Athens Journal of Law - Volume 10, Issue 1, January 2024 – Pages 119-154

ADR and Workplace Conflict - A Podcast Analysis Nigeria, Britain and the US

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The decline of union representation and the introduction of legal incentives for workers to resolve individual employment disputes without resorting to the courts has unequivocally made Alternative Dispute Resolution (ADR) increasingly prominent in the British industrial relations landscape. The conciliation service offered by the Advisory Conciliation and Arbitration Service (ACAS) has been the most important sign and driver of this change. Although ADR has been encouraged in Western jurisdictions, particularly in the United Kingdom (UK) and in the United States (US), as a means to reduce time and litigation costs in relation to employment tribunal claims, the scarcity of scholarly publications, particularly on the benefits of utilising mediation or conciliation to settle workplace disputes is frankly unacceptable. On the other hand, Nigerian workers or employees are not encouraged or have little or no awareness of resolving workplace disputes or conflicts via ADR due to a lack of sensitisation in most organisations and a dearth of scholarly research on ADR to settle conflicts or workplace disputes in Nigeria, particularly with Mediation and Conciliation. This lack of awareness is a grave oversight compared to the UK. While British workers are encouraged to lodge their disputes with the Advisory, Conciliation and Arbitration Services (ACAS) before proceeding to an employment tribunal claim, Nigerian counterparts settle via the National Industrial Court (NIC) ADR, which is not always adequate. However, some sectors in Nigeria, like the Trade Unions, are quite complex, particularly disputes emanating from the Maritime Industry, which are hardly settled via ADR, unlike their UK counterparts. Hence, the jurisdictions mentioned above have different patterns and modus operandi for resolving workplace conflicts or disputes, and these will be meticulously examined in this paper. Additionally, the paper scrutinises the reason why the minister of labour and employment has so much power accorded or bequest to him to apprehend and refer a disputed award to the National Industrial Court (NIC) ADR. The paper employs a comparative and, for the first time, podcast analysis of workplace disputes in Nigeria and Britain, focusing on the different patterns of settling Workplace Conflicts such as discrimination, bullying and harassment. The paper concludes

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[1]The authoress acknowledges and appreciates the unwavering support and invaluable guidance provided by her research mentor, Dr. Anne Daguerre (Reader in Social Justice) at the School of Business and Law, University of Brighton, without which her research journey would have been significantly more challenging. The author firmly acknowledges and appreciates the invaluable contributions of the experts who graced the EVA Show, particularly those mentioned in the article, as well as the ESRC-UKRI and the American Bar Association (ABA) Section of Dispute Resolution.

https://doi.org/10.30958/ajl.10-1-7 doi=10.30958/ajl.10-1-7

by unequivocally highlighting the benefits of mediation and its relevance to various entities involved in Workplace conflicts or disputes.

Keywords: *Alternative Dispute Resolution, Workplace Conflict, Access to Labour Justice, Employment Relations, Human Resource Management, Podcast, Awareness.*

Introduction

The invention of new technologies such as podcasts has made the world a global village, with people from different parts of the world being able to connect with each other more easily.[2] Despite the advancements in technology that have brought people closer together, there are still unique differences and similarities between different jurisdictions such as Nigeria, the US and the UK.[3] As such, the comparative analysis of legal systems can provide valuable insight into foreign cultures.[4] Comparative legal analysis involves systematically comparing two or more legal systems. This definition is consistent with John Reitz's view that the comparative method involves an explicit comparison of different elements of legal systems.[5]

Furthermore, a comparative study can enhance understanding of different legal systems and create awareness of the position of one's own legal system in an international legal order.[6] Research podcasts have been found to be a credible method of data gathering, as guests invited are experts in their respective fields. In furtherance, ongoing research by the writer indicates that podcast reaches more geographic location or audience faster than any form of data-gathering tool- it was employed as instructional material.[7]

Scholars tend to reveal thoroughly researched views on podcasts because they know or are aware that whatever they say would be distributed all over platforms like Amazon, Spotify, and Apple, amongst others, in turn, reaches thousands of people all over the world, which makes podcasts the most authentic form of data gathering and research dissemination. Thus, the writer shall adopt this pattern to achieve a more in-depth understanding of critical insight into what new knowledge is likely to emerge from comparing the United Kingdom, in some cases the US, of settling workplace conflicts or disputes with that of Nigeria.

[2]Eberle (2009) at 451-452.
[3]The Association of Multi-Door Courthouses of Nigeria, (2019).
[4]Hantrais (1995) at 3.
[5] Reitz (1998) at 619.
[6]Platsas (2015).
[7]Egbunike & Umegbolu (2021).

The Need to Manage Conflict via ADR

Recent research has shown that conflict in the workplace leads to poor performance, creates an unconducive environment, and impacts mental well-being.[8] Hence, the need to manage conflict via ADR, precisely mediation and conciliation, has proved to be a relatively cheap, fast, and successful way of resolving most disputes without further escalation, particularly when compared to litigation.[9]

Currie et al. postulated that in the heyday of collective industrial relations, conflict at work was commonly viewed as something like the arrival of bad weather, not particularly welcomed but inevitable, nonetheless.[10]

According to her, both trade union representatives and personal managers in the UK held a stoic attitude towards workplace conflict.[11]

The stoic attitude towards workplace conflict held by both trade union representatives and personal managers in the UK is not a sustainable approach. It is unacceptable that some view occasional industrial disputes as therapeutic for cleansing bad feelings between management and the workforce. Fortunately, the introduction of the Advisory Conciliation and Arbitration Service (hereinafter ACAS), which uses ADR to settle disputes such as mediation and conciliation, has brought about significant changes to the UK dispute resolution system. Michael Gibbons's review in 2007 initiated these changes, leading to the introduction of the new ACAS pre-claim conciliation service. Through this service, parties can avoid resorting to an employment tribunal (ET) to resolve a dispute, which has delivered significant savings to businesses.[12]

