitable resolution of centre employment, labour and industrial relations disputes within the jurisdiction of court; to minimize, reduce, mitigate and eliminate stress, cost and delays and in justice delivery by providing a standard Alternative Dispute Resolution framework for fair, efficient, fast and amicable settlement of disputes; to assist disputant in resolution of their disputes without acrimony or bitterness.⁶⁰ This is the core purpose for establishing the Centre, The jurisdiction of the Centre on subject matter is as provided for in paragraph (4) of Article 4, which made reference to matters contained in sections 254 C (1) (a), 254 C(1) (C), 254 C (1) (g) and 245 (1) (k) respectively. The aforementioned sections have to do with matters connected with labour, employment, trade union, industrial relations and matters arising from work place, the conditions of service, dispute arising from any strike, lock-out or any industrial actions, payment or non-payment of salaries, wages, allowance, benefits and/ or pensions.

The Economic Effect of Settling Industrial Disputes through ADR

The economic effect of settling industrial dispute through ADR mechanisms cannot be over emphasized. Abila⁶¹ citing *Marful-sua* of the Ghana Court of Appeal reiterated thus;

When ADR is well coordinated and effectively practiced, the
right economic and political environment that will foster

⁵⁵*Ibid*, Art.2(3)(a).

⁵⁶*Ibid* (n 49) Art.2(4)(a).

⁵⁷*Ibid*, Art.2(4)(b).

⁵⁸*Ibid*, Art.2(5).

⁵⁹*Ibid*, Art.3(2).

⁶⁰*Ibid*, Art.3(1), (2) & (3).

⁶¹S Abila and D Damfebo *Teaching Alternative Dispute Resolution for Peace and Development* (Saintcity Multimedia 2015) Available on: <https://www.researchgate.net/publication/283727641-Teaching-Alternative,Dispute,ResolutionforpeaceandDevelopment> accessed 20 February 2021.

international trade and investment will be created. A country that has its industrial sector in dispute will hardly attract any investment, both local and international thereby hindering the economic development of such country.⁶²

Some economic importance of practicing settlement of industrial dispute through ADR includes:

(a) Sustenance of Relationship

Dispute settled through ADR is usually a win-win situation where both parties are almost totally satisfied with the results. Nobody is at fault and Nobody is without fault, this kind of situation where no one is to be blamed, helps to retain/preserve existing relationships that would have been hampered by the conflict. Disputing parties can go about their businesses as usually with little or no grievance.⁶³

Increased commercial activities bring about economic development. A sustained peaceful environment is needed for economic development, hence a swift mechanism of resolving conflicts in the industrial sector is a huge necessity.⁶⁴

For any economy to prosper and bring about positive impact on the citizenry, then the need to maintain industrial peace is inevitable, this can only be achieved when matters relating to labour or trade disputes are expeditiously resolved without much lingering. Ajonuma,⁶⁵ maintains that “the impact of a dispute resolved by adversarial methods, especially litigation can cripple business relationship.”⁶⁶

In the case of *Adebayo & Ors v Ondo Rugipoly & Anor*,⁶⁷ the court asserted that:

Organized labour is the bedrock of a nation. Dispute arising from such labour or trade need to be settled as quickly as possible, because failure to do so might grind to a halt the economy of the nation. This is why the Constitution intends expectation trial/settlement of matters before the NIC.⁶⁸

The implication of the forgoing emphasizes the need to quickly resolve industrial related conflicts as they not only disrupt the chain of production but can also halt other economic activities and occasion serious adverse economic effect as investment and trade will be greatly affected.

⁶²Ibid (n 60).

⁶³Ibid (n 60) 3.

⁶⁴Ibid.

⁶⁵J A Ajonumah and O E Ehie, ‘The Applicability of Alternative Dispute Resolution Mechanisms to Labour Disputes in Nigeria’ [2019] (7) (1) *International journal of Business and Law Research* 47-54 Available on: <https://www.seahipaj.org> accessed 29 July 2021.

