MECHANISMS FOR THE RESOLUTION OF LABOUR DISPUTES IN NIGERIA - A CRITIQUE

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I. INTRODUCTION

This article examines the different mechanisms available for settling trade disputes in Nigeria. The approach adopted is to first examine the mechanisms and then offer a general critique of the mechanisms. Overall, the article argues that there is need for reform of the procedures in order to make it less cumbersome and complicated, devoid of suspicion of bias on the part of the Minister of Labour, provide direct access to justice and ensure speedy disposal of labour disputes.

II. OVERVIEW OF THE MECHANISMS FOR THE RESOLUTION OF LABOUR DISPUTES

A. Settlement by the Grievance Procedures

Nigerian law acknowledges the role of voluntary grievance procedures in the settlement of trade disputes and accordingly requires the disputing parties to first attempt settling their disagreement by the existing negotiation machinery at a meeting between both parties. The grievance procedure is a kind of charter, a self-imposed bilateral treaty between union and management whereby the parties undertake to resolve all grievances through the stated procedure.

An important aspect of the settlement process is that, when a dispute is being dealt with or negotiations are underway, the parties must not resort to industrial action. To do so would be contrary to law. Furthermore, although the internal dispute procedure is traditionally established by collective agreements, there are instances where some employers unilaterally lay down a dispute procedure as part of the management's work rules.

B. Settlement by Mediation

Where the parties fail to resolve the dispute after the exhaustion of the voluntary grievance procedure, or in the absence of such means of settlement, they are required, within seven days, to meet to resolve the dispute amicably under the presidency of a mediator mutually agreed upon and appointed by the parties. The parties are entitled to be represented at the mediation by themselves or their representatives. Although the mediator is an outsider, the dispute remains essentially at the union-management level, for the mediator is their appointee and cannot impose a solution on them.

If the dispute cannot be settled within seven days by the mediator, a report of the efforts made and the points of disagreement must be furnished to the Minister of Labour by or on behalf of either party within three days of the end of the seven days. Upon receipt of the report, the Minister is empowered to review action already taken by the parties on the matter. If he is satisfied that the procedures laid down in sections 3 and 5 have not been complied with, he may refer the matter back to the parties to take such further steps necessary to achieve an amicable settlement.

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1. O.V.C. Okene Ph.D., Senior Lecturer, Faculty of Law, Rivers State University of Science and Technology. Port Harcourt, Nigeria.
4. Ibid.
5. Ibid.
6. Ibid.
7. Ibid.
9. Ibid.
Furthermore, if the dispute still remains unresolved after all the necessary steps have been taken, or the parties refuse to take such steps, the Minister must then set in motion the appropriate machinery prescribed by law by exercising his powers under sections 7, 8, 16 or 32. The following options are open to the Minister: the appointment of a conciliator; or reference of the dispute to a board of inquiry, or the Industrial Arbitration Panel (IAP), or the National Industrial Court (NIC).\(^\text{10}\)

C. Settlement by Conciliation

Pursuant to section 7 of the Trade Disputes Act 1990, the Minister may appoint a fit person to act as a conciliator for the purpose of effecting a settlement of the dispute.\(^\text{11}\) The Act does not define "a fit person," but presumably it means somebody who is knowledgeable in industrial relations.\(^\text{12}\) The duties of the conciliator are to inquire into the causes and circumstances of the dispute and, by negotiation with the parties to the dispute and bring about a settlement.\(^\text{13}\) Where the dispute is settled within seven days of his appointment, the conciliator is expected to submit to the Minister a memorandum setting out the terms of the settlement signed by the representatives of the parties.