The establishment of the National Industrial Court of Nigeria (NICN) in 1976 marked a significant milestone in resolving labour disputes in Nigeria through the Trade Disputes Decree.[13] The NICN ADR Centre Instrument & Rules 2015 provides a vital legal framework that serves as the foundation for establishing and operating the ADR Center. The NICN ADR is deeply rooted in the combined provisions of Ss.1 (2) (a) and 20 of the NICA 2006, which empower the President of the Court to administer the court, promote and apply ADR in the court.[14]

With far-reaching jurisdiction and powers under the Constitution and statute, the court has a clear responsibility to provide justice between parties without the need for strict evidentiary rules and technicalities, consistent with national laws, international standards, and best practices.[15] Conflicts or disputes relating to labour are bound to occur in the workplace, and workers have the responsibility to solve problems via ADR instead of litigation, which may accentuate the fragmentation and isolation of the employment relationship, a potential issue that needs to be addressed.

[8]Orifowomo & Ashiru (2015).
[9]Blake, Browne & Sime (2021) at 37.
[10]Currie, Gormley, Roche & Teague (2016).
[11]*Ibid.*
[12]Resolving workplace disputes: A Consultation (2011) Department for Business Innovation and Skills (Tribunal Service).
[13]Orifowomo & Ashiru (2015) at 152.
[14]Ogbuanya,(2015).
[15]Orifowomo & Ashiru (2015).

In Nigeria, it is uncommon for employees to utilise alternative dispute resolution (ADR) methods when attempting to resolve issues with their employers. This is due to a variety of factors, including cultural norms and corruption.[16] Unfortunately, labour disputes are viewed unfavourably in Nigeria due to the lengthy and complex adjudication process, as well as regulations that govern the employment relationship.[17] Additionally, the Trade Act requires disputing parties to consult with the Minister of Trade and Industry prior to bringing their grievances before an arbitral body.[18] As a result of these challenges, new approaches to workplace dispute resolution are necessary. Mr Kehinde Aina, the founder of the Multi-Door Courthouse in Nigeria, recognises that while employees are aware of their options for resolving workplace conflicts, their knowledge is not as widespread as it should be.[19]'

He went on to reveal 'that the National Industry Court (NIC), which is solely responsible for employment disputes, has incorporated an ADR Center based on the Multi-Door Courthouse (MDC) model. This move has improved awareness among employers and employees on the concepts of mediation and ADR. However, there is still more work to be done in raising awareness within the labour community. The Lagos Multi-Door Courthouse (LMDC) resolved its first case involving a staff member laid off by a Trade Association and Bank, showcasing the efficacy of mediation in resolving disputes. The inability of the federal government and the Academic Staff Union of Universities (ASUU) to find common ground brings to light the potential limitations of mediation or ADR in resolving cases. While ADR or mediation may not be the mainstream approach in dealing with Trade union cases, trade unions still have a role to play in mediation. South Africa has made significant strides in addressing Trade union disputes through mediation.'[20]

Conversely, Dr Eugene Nweke, Trade Union Consultant, has made it clear that the Maritime Industry in Nigeria needs to take a more professional approach to resolving conflicts. He believes that the Trade Union Congress (TUC) represents the interests of workers in Nigeria but is outspoken about the corruption plaguing the settling of cases in Nigeria,[21] where one or two people are paid off, and the case remains unsolved. However, he is adamant that ADR still has an important role to play in the Maritime Industry.

He points out that the Nigerian Shippers Council has a mediation desk that has successfully mediated between parties involved in freight forwarding. Dr Nweke firmly believes that mediation has played a vital role in resolving conflicts, but further sensitisation is needed on the use of ADR in the maritime industry.

To bolster the points made above, it dawns on the writer that the nature of industrial relations and labour or employment-related conflicts or disputes tends to favour the adoption of ADR without going through the rigorous process associated

[16]Resolving workplace disputes: A Consultation (2011) Department for Business Innovation and Skills (Tribunal Service).
[17]Orifowomo & Ashiru (2015).
[18]Okpara (2022) at 85..
[19]Expert Views on ADR (EVA) Show, Episode 39.
[20]*Ibid*.
[21]Corruption in Nigeria is also known as 'man know man.'

with litigation. While ADR is gaining acceptance in other sectors, such as property, commercial, family, and even criminal matters, it still has a long way to go in industrial relations,[22] but in industrial relations, it still has a long way to go. However, more emphasis must be placed on training Senior management teams to handle workplace conflicts or disputes via ADR processes.

Disputes and conflicts are a natural part of any workplace, and in some cases, legal action may be necessary to resolve them. According to Section 54 (1) of the National Industrial Court Act (NICA), a trade dispute refers to any disagreement between employers and employees,[23] as well as between their respective organisations and federations, related to employment or non-employment of any person, terms of employment and physical conditions of work of any person, the conclusion or variation of a collective agreement, and an alleged dispute.[24]

In recent years, there has been an increased emphasis on utilising workplace mediation to settle labour disputes2.[25] Despite claims of its efficacy, there is a lack of evidence to support the notion that alternative dispute resolution (ADR) is successfully resolving workplace conflicts.[26] While there is limited academic research into workplace mediation in Nigeria,[27] there is a growing body of evidence that suggests its potential benefits[28] are too significant to ignore.