⁶⁶Ibid, 47.

⁶⁷Supra (n 44).

⁶⁸Ibid (n 44).

(b) Attraction of Foreign Investment and Trade

Good governance and the prevalence of the rule of law in a nation can be achieved through the promotion of a rapid access to justice which is greatly achieved through the application of ADR in our courts. This is one factor that attracts foreign investment and trade. The practice of ADR has boost investors' confidence in our courts as the processes are less stressful, cheap and efficient.⁶⁹ Apart from the need to maintain national security, the maintenance of peace is considered necessary in a nation if economic survival is to thrive⁷⁰ as nobody will be willing to do business in a conflict abundant/residing environment. Many sectors of our economy such as mining, manufacturing and agriculture, have experienced growth and development as a result of foreign investment thereby increasing the Gross Domestic Profit (GDP) of the nation.

From the foregoing, it can be observed that investment and trading can thrive well in a nation with a judicial system that ensures speedy, efficient, less expensive conflict resolution mechanisms. International commercial arbitration has become attractive to investment and business communities all over the world due to its obvious advantages over litigation.⁷¹

(c) Preventing the Wastage of Time and Resources

Article 4 of the Instrument⁷² provides for the mandates and the benefit of the Centre to wit:

1. To enhance and facilitate quick, efficient and equitable resolution of certain employment labor and industrial relations dispute within the jurisdiction of the court;
2. To minimize, reduce, mitigate and eliminate stress, cost and delays in justice delivery by providing a standard Alternative Dispute Resolution framework for fair, efficient and amicable settlement of disputes
3. To assist disputants in the resolution of their disputes without acrimony or bitterness.⁷³

The implication of the provision reiterated above is that the ADR Centre created by the Instrument aims at ensuring that labour related conflicts are handled to eliminate cost, stress and delays in justice delivery which ordinarily will act as a strong clog against the wheel of economic advancement. The phrase eliminating of cost here, did not just end at the financial expenses made by the disputants in the conventional court by system of employing legal counsel, filing, transportation or prosecution and presentation of evidence but also the losses to be incurred as a result of the halt in production and distribution, including loss of revenue by the government. All these shall in no little means affect the nation's economy negatively.

⁶⁹Ibid (n 64) 37.

⁷⁰Ibid (n 64).

⁷¹Ibid, 39.

⁷²Ibid (n 49).

⁷³Ibid (n 49), Art.4(1)(2) & (3).

Similarly, Fapohunda,⁷⁴ outlined some merits of resolving industrial conflicts through ADR mechanisms to include:

- i. **Timely Resolution and Decreased Stress:** Despite the best efforts, of the court system to improve processing time of industrial dispute, it seems there is always an unending period of waiting before judgment is made. There is no case waiting for your day in court. The element governing speed is the eagerness of the parties to end the dispute and the complexity of the cases to be resolved.
- ii. **Preservation of Relationship:** The ADR focus is to reach a resolution that would foster a positive preservation of relationship that has hitherto existed between the parties to the conflict.
- iii. **Saving in the Legal Cost and Time:** ADR processes are designed to be fast, more streamlined and more informed than the statutory resolution procedure.⁷⁵

The foregoing summarizes the advantages of utilizing ADR mechanisms in settlement of trade and or industrial related conflicts under the Nigeria labour jurisprudence.

Summary of Findings

The practice of Alternative Dispute Resolution (ADR) under the Nigeria Jurisprudence is not entirely new. It is long established as a great move towards achieving prompt and amicable resolution of conflicts amongst disputants especially, causes relating to or arising from employment or labour relations and other commercial transactions. The paper reveals the following;

- i. **Lack of Independence for Dispute Settlement Institutions.** Amongst the national legal instruments none made any provision for the independence of the ADR Centres or other existing mechanisms for settlement of industrial/trade disputes.
- ii. **Power of The Minister of Labour and Employment.** Under the TDA the Minister has overall control of all processes relating to settlement of industrial dispute. Whereas, under the NICA, the President of NICN superintends over the affairs of the ADR Centre.
- iii. **Delay in the justice delivery system amidst application of ADR mechanisms.** It was found that the procedures in arriving at justice in matters of labour relations under the TDA and NICA are as cumbersome as what is obtainable in litigation in the regular courts. This is due to the *lacunae* in the legal instruments which did not provide for

⁷⁴Ibid (n 31).