The terms contained in such memorandum shall automatically become binding on the parties to whom they relate.\(^\text{14}\) Any breach thereof is made an offence under the Act. Punishment upon conviction is a fine of N\text{200} in the case of workers or N\text{2000} in the case of an employer or an employer's organization representing the employers.\(^\text{15}\) There is no indication as to what happens after payment of the fine where the party continues to be in breach. However, it seems that the provisions of section 13(5) of the Act would be applicable in this regard. The section is to the effect that any party, who after conviction for the offence continues to fail to comply with the terms of the memorandum, shall be guilty of a further offence and shall be liable on conviction to a further fine as the case may be for each day on which the offence continues.

However, where a settlement of the dispute is not reached within seven days or if, after attempting negotiation with the parties, the conciliator is satisfied that he \textit{will} not be able to bring about a settlement, he must forthwith report this fact to the Minister of Labour who is obliged to refer the dispute to the Industrial Arbitration Panel within fourteen days of the receipt of the report.\(^\text{16}\)

It should be noted that the provision for both mediation and conciliation may cause undue delay in the process of dispute settlement. It is submitted that, in order to effect speedy machinery for settlement of trade disputes that the parties should be free to choose either mediation or conciliation, so that, once there is a failure to reach a settlement by either method, the dispute goes straight to the Industrial Arbitration Panel (IAP). Besides, the movement from mediation to conciliation and back to conciliation in some cases seems to undermine the nature and seriousness of some disputes.\(^\text{17}\)

D. Settlement by the Industrial Arbitration Panel (IAP)

Where a conciliator has failed to effect a settlement of the dispute he is required to report that fact to the Minister. The Minister is required to refer the dispute for settlement to the Industrial Arbitration Panel within fourteen days of receipt of the report of conciliation.\(^\text{18}\) The IAP consists of a chairman

\(^{10}\) Ibid.  
\(^{11}\) Ibid, section 8(1).  
\(^{13}\) Ibid, section 8 (2).  
\(^{14}\) Ibid, section 8(3).  
\(^{15}\) Ibid.  
\(^{16}\) Ibid, section 9 (1).  
\(^{18}\) Ibid, The Minister could also refer a dispute directly to the Panel in the exercise of his discretionary powers under section 6 of the Trade Disputes (Essential Services) Act 1990, when it is expedient to do so.
and a vice-chairman and ten other members all of whom are appointed by the Minister. Of the ten members, at least two must represent the interests of employers while at least two must represent the interests of workers. For the purpose of each dispute referred to the IAP, the chairman, having regard to the subject matter of the dispute and the means already adopted to settle it, constitutes an arbitration tribunal drawn from the members of the IAP which may consist of a sole arbitrator, or a single arbitrator assisted by assessors, or one or more arbitrators nominated by the employers concerned and an equal number of arbitrators nominated by the workers concerned, presided over by the chairman or vice-chairman. Where an arbitrator is assisted by assessors, he makes the award. In other cases, the award is arrived at by the majority of the members.

An arbitration tribunal is expected to make its award within 21 days unless the period is extended by the Minister. The award shall be communicated to the Minister as soon as it is made. Upon its receipt, the Minister may, if he considers it desirable to do so, refer the award back to the tribunal for reconsideration. Where the Minister chooses not to refer the matter back for reconsideration, he shall subsequently serve a notice on the parties setting out the award and informing them of their right of objection to the award within seven days, failing which the award is to be confirmed by the Minister. If he receives no notice of objection from either party within seven days, the Minister shall confirm the award which becomes binding on the employers and the workers to whom it relates. However, if a valid notice of objection is received by the Minister, he must refer the dispute to the National Industrial Court (NIC), whose award shall be final and binding on the parties to whom it relates from the date of the award.

A crucial question that arises in respect of the IAP is why is it that its award is not binding until confirmed by the Minister of Labour? This, it is submitted, denies the IAP its independence and its status as an adjudicatory body. Its award therefore remains a recommendation which can be objected to by the parties or the Minister of Labour. It is submitted that, for the IAP to retain its character as an adjudicatory body, its award should without any qualification become binding on the parties immediately upon its publication, leaving it to the parties to decide whether or not an appeal should be made to the National Industrial Court.