Workplace mediation is an idea whose time has come; over the past two decades, mediation services have been set up in both developed and developing countries to deal with a range of disputes, including commercial, property, criminal[29], and family disputes.[30] The Woolf Report, released in 1996,[31] made suggestions to the legal system for the expansion of mediation into various areas of the law, such as civil disputes and legal disputes with local authorities.[32]

Against this backdrop, Blake et al. pointed out Alternative Dispute Resolution (ADR) has a long and respected history in England and Wales.[33] Several government reports and consultation papers have been disseminated to establish how mediation can be utilised, and legislation has been passed to introduce ADR procedures into employment law.[34] The first formalised approaches to mediation in the workplace were developed in 1996 in Lewisham Council's Housing Department and the Department of Health.[35]

A 2015 Chartered Institute of Personnel and Development (CIPD) survey of their members testified that in-house mediation was used in 24% of organisations

[22]Umegbolu (2021) at 54.
[23]Orifowomo & Ashiru (2015) at 152.
[24]*Ibid.*
[25]Efbunike-Umegbolu (2022b).
[26]Umegbolu (2021) at 56.
[27]*Ibid*.
[28]Osabiya (2015).
[29]Umegbolu (2021) at 54.
[30]Levin & Wheeler (1979) at 51.
[31]In a bid to decongest the court system in England.
[32]Liebmann (2000) at 167.
[33]Blake, Brown & Sime (2021).
[34]Liebmann (2000) at 166.
[35]*Ibid*.

and external mediation in 9%.[36] Moreover, the use of in-house and external mediation increased by 24% and 32%, respectively.[37] At the same time, almost four in ten organisations had expanded their development and use of mediation skills.[38] However, Litigation is still preferred over mediation due to the attraction of financial rewards.[39] This is a mistake, and it is time for people to recognise the benefits of mediation.

The case of Shell v. Farah is a prime example of why people need to start taking mediation seriously. In this case, the lawyers received roughly 2,500,000 Naira (equivalent to 4,934.9) or 54% of the total compensation payment, leaving the plaintiffs with only 46% of the compensation.[40] It is essential to understand what mediation is. According to Acas and the CIPD, mediation is defined as 'where an impartial third party, the mediator, helps two or more people in dispute to attempt to reach an agreement.'[41]

The court system has faced numerous challenges, including high costs,[42] congestion,[43] and delays,[44] leading to significant changes.[45] Litigants and stakeholders alike have sought effective solutions to address these issues.[46] Litigants have expressed concern about their cases taking years to resolve due to the expensive nature of litigation,[47] including lawyers' fees and court filing fees.[48] Furthermore, corruption has only served to reinforce a lack of trust in the judiciary.[49] Meanwhile, stakeholders have been proactive in encouraging litigants to consider ADR as a viable alternative to litigation. [50] It is important to note that these challenges are not exclusive to Nigeria and are present in other jurisdictions[51] as well, highlighting the need for all stakeholders to take decisive action to tackle them.

Following the above, ADR has established a well-deserved reputation as a reliable, efficient, and cost-effective method of resolving commercial disputes.[52] This is particularly evident in countries like the USA, Australia, the UK, Singapore, Canada, and numerous other nations worldwide. With litigation being commonplace, ADR has become the preferred choice for dispute resolution and is gaining popularity among businesses worldwide.[53]

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[36]*Ibid*.
[37]Saundry, & Wibberley (2015) at 1.
[38]*Ibid*.
[39]Frynas (2001).
[40]*Ibid.*
[41]Saundry & Wibberley (2015).
[42]Nwosu (2004) at 9.
[43]Onyema (2013) at 4.
[44]I*bid*.
[45]Levin & Wheeler (1979) at 51.
[46]Onyema (2013) at 6.
[47]Dawson (2013).
[48]*Ibid.*
[49]Oduntan (2017) at 36.
[50]Akerdolu (2013).
[51]Ahmed (2015) at 72.
[52]*Ibid.*
[53]Ntuly (2018) at 38.

Given the above, it is a fact that in the last two decades, Alternative Dispute Resolution (ADR) has grown to the extent of challenging litigation as the principal means of dispute resolution in the West.[54] Nevertheless, a brief insight into what the term ADR refers to is necessary - it simply refers to Mediation, Arbitration, Conciliation and Negotiation, which are out-of-court mechanisms for settling disputes.[55] This work does not seek to engage with all aspects of ADR but will deal mainly with Mediation and Conciliation.

Considering the changes that are sweeping across the globe in terms of dispute resolution, it is disheartening to note that the progress of ADR as a method of dispute resolution in developing countries is hardly keeping pace with the more developed countries like the UK and the USA;[56] particularly in workplace conflicts or trade disputes. It is concerning that many employees in Nigeria are aware of neo-patrimonial characteristics such as corruption and bullying; such traits are only further reinforced in the workplace. Additionally, recent research conducted illustrated that Nigerians are yet to embrace ADR.[57]

The Relevance of using the United Kingdom and Nigeria as Case Studies

The common law, also known as the Anglo-American Law, was the body of customary law based upon judicial decisions and represented in decided cases that the common-law courts of England have administered since the Middle Ages.[58] From it has evolved the type of legal system now also found in most of the member states of the Commonwealth and in the United States.[59] With the advent of colonial rule, Nigeria embraced common law and Customary Jurisprudence.[60] In the aftermath of colonial rule, virtually all new ideas of law or development in Nigeria that have been introduced are patterned after Western law, precisely the United Kingdom.[61] For example, the Arbitration Act, the first legislation on Arbitration in Nigeria, was inspired by the then-English Arbitration Act of 1889, which extensively dealt with domestic arbitration.[62] Subsequently, in 1988, Nigeria became the first African country to adopt the UNCITRAL Model law with the promulgation of the Arbitration and Conciliation Decree of 1988.[63]

To reiterate, the work will focus on the United Kingdom, Nigeria, and the US; however, it will predominately concentrate on Britain and Nigeria in the comparative analysis of this paper. Lagos was the federal capital territory of Nigeria from 1914-1991 and is one of the biggest commercial cities in Africa.[64]

[54]Fiadjoe (2004) at 19.
[55]Derri (2016) at 2.
[56]Fiadjoe (2004) at 37.
[57]Umegbolu (2021) at 53.
[58]The Common Law and Civil Law Traditions.
[59]*Ibid*.
[60]Idornigie (2007).
[61]Burns (1978) at 18.
[62]Derri (2016).
[63]*Ibid* .
[64]Fiadjoe (2004) at 18.