⁷⁵Ibid (n 31) 96.

holistic and prompt measures for intervention and quick resolution of dispute as to restore peace and harmonious labour environment.

- iv. Limited awareness of ADR as a better and cheaper means of dispute settlement. It is pivotal to observe that the NICN ADR Centre has not been made popular in Nigeria. Many citizens are not aware of the existence of such conflict resolution institutions. The Centres are only established on zonal basis, thereby making the available Centres inaccessible to many disputants. In other words, infrastructure is lacking for the Centre and most of the major industrial hubs like Port Harcourt and Lagos can barely access the Centre, since the Centre is not cited within their jurisdiction.

Conclusion

The effects of and the advantages of applying the ADR mechanisms in settlement of industrial conflicts were identified. In course of doing that, statutory provisions on ADR mechanisms were elucidated. The need for creating awareness of the existence and advantages of ADR mechanisms in settling industrial/trade conflicts is inevitable. Amendment of existing legal instruments to strengthen the institutions and give room to educate the citizens on the subject matter from schools and colleges is pivotal and quite imperative.

Hence, the knowledge of the gains of applying ADR mechanisms in industrial/ trade disputes settlements will eliminate many adverse economic effects arising from industrial and/or trade conflicts on our nations' economy, including the educational sector and general wellbeing of the citizens.

Recommendations

The paper offers some suggested recommendations that Law makers, Government authorities, Educators, Pressure groups, Investors, Employment organizations and Workers union should embark on or introduce by way of amendment to existing legal instruments or policies to ensure efficient and peaceful industrial atmosphere and its attendant economic impacts.

- a. A new law should be enacted to repeal the existing National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre Instrument, 2015. This is to ensure an independent body, devoid of total control by any arm of the government, especially, the judiciary.
- b. A revision of Article 2 Rules (4) (5) and (6) which vested power and privilege on the President of the National Industrial Court of Nigeria to direct and control the activities of the NICN ADR Centre, upto the appointment of and posting of staffers and designate who becomes the Director of the Centre, make rules and practice direction from time to time. Upholding the existing norms will mean that the Centre is not independent and can barely do substantial justice as required by the principles of equity upon which ADR mechanisms are found, without interference, especially in any dispute where the government is involved.

- c. Revision of the Trade Disputes Act Cap. T8 LFN, 2004 is necessary to include a section compelling both private and public employers to compulsorily adopt and respect the ADR process. Also respect the outcome of any settlement should have the same effect as the judgement of a court, this way it is sure that peace and order will be achieved in the economic sector. A huge sanction should be introduced as punishment for non-compliance.
- d. The National Assembly to enact an Act on the use and application of ADR for the resolution of trade and labour related disputes. It should establish a Centre which shall be independent and provide for compulsory publicity of the application of ADR process. It should provide for compulsory application of ADR mechanisms in all labour contracts. Settlement by means of ADR techniques should be made part of national educational curriculum.
- e. Revision of Articles 4(6),(8),(16) and (27) of the National Industrial Court of Nigeria Alternative Dispute Resolution Centre Instruments, 2015, to ensure that the values and rules of equity which ADR propagates will not be altered by submerging the later with the common law rigidity, when annexed to a court. In alternative, a brand new ADR Act should be enacted to allow for effective and efficient functionality and promotion of the core ADR values.
- f. The new law when enacted should allow for cases resolved by ADR Centre to be publicized. Firstly, in order to enhance the proclamation of the advantages of ADR in resolving trade or industrial conflicts. Secondly, the outcome of ADR proceedings should not be strictly confidential and without prejudice so there can be an end to the dispute, when principle of estoppel is applied.