Another problem is that the Minister of Labour is a government agent. What would be the relevance of this where the government is a party to the dispute? The IAP award is not binding until confirmed by the Minister. This would mean sitting in judgment over its own case. It is obvious that the Minister will never make such an award especially where the interests of the government, whom he represents, will be affected by the order which he makes. It is difficult here to separate the government as an employer on the one hand and as the regulator of industrial relations on the other hand.

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19 Section 9(2) Trade Disputes Act 2004.
20 Ibid, section 9 (3) and (4).
21 Ibid, section 9 (6).
22 Ibid, section 13(1).
23 Ibid.
24 Ibid.
The Act does not make clear what can be achieved by the use of a board of inquiry as a means of resolving trade disputes. Can the Minister, for example, make a binding award based on the findings of the board of inquiry? If the parties disagree where should the matter further be taken to - the Industrial Arbitration Panel or the National Industrial Court? The Act is silent on these issues. However, as regards the aspect of inquiry relating to industrial conditions in Nigeria the board of inquiry could be of great assistance in making recommendations to improve the conditions of non-unionized and public sector workers. The board of inquiry could also be used to resolve ad hoc disputes. This mechanism has, however, been rarely used.

D. Settlement by the National Industrial Court (NIC)

The National Industrial Court (NIC) is the highest labour court in Nigeria for the settlement of trade disputes. The NIC was first established under the Trade Disputes Act 1990. However, this has been replaced by the National Industrial Court Act 2006. The NIC Act, which came into force on 15 June 2006, repealed Part II of the Trade Disputes Act, which was the part that provided for the establishment and jurisdiction of the NIC under the Trade Disputes Act. Section 1 of the NIC Act 2006 re-establishes the NIC, while section 7 of the Act provides for the jurisdiction of the NIC. The NIC has exclusive jurisdiction in civil matters and cases relating to labour, including trade unions and industrial relations, environment and conditions of work, health, safety and welfare of the workforce and matters of industrial relations.

The court also exercises similar jurisdiction in matters relating to the grant of any order to restrain any person or body from taking part in any strike, lock-out or any industrial action, or any question as to the interpretation of any collective agreement, any award made by an arbitral tribunal in respect of a labour dispute or an organization dispute. In addition, the NIC Act confers power on the court to grant: injunctive relief, as well as to make orders of mandamus, prohibition or certiorari; to appoint a public trustee for the management of the affairs and finances of a trade union or employers' organization; and award of compensation or damages.

F. The Board of Inquiry

Where a trade dispute exists or is apprehended, the Minister of Labour may cause inquiry to be made into the causes and circumstances of the dispute by a board of inquiry which shall inquire into the matter referred to it and report thereon to the Minister. The Minister is further empowered, at his discretion, to refer any other matter connected with industrial conditions in Nigeria to a board of inquiry, which shall inquire into a matter referred to it and report thereon to the Minister. Upon receipt of these reports, the Minister may cause to be published in any manner he deems fit any information obtained or conclusions reached by such board of inquiry in the course of or as result of the inquiry.

The Act does not make clear what can be achieved by the use of a board of inquiry as a means of resolving trade disputes. Can the Minister, for example, make a binding award based on the findings of the board of inquiry? If the parties disagree where should the matter further be taken to - the Industrial Arbitration Panel or the National Industrial Court? The Act is silent on these issues. However, as regards the aspect of inquiry relating to industrial conditions in Nigeria the board of inquiry could be of great assistance in making recommendations to improve the conditions of non-unionized and public sector workers. The board of inquiry could also be used to resolve ad hoc disputes. This mechanism has, however, been rarely used.