Lagos is widely known in Nigeria as the 'Centre for Excellence.' Population-wise, as of 2019, Lagos has over Twenty-five (25) million inhabitants with over Two hundred and fifty (250) ethnic groups represented in Lagos as residents with a reasonable number of international or foreign citizens resident for various economic purposes. [65] Lagos boasts of both huge water and land resources, thus making it inevitably the economic capital of Nigeria and Africa due to the location of its seaport. Hence, the attraction of various international companies like the six (6) major foreign oil companies which dominate the Nigerian oil industry today (Shell, Exxon Mobil, Chevron, Elf, Agip and Texaco), were already present in Lagos- Nigeria, to set up their businesses in Lagos by the early 1960s.[66]

On the other hand, in the United Kingdom, the rule of law is the longest-established common law dating to the Magna Carta of 1215, particularly jurisprudence.[67] In the same vein, in 1998, the encouragement of the use of ADR was built into the Civil Procedure Rules in the United Kingdom.[68]

Access to Labour Justice

The concept of "access to justice" embodies two fundamental approaches. Firstly, the justice system must be approachable without hindrance or obstacles, meaning that it must be unequivocally open and accessible to everyone, leading to socially just results.[69] Additionally, access to labour justice is grounded in the rules or methods established by the courts for their citizenry, guaranteeing just legal proceedings and outcomes.[70] Disputes and conflicts arising from employees' complaints continue to grow across different spheres of the world. Labour courts play a vital role in contributing to equity in industrial relations and ensuring access to justice. Access to labour justice should not only be understood as "formal access to labour courts and rights," but rather, it should enable real conditions of equality before the judiciary.[71]

Paz-Fuchs et al. have reflected on two aspects of access to justice: the procedural element of "access" and the substantive element of "justice.[72]" By combining the two, access to justice is undoubtedly hinged on its accessibility to all, and the denial of access to justice by any means, whether by a failure of the system to make alternative provisions or any form of bullying, discrimination, or harassment, is unacceptable.[73]

The case of *R (on the application of UNISON) v Lord Chancellor* underscores the constitutional right of access to justice and the rule of law. UNISON pursued a judicial review on the Fees Order, which illicitly restricted access to justice, and the Supreme Court collectively allowed its appeal, declaring the Fees Order

[65]Aina (2000) at 18.
[66]Frynas (1999) at 19.
[67]Blake, Browne & Sime (2021) at 5.
[68]*Ibid.*
[69]Access to Labour Justice (2021).
[70]*Ibid.*
[71]*Ibid.*
[72]Welsh (2022) at 6.
[73]*Ibid* .

unlawful and must be quashed.[74] The 1999 Constitution, Section 36 (1), explicitly guarantees the fundamental right of every citizen of Nigeria to a fair hearing, such that the common man is entitled to be treated justly and receive appropriate remedies from the court, which is within the ambit of the law and his constitutional right as a citizen of Nigeria.[75]

In Nigeria, several factors contribute to the impediment or hindrances to access to justice, some of which are deep-rooted in the political and economic scheme of the country, while others are procedural or substantive.[76] A report published by Afro Barometer reveals that one out of eight (8) Africans deliberately avoided taking cases to court in the past eight years.[77] The reasons for their avoidance include spiralling high costs of litigation,[78] unfair treatment,[79] alleged corruption[80] in the judiciary, and a lack of confidence and trust in the justice system. These hindrances pave the way for introducing ADR in all parts of the country to ensure access to justice.[81]

The Workings of Workplace Conflicts or Disputes in Nigeria

Generally, conflicts or disputes arising between employers and employees, employers and employees in organisations, are bound to occur in every organisation.[82] In Nigeria, the relationship between employers and employees is that of master and servant roles, making it difficult for employees to open up or even report a conflict between them and their employers for fear of losing their jobs.[83] In contrast to their UK counterparts, they are encouraged to open up or report any conflicts or disputes arising between them and their employers informally.[84]

The Nigerian Labour Law is the primary legislation that deals with the relationship between employers and employees.[85] In other words, in Nigeria, disputes or conflicts in the workplace entail or involve all employment disputes.[86] However, the act gave a vague definition of workers -excluding persons exercising administrative, executive, technical or professional functions as public officers or otherwise.[87]

The usage of the term 'workers' in the Labour Act has led to debates about its applicability to all classes of employees in Nigeria.[88] In retrospect, the above

[74]*R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51.
[75]Constitution of the Federal Republic of Nigeria, 1999.
[76]Okoguble (2015).
[77]Chukwurah (2017).
[78]Okogbule (2005) at 101.
[79]Oduntan (2017) at 37.
[80]*Ibid.* at 38.
[81]*Ibid.*
[82]Egbunike-Umegbolu (2022a). .
[83]*Ibid*.
[84]Acas working for everyone.
[85]9 Things every Nigerian should know about the Labour Act.
[86]Essien (2014) at 464.
[87]*Ibid*.
[88]*Ibid*.

definition begs the question, who is an employee? The definition of an employee in Section 230 (1) of the Employments Act, 1996 (ERA) in the UK defines an employee as an individual who has entered or works under contract employment[89] is different from that in the Nigerian Labour Act.[90]

However, both definitions share a common factor, which is that an employee works under a contract of employment. Moving on, labour disputes refer to any disagreements that occur among parties involved in establishing, implementing, or terminating labour relations.[91] These disputes can also arise from relations directly related to labour relations or disputes among workers' representative organisations. Such disputes are commonly referred to as trade disputes.[92] The Oxford Law Dictionary defines trade disputes as disagreements between an employer and employees (or their trade union), usually concerning wages or working conditions.[93] Nevertheless, Obi-Ochiabutor argued that the Trade Dispute (Amendment) Decree 1992 interpreted the meaning of trade disputes inversely. This means that the National Industrial Court (NIC) has exclusive jurisdiction over trade dispute cases, including inter or intra-union disputes.[94]

On the contrary, Section 47 of the Trade Dispute Act 2004 and Section 54 (1) of the National Industrial Court Act (NICA) 2006 provide clear definitions of trade disputes as any disagreement between employers and workers or between workers and workers related to employment or non-employment, terms of employment, physical conditions of work, or collective agreements.[95] It is important to note that not every labour dispute qualifies as a trade dispute.

Subsequently, Section 54 (1) of the National Industrial Court Act (NICA) 2006 defines trade dispute to mean-

Any dispute between employer and employees, including a dispute between their respective organisations and federations, which is connected with the employment or non-employment of any person, terms of employment and physical conditions of work of any person, or the conclusion or variation of a collective agreement, and an alleged dispute.[96]

The above definition depicts that the Labour Dispute is based on the premise of a relative balance of power between different parties, such as wrongs like exploitation, for instance, an exploiter and an exploited victim.[97] Nevertheless, it is not every labour dispute that qualifies as the latter.

For example, the court stated the core elements of a trade dispute in the case of NURTW v. Ogbodo (1998),[98] which are as follows:

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[89]Russell (2021).
[90]9 Things every Nigerian should know about the Labour Act.
[91]*Ibid*.
[92]Advocaat Law Practice.
[93]*Ibid*.
[94]Obi-Ochiabutor (2002-2010).
[95]Essien (2014
[96]National Industrial Court Act (NICA) 2004
[97]Bogg (2017).
[98]NURTW v. Ogbodo (1998). 2 N.W.L.R (Pt. 537) at 189 *Cited* in Advocaat Law Practice, An Appraisal of Trade Dispute Resolution Mechanisms in Nigeria 2006, 1.

a) There must be a dispute.
b) The dispute must involve a trade, and it must be between employers & workers or workers and workers.
c) the dispute must relate to the employment or non-employment or terms of employment or physical condition of work of any person.[99]

From the preceding, the National Industrial Court of Nigeria (NICN) was established to handle labour, employment matters, and industrial relations matters. Any issues that have to do with labour matters are exclusively for the National Industrial Court.[100] In the 1999 constitution of Nigeria, there is a provision that says that the court may establish an ADR centre to deal with matters where the court has jurisdictions, which are labour employment and industrial matters. The Labour Conflict Act is designed to resolve any related labour matters in a cost-effective, user-friendly, and time-efficient manner, restoring relationships, maintaining confidentiality, and ensuring that the aggrieved parties receive satisfaction.[101]

A Trade Dispute Resolution Mechanisms in Nigeria

In regard to labour disputes, it is important to note that any party involved in such a dispute, including employees, employers, trade union representatives, or the Minister of Labour, can contact the Mediation Services provided by the National Industrial Court of Nigeria (NICN).[102]

This course of action is guided by the relevant laws, including the National Industrial Courts Law, the 1999 Constitution, and the Trade Dispute Acts 2004, which the NICN adheres to in its dispute resolution process. The trade unions are also empowered to initiate a process to settle disputes through mediation, conciliation, arbitration, or court intervention.[103] The Minister of Labor may also initiate the dispute resolution process if they become aware of a dispute. It is worth noting that the labour minister can begin settling labour disputes[104] outside of these methods as well.

Given the context mentioned above, it is crucial to compare the modus operandi of trade dispute mechanisms in Nigeria to that of the United Kingdom's mode of operation. This analysis will help to identify any similarities or differences between the two approaches.

[99]*Ibid*.
[100]1999 Constitution of the Federal Republic of Nigeria
[101]Expert Views on ADR (EVA) Show, ADR and workplace conflicts: National Industrial Court of Nigeria (NICN) with Mr Odunayo Bamodu.
[102]*Ibid*.
[103]*Ibid*.
[104]*Ibid* .

Internal Settlement Mechanism

Under the Trade Dispute Act of Nigeria, parties to a conflict or dispute are mandated to settle their disputes themselves through internal settlement mechanisms before approaching any alternative means.[105] These internal means are also known as Collective Bargaining.[106]

What this means is that it allows or mandates parties to a conflict or dispute a leeway to settle their disputes themselves before approaching any alternative means. These Internal means are also known as Collective Bargaining. Section 91 (1) of the Labour Act defined Collective bargaining as a process of arriving or attempting to arrive at a collective agreement.[107]

Conversely, Section 3 of the same act indicates that collective agreements freely entered by the parties may have the effect of law after being submitted to the Minister of Labour and Employment, who has the discretion to make an order specifying the terms and portions of the agreement that shall be binding on the employers and workers.[108]

The above statement raises the prevalent question of why the minister of labour and employment has so much power conferred on him. It has been argued that this power is necessary in Nigeria, especially the fact that 'Nigerian culture' is one of the factors for this rule in the sense that most Nigerians understand the 'hard way'. For instance, the way most people were brought up with a whipping or beating and a 'do as I say mentality' without being allowed to question why they are being punished by their parents or elders, in contrast to the UK, where children ask 'why they are being shouted on. Hitherto, in Nigeria, if a rule is soft, people tend to flout it because they are accustomed to rigid rules/the 'hard way.'

Mediation/Conciliation

Mediation or conciliation is a process where a neutral third party, called a mediator or a conciliator, is appointed by parties in dispute to facilitate or assist them in reaching an amicable settlement.[109] The main objective of using mediation to settle workplace conflicts or disputes is to restore good employment relations through an efficient and fair resolution of conflicts. Unlike litigation, where parties are not directly involved, mediation promotes good employment relationships as it is party-driven. Another advantage of mediation is the preservation of the existing relationship between the parties, which tends to be lost in adversarial system.[110] Moreover, mediation saves time and avoids dealing with overloaded courts and inherent delays in the adversarial system, which is the primary motivation for the federal and state governments to encourage ADR in industrial relations in Nigeria.