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29 Ibid, sections 20 - 32.
30 See section 53 of the National Industrial Court Act 2006.
31 Ibid, section 8.
32 Ibid, section 8 (1).
33 Ibid, sections 17 - 20.
34 Section 34(1) of the Trade Disputes Act 2004.
35 Ibid.
36 Ibid, section 34(2)
III. CRITIQUE OF THE MECHANISMS FOR THE RESOLUTION OF LABOUR DISPUTES

Overall, the mechanisms for the resolution of labour disputes must be criticized or being overly bureaucratic and cumbersome. This defeats the objective of the machinery for the settlement of trade disputes, which is to temporarily suspend the right to strike and provide an adequate, impartial and speedy resolution of disputes. For example, it takes at least 21 days for a dispute, which cannot be settled by the voluntary grievance procedure, to get reported to the Minister. Thereafter, the dispute spends another 14 days at the conciliation stage before it gets referred to the IAP by the Minister who has another 14 days within which to do so. The IAP has 42 days within which to make its award and the parties have an additional period of 21 days to object to the award, whereupon the dispute goes to the NIC for a final decision. This is contrary to acceptable labour standards. The ILO does not support cumbersome and complicated dispute resolution processes which tend to frustrate the right to strike. In ILO's view, "such machinery must have the sole purpose of facilitating bargaining: it should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness."

A second problem is the practice of routing disputes for settlement through the Minister of Labour. As was seen above, the Trade Disputes Act does not allow workers and trade unions to take their disputes directly to the arbitral bodies. Only the Minister of Labour alone is empowered to make such a decision. For example, it is he who appoints a fit person as a conciliator for the purpose of effecting a settlement of a trade dispute. The IAP can only act upon a case referred to it by the Minister. Moreover, in the case of the IAP any award is communicated to the Minister alone and not the parties affected. The discretionary power to refer disputes to the arbitral bodies is time-wasting and subject to abuse. The Minister could delay exercising his discretion or refuse to exercise it at all. This is often the case whenever a trade dispute arises between a government employer and the trade unions." As Aguda noted:

Any procedure for the resolution of disputes which is centred around any Ministerial functionary of Government in this country - if our experience in the past is anything to go by - is bound to be annoyingly slow. The Minister is surrounded by die-hard bureaucrats without whose advice he may not, and in most cases cannot, act."

A third problem is that this procedure has led to fears of bias on the part of the Minister since he or she is given the mandate to appoint the conciliator as well as members of the Board of Inquiry and the Arbitration Tribunal, in Nigeria the likelihood of undue political influence on the outcome is high. How can one be assured of the independence of the tribunal or board in the settlement of the dispute? Fears over the neutrality and independence of state-appointed persons were also expressed in a Colonial Office Circular Dispatch of 22 August 1951:

Government often occupies the dual role of employer and conciliator, and it is the Minister who appoints the members of the Arbitration Tribunal. The setting up of semi-independent public boards or corporations would do a great deal towards removing this particular difficulty; but so long as the salaries of the servants of such corporations or boards continue to be paid by government, then those persons continue to be servants of government and the basic difficulty remains.
A fourth problem is that access to justice for workers and trade unions is conditional upon a discretionary referral by the Minister. This is a clog on freedom of association and the guarantees of due process of law. Workers and trade unions should be allowed to enjoy the right of access to justice by being able to take their disputes directly to the arbitral bodies for adjudication, unlike the present practice whereby disputes come before the arbitral bodies upon referral by the Minister. It is submitted that there is a need to overhaul the machinery for dispute settlement in order to speed up things, allay fears of bias, restore access to justice, and the guarantees of due process of law. To this end it is suggested that, first, the right to refer disputes to the arbitral bodies should be removed from the Minister; parties should be given the right to take their disputes directly to the arbitral bodies for adjudication. In India, for example, where section 10(1) of the Industrial Disputes Act 1947 (equivalent to Nigerian sections 8 and 16) makes access to justice for workers and trade unions conditional upon a discretionary referral by the Government, the ILO has advised that the legislation should be amended to afford workers and their organisations a fuller right of access to justice in respect of both individual and collective disputes. The position taken by the ILO here also holds good for Nigeria. Nigerian law should therefore be amended to afford workers the right of direct access to the arbitral bodies for the adjudication of disputes.