[105]Advocaat Law Practice.
[106]Chaman Law Firm.
[107]International Labour Organisation 2021.
[108]*Ibid*.
[109]According to Professor Paul Idornigie, Mediation and Conciliation are both the same and thus can be used interchangeably. *Cited* in Egbunike-Umegbolu (2022a).
[110] *Ibid.*

According to Section 4 (2) of the Act, the mode of settling trade disputes via the mediation route is stipulated. If an attempt to settle the dispute through the internal settlement mechanism fails, or no such means of settlement exists, the disputing parties are required to meet within seven (7) days to resolve the dispute by the presidency of a mediator mutually agreed upon by the parties.[111] If the mediation fails, the matter will then be referred to the Minister within three (3) days of the expiration of the period for resolving the dispute by mediation.[112] This will be done in a written report containing the details of the disagreement and attempts made to resolve it by the Minister.[113] However, where this fails, it is within the remit of the Minister's power to direct the parties to take further steps to resolve the conflict where he/she is not satisfied that the parties have engaged in the procedures in good faith. If the parties, for any reason, are not able to resolve amicably, then the Minister refers the matter for mediation or conciliation to the Industrial Arbitration Panel (IAP).[114]

The Industrial Arbitration Panel (IAP)

The Industrial Arbitration Panel (IAP) offers Arbitration to disputants who were not able to settle disputes via the Mediation/Conciliation route. Professor Emilia Onyema defined 'Arbitration as a process wherein a third (3rd) party decides or makes a decision for the parties, unlike Mediation or Conciliation, where the third (3rd) party supports the parties or the disputants to decide for themselves.'[115]

One of the significant characteristics of the Trade Disputes Act is that the Minister has the authority to refer disputes to the IAP, and any award granted by the panel will not be legally binding on the parties up until the Minister of Labour approves or confirms it.[116] In simple terms, the IAP does have a procedure – it would only deal with matters referred by the Minister.

Given the foregoing, IAP is 'responsible for arbitrating the industrial disputes between employers and employees inter and intra-union disputes upon referral by the Minister of Labour and Productivity under section 9 (1) of the Trade Dispute Act 7.'[117] The Objective of the Industrial Arbitration Panel is to preserve harmony between workers and employers from the public and private sectors in industrial relations. Additionally, to enrich workers' and employers' political and socio-economic development in various working environments in the Nation.[118]

[111]Advocaat Law Practice.
[112]Advocaat Law Practice.
[113]This written report is required in accordance with the Act to be submitted by the parties to a dispute.
[114]Obi-Ochiabutor (2002-2010).
[115]Egbunike-Umegbolu (2021).
[116]Okpara (2022).
[117]IAP was conceived under the Trade Dispute Decree No. 7 of 1976 Cap 438, and the Minister of Labour and Productivity is the supervising body to the Panel *Cited* in Essien (2014).
[118]*Ibid.*

Hearing

According to Obi-Ochiabutor, 'the hearing consists of the Panel of Arbitrators listening to the disputing parties.'[119] The panel comprises the Chairman, the Vice Chairman, and at least Ten (10) other members appearing to the minister to represent the workers' interests. Generally, the Arbitration Tribunal (AT) consists of a sole Arbitrator supported by assessors and one or more arbitrators nominated by the representatives of employers and workers.[120]

Award

Subsequently, the IAP is expected to make its award within Twenty-one (21) days or more extended period at the discretion of the Minister.[121] Once a copy of the award is sent to the minister, he then sends copies to the parties and publishes the same.

Enforcement

This automatically validates the award parties shall be bound by the decision reached by the award.[122] It is pertinent to point out that a breach of the award will render the guilty parties (y) legally responsible. Nevertheless, if a notice of objection to the award is given within the stipulated time to the minister, then the minister shall refer the dispute to the National Industrial Court.[123]

Settlement by the National Industrial Court of Nigeria (NICN)

To reiterate, the Minister has the absolute power to apprehend[124] and refer a disputed award to the National Industrial Court (NIC). It is argued that the minister is the final arbiter in such circumstances.[125] This raises a prevalent question of whether the absolute power vested in the minister by the Trade Act creates a ripple effect on the part of the party, [126]who might not ordinarily have faith in the ADR procedure- to exercise his fundamental right by approaching the traditional court of Justice.

On the other hand, once the matter reaches the NICN, it ceases to be arbitration; as this is the apex court for the settlement of trade disputes, it becomes a Judicial hearing- which is final and binding.[127] However, there is an exception to

[119]Obi-Ochiabutor (2002-2010) at 78.
[120]*bid.*
[121]*Ibid*.
[122]*Ibid*.
[123]Essien (2014) at 467.
[124]Okpara (2022).
[125]Obi-Ochiabutor (2002-2010) at 82.
[126]Okpara (2022).
[127]Obi-Ochiabutor (2002) at 83.

this rule if a party alleges a breach of his/her fundamental rights automatically; this creates a leeway for an appeal.[128]

By and large, Section 5 of the Trade Dispute Act has empowered the Minister of Labour and Productivity to apprehend a dispute even before the parties report it.[129] What the Minister does, in this case, is to inform the disputants in writing of his apprehension of their case and propose to them steps that can be taken to resolve the dispute. The writer believes that state intervention in labour-related matters is targeted towards promoting democracy and safeguarding economic and international responsibilities. The power of the Minister of Labour and Productivity is not without its limitations, as the parties can refer the case to the National Industrial Court if they are not satisfied with the award at the end of the arbitration.

Therefore, in Nigeria, going by the Trade Disputes Act, as enumerated above, parties are mandated by the act to approach all these steps or processes -mediation, conciliation, and arbitration before they may choose the services of a lawyer, which is contrary to the modus operandi of ACAS in Britain-the powers of the Minister in Nigeria have no equivalent in the UK where the Conciliation/ Arbitration process is almost entirely privatised and in theory depoliticised.

The Workings of Workplace Disputes or Conflicts in Britain

The Advisory Conciliation and Arbitration Service (Acas)

ACAS is the Advisory, Conciliation and Arbitration Service. It is an independent body funded by the UK Government;[130] thus, it is not under the influence of any minister to exercise its functions, unlike its Nigerian Counterpart.

Trevor Colling postulated that:

> The Advisory Conciliation and Arbitration Service (ACAS), the public body with statutory responsibilities for individual and collective employment dispute resolution, can facilitate conciliated settlements in most cases prior to a tribunal hearing. Most parties express satisfaction with the service they receive, and targets for bringing remaining cases to a hearing within a reasonable time frame are substantially met.[131]

The focal point is that ACAS has been at the hub of dispute resolution in Britain, complementing the Employment tribunal system. It has provided a substantial number of services with a strong initial focus on collective disputes while adapting to more individual claims.[132] ACAS services align with the Employment Act 2002, which provides procedural reforms to the tribunal system to force dispute resolution back into the workplace.[133] The main objectives of

[128]Chapter IV of The Constitution of the Federal Republic of Nigeria Cited in Okpara (2022).
[129]The Trade Disputes Act 2004
[130]Curtis & Wright (2001).
[131]Colling (2004) at 560.
[132]*Ibid* .
[133]*Ibid*.

ACAS are to promote the improvement of industrial relations and resolve disputes more quickly and effectively.

However, the Advisory Conciliation and Arbitration Services (ACAS) modus operandi is thus:

> Before approaching the employment tribunal, parties are advised to try to settle their dispute by themselves, i.e., telling their manager. If they cannot resolve it, they approach ACAS to raise a formal grievance. Nevertheless, it is optional for parties to do so before they approach an employment tribunal to make claims;[134] however, it could help parties resolve disputes informally. Not trying this may affect how much compensation would be awarded. If they eventually make an employment tribunal claim. It is pertinent to point out that if a party raises the problem with his employer first, the time limits to make an employment tribunal claim do not change.[135]

Notification to Acas

'Parties must notify Acas before claiming an employment tribunal about a workplace conflict or dispute'[136]:

1. Once the party has notified 'Acas that they want to make a claim to an employment tribunal, they are 'the claimant.'
2. 'The other party who will respond to the claim, for example, your employer, is the respondent,'
3. Once the parties have notified Acas 'that they want to make a claim, they will offer early conciliation; this is when they talk to both parties, hereinafter known as 'the claimant and the respondent.' In most cases, it allows them to reach an agreement without going to the tribunal. It is pertinent to state that Acas is not part of the tribunal service and will not discuss any matter with the tribunal.'

Following the above, the ACAS mode of operation is quite lenient and free from any interference, unlike in Nigeria, where the parties are under pressure to settle due to the Minister's interference in labour dispute resolution. This is seen in the trade dispute resolution process as provided by the Trade Disputes Act. Due to the extensive control given to the Minister of Labour over the Industrial Arbitration Panel in the Trade Disputes Act, there is no real liberty for the Panel to demonstrate their impartiality towards the disputing parties.

The Different Patterns of Settling Workplace Conflicts: Discrimination, Bullying and Harassment

In relation to Discrimination, bullying, and harassment are common practices in most organisations. It is pertinent to point out that the culprits are often above

[134]Acas working for everyone.
[135]*Ibid.*
[136]*Ibid.*

the employee or at some level of authority in which they believe they can exercise certain treatment with immunity.[137] However, in the US, if an employee is being treated poorly, it can be frowned upon but not illegal.[138] While most companies do not regard bullying as harassment, by utter definition and the result of the behaviour, it is. When it relates to an employee's diverse background, it is considered discrimination, which is illegal.[139]

According to Herschenia A. Brown, in the U.S. the bullying activities are not yet recognised as illegal, and some companies do not understand subtle forms of discrimination based on someone being a member of a legally protected class of people, thereby resulting in a potential hostile work environment claim. So, for many employees, there is not a trusting resource available within the company to help them resolve these conflicts, so they suffer in silence.[140]

However, David Hoffman, a past chair of the American Bar Association Dispute Resolution and a Harvard Law Lecturer, pointed out that there is a 'well-established system of Adjudication for discrimination cases in the United States and other parts of the world. In the US, both the national federal agency and the state anti-discriminatory agency have mediation programmes, and the cases are filed if it is found to have enough merits in the allegations to warrant processing the claim.'[141]

Hitherto, in the US, the participants are offered the option of mediation, and occasionally, they are ordered to at least try mediation. The principle of mediation is voluntariness; however, if people are required to stay in mediation until they have an agreement- then it removes the voluntariness of the mediation process. Interestingly, many of the US courts and anti-discriminatory agencies have a procedure requiring parties to try mediation at least. It raises an interesting policy question, which is -if mediation is confidential, then how did these agencies and courts, for that matter, enforce the obligations to try mediation in good faith because they are not allowed to enquire about what happened in the mediation process? Thus, there is an unresolved tension between confidentiality and policies that want to encourage the use of ADR in the US.[142]

On the contrary, in Nigeria, disputes concerning bullying, discrimination and harassment are not amenable to the use of ADR. Bullying and harassment are issues that ought to be resolved in most cases via disciplinary actions; in some cases, they may bother on crime, and if the crime is established, they will be dealt with accordingly. Thus, discrimination can arise in many ways, either due to disability, race, sex, age, national or state of origin or religion. Such complaints should be adequately addressed and should be handled at the managerial level.[143]

However, there is minimal encouragement for employees to use ADR to settle discrimination, bullying and harassment in the workplace in Nigeria. Unlike the way an ADR clause is inputted in commercial agreements between

[137]Herschenia (2022).
[138]*Ibid.*
[139]Herschenia (2022).
[140]*Ibid.*
[141]Egbunike-Umegbolu, C. (2022c).
[142]*Ibid*.
[143]Egbunike-Umegbolu (2022a).

organisations, many employers do not have the inclusion of explicit ADR provisions in their organisation's handbooks, unlike in the UK and the US. Nevertheless, in Nigeria, employees are aware of ADR options regarding disputes or conflicts that might arise at the workplace- this is because of the third alteration to the Constitution of 2010. The issue of ADR is not only constitutionally but also statutory.[144] This is because they now have an ADR sector at the National Industrial Court (NIC).