Secondly, in order to be free from abuse and rumours of impropriety, it is suggested that the arbitral bodies should be allowed to pronounce their decisions publicly. This would eliminate unhealthy speculations which often surround their recommendations, especially before their release by the Minister. Indeed, the general feeling is that the procedure for the settlement of trade disputes needs modification to ensure the speedy dispensation of cases and fairness in the overall interest of both labour and management. As Okodudu and Girigiri have noted:

These procedures are fraught with complexities, ambiguities and outright partisanship of the source of law from which they derive ... [T]he most outstanding feature of the procedure for settlement of industrial disputes, when properly analysed, is their cumbersomeness and the fact that they are weighted against the interest of labour.

Another significant problem is the stipulation in the Trade Disputes Act 1990 that the determination of the National Industrial Court shall be final and not subject to appeal. This appears to be unconstitutional. The National Industrial Court Act 2006 confers exclusive jurisdiction on the National Industrial Court (NIC) in labour matters. The decisions of the court, whether in its original or appellate jurisdictions, shall be final as no appeal shall lie from the decision of the court to the Court of Appeal or any other court except on questions of fundamental rights as contained in chapter 1V of the 1999 Constitution. However, a literal interpretation of section 7 of the NIC Act 2006, which confers exclusive jurisdiction on the National Industrial Court, appears to be inconsistent with sections 251 and 272 of the 1999 Constitution.

43 See sections 8 and 16 of the Trade Disputes Act 1990.
47 Section 13. See also section 6(8) Trade Union (Amendment) Act 2005.
48 Section 7 National Industrial Court Act 2006.
49 Ibid, section 9 (1) and (2).
50 Section 251 gives exclusive jurisdiction to the Federal High Court in respect of certain matters.
Constitution the state High Courts have unlimited jurisdiction to try civil causes and matters, subject only to section 252. The exclusive jurisdiction accorded to the NIC is unconstitutional as it conflicts with the jurisdiction granted by the Constitution to the state High Courts. Section 1 of the Constitution affirms that the Constitution is supreme and binding on all authorities and persons in Nigeria. Section 1(3) of the Constitution states that "if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and the other law shall to the extent of inconsistency be void." In Adisa v. Oyinwola, for example, the Supreme Court of Nigeria held that any existing legislation cannot curtail the jurisdiction vested in a court by the Constitution and that any existing law that purports to do so is void.

Furthermore, apart from the issue of jurisdictional conflict with the state High Courts, removing the right of appeal from any decision of the NIC seems problematic. The court could be wrong in law in its decision and the only way an aggrieved person can secure redress is through the appellate process of the Court of Appeal. If allowed, all complaints against errors and misdirection of the court on law shall pass without redress. This is dangerous and clearly a breach of the constitutional right to a fair hearing. It is submitted that a right to appeal against a decision that is unfavourable by a superior court of record ought to be available up to the highest court in the land. The provisions of section 241 of the Constitution are supreme and should be binding on the NIC as a court of coordinate jurisdiction with the High Courts.

IV. CONCLUDING REMARKS

This article has highlighted some of the impediments to the speedy and unbiased resolution of labour disputes in Nigeria. It is hoped that these impediments would be addressed by policy makers so as to ensure that the procedures work well in the interests of employers and employees in order to bring about industrial peace and harmony in Nigeria.

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51. Section 272(1) confers on state High Courts unlimited jurisdiction to hear and determine "any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, or claim is in issue."
53. Ibid, section 6(5) (c) (j).
57. Sections 36 and Article 7 of the 1999 Constitution and the African Charter respectively guarantee the right to a fair hearing.
58. Section 241 provides that "An appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right... ."