Secondly, the Trade Disputes Act of 1976 and the NIC Act of 2006 expressly provide for ADR in the Industrial and Labour sectors. However, Professor Paul Idornigie pointed out that there needs to be statistics to demonstrate the awareness of ADR options regarding disputes or conflicts that might arise. Still, when drafting contracts, most organisations prefer clauses on Mediation over Arbitration.[145]

Conversely, in the UK, employees are aware of utilising ADR to settle disputes. It is definitely spreading now; ADR and mediation, particularly, are struggling to get a few holds in many different jurisdictions initially. That has been the case in the UK to some degree and certainly also in the workplace and employment disputes, but things are changing quite a lot, and there is a lot of awareness that is going on. People are aware of mediation, and many people have experiences with that in different contexts.[146]

Professor Bryan Clark pointed out that in the UK, large organisations have their in-house dispute resolution, particularly mediation thus if there is some sort of dispute or a conflict between employees, they can be referred to an in-house mediation service that is either offered by the trained and independent staff of the organisations or by an external third-party organisation bringing in mediators.[147] For instance, New Castle University has an in-house mediation scheme for staff disputes.[148]

But equally, in the United Kingdom, they have other external mediation providers offering workplace employment mediation. As a result, the civil mediation council has a list of accredited workplace mediators, and that space or area of activity is growing, and equally, people/ organisations are beginning to interact with the employment tribunals services. For example, if there is a real legal dispute, as it were, he/she may be offered mediation service by an employment tribunal judge.[149]

Professor Bryan Clark pointed out that 'after they have assessed your dispute for the suitability, they may offer you that service though parties do not have to accept it, they can go down that route. If they like, one of the judges will mediate if the case is not successful, and then another judge will deal with the claim thereafter. However, that has grown quite a lot since it was brought in early 2006 and equally the other way- ADR in the employment tribunal services; it's called Advisory, Conciliation and Arbitration Service (ACAS).'[150]

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[144]*Ibid*.
[145]*Ibid*.
[146]*Ibid*.
[147]Egbunike-Umegbolu (2022b).
[148]*Ibid.*
[149]*Ibid*.
[150]*Ibid.*

On the Contrary, David Hoffman indicated 'that there is a fairly low level of awareness in the US except in a couple of situations. Yet, a portion of the US workforce is unionised, and a fairly high percentage of the employees realise that if they have a dispute with their employer, there is a procedure in the collective bargaining agreement- processing grievances and ultimately going to Arbitration if the grievances are not resolved. Nevertheless, this is less than Ten (10) per cent of the US workplace; unfortunately, it could have been much better if there was a high level of unionisation. Laws in the United States have been interpreted in ways that make unionisation efforts hard to succeed.

Against this backdrop, it is crucial to note that a significant portion of the US workforce is not represented by unions or subject to collective bargaining. However, in cases where employees sign written employment agreements, these agreements often include provisions for mandatory mediation in case of a dispute. If mediation fails to resolve the issue, the next step is private arbitration.[151] It is imperative that employees have a comprehensive understanding of the differences between mediation and arbitration and what the process entails, especially for those who have signed employment agreements with these provisions. Furthermore, it is essential to note that for workers in the US who do not have such agreements in place, there is a lack of awareness that they can suggest mediation as an option for resolving disputes with their employer.[152]

Conclusion and Recommendations

The paper presents a compelling and convincing historical account of employment relations in Nigeria and Britain, highlighting the significant differences in their respective ADR mechanisms - ACAS and NIC ADR. It unequivocally points out that the Minister's imperious influence has been hobbling Nigeria's NIC ADR, while Britain's ACAS is free and fair.

However, ADR, especially the straightforward and efficient Mediation process, is undoubtedly a clear winner over litigation, offering a cost-effective, party-driven, timely, and effective mode of conflict resolution. Mediation aims to restore healthy employment relationships and preserve the relationship between the parties. The adoption of ADR mechanisms has resulted in decongesting courts and better access to labour justice.

Nonetheless, a comparison of Nigeria's NICN ADR and Britain's ACAS lays bare the significant disparities in their respective functioning. ACAS is an independent impartial advice to employers, employees, and their representatives on employment public body that receives government funding and offers free and rights, best practices, and policies. In contrast, NICN ADR's limited jurisdiction, lack of independence, and strict adherence to formal court procedures make it a far cry from ACAS.

Therefore, the writer strongly recommends that the Nigerian government continues its efforts to provide ADR at no cost and encourages citizens, particularly

[151] *Ibid.*
[152] *Ibid.*

Trade Unions, precisely maritime and the Nigerian Union of Teachers, to maximise ADR to its fullest.

The writer also insists on the modification or review of the Trade Disputes Act to remove the Minister's undue influence or interference in labour dispute resolution, thus ensuring that settlements are impartial and free from corruption. The ACAS model must be used as a guide or replicated, as it is independent and devoid of corruption.

Additionally, the writer asserts that a review of the NICN ADR Centre Instrument & Rules 2015 is necessary to include walk-ins by employees and employers, reinforcing that the NICN ADR is a Court-Connected ADR centre where parties have the autonomy to opt for dispute resolution of their choice. This is one of the main features or benefits associated with ADR/court-connected ADR.

Finally, the writer insists that heightened sensitisation programmes concerning the benefits of ADR in settling disputes or conflicts in the workplace must be provided. Every organisation, especially private organisations that do not adhere to government rules, must be mandated to do so, as it would benefit both the organisation and society at large. The management of private organisations should include the ADR mechanism in their employee manual.

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