

**THE LEGAL FRAMEWORK FOR ALTERNATIVE DISPUTE RESOLUTION IN
ACADEMIC STAFF UNION OF UNIVERSITIES' TRADE DISPUTE:
CHALLENGES AND PROSPECTS**

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**BEING A THESIS SUBMITTED AT THE FACULTY OF LAW, LEAD CITY
UNIVERSITY, IBADAN, NIGERIA**

**IN PARTIAL FULFILLMENT OF THE REQUIREMENTS, FOR THE AWARD OF
MASTER OF LAWS (LLM) DEGREE**

DECLARATION

I, Omowumi Omotayo Ogunkunle, hereby declare that this thesis titled ‘The Legal Framework for Alternative Dispute Resolution in Academic Staff Union of Universities’ Trade Dispute: Challenges and Prospects’, was written by me in the faculty of Law, Lead City University, Ibadan, under the supervision of Professor Olu Ojedokun. The information derived from the literature has been fully acknowledged in the text and the lists of references provided. No part of this work has been presented for another degree or diploma at any institution.

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CERTIFICATION

I certify that this research was carried out by Omowumi Omotayo Ogunkunle, with matriculation number, LCU/PG/003036 in the Faculty of Law, Lead City University, Ibadan during the 2023/2024 academic session under my supervision.

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DEDICATION

This long essay is dedicated to almighty God, who saw me through the programme.

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ACKNOWLEDGEMENT

My greatest appreciation goes to God Almighty who has been my help from conception till date, All I have ever achieved is by and through HIS GRACE.

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APPROVAL

This research titled ‘The Legal Framework for Alternative Dispute Resolution in Academic Staff Union of Universities’ Trade Dispute: Challenges and Prospects’ written by Omowumi Omotayo Ogunkunle has been read and approved as meeting the standards of the Faculty of Law, Lead City University, Ibadan, in partial fulfilment of the requirement for the award of Master of Law (LL.M HONS.) Degree of Lead City University Ibadan.

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ACRONYMS

ADR	Alternative Dispute Resolution
EITI	Extractive Industries Transparency Initiative
FCT	Federal capital Territory
FMENV	Federal Ministry of Environment
HDI	Human Development Index
ICSID	International Centre for Settlement of Investment Dispute
ILO	International Labour Organization
LUA	Land Use Act
MCO	mining Cadastre office
SAICM	Strategic Approach to International Chemicals Management
SAP	Structural Adjustment Programme

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UNIVERSITY COMPLIANCE CERTIFICATE

ABSTRACT

The study, "The Legal Framework for Alternative Dispute Resolution in Academic Staff Union of Universities' Trade Dispute: with the Theme: Challenges and Prospects," analyses the imperfection of the litigation system in the settlement of trade disputes prescriptive by the Academic Staff Union of Universities (ASUU) in Nigeria. Since conventional judicial processes take time, cost a lot of money and rarely produce positive results to all the parties involved, the study focuses on ADR procedures as effective means to solve disputes through arbitration and/or mediation and/or conciliation. An empirical legal research methodology with a doctrinal and qualitative emphasis was used, using case laws, statutes, journals, and opinions from experts. Evaluation of analytical content and statistical analysis of legislation such as the Trade Disputes Act and the National Industrial court regulations towards assessing the prospects of ADR in Nigeria legal system form a key part of this research. ASUU strike and litigation by the government prolong industrial action in so far as the institutions of students, staff, and the nation are concerned. Arbitration, in particular, is rather expense-efficient, fast, and adaptable in comparison with traditional lawsuits, and relationships between parties are not harmed. However, ADR enjoys little popularity in Nigerian industrial relations, has limited statutory support, and the minister has substantial control over awards. These include the following barriers: awareness, corruption, procedural and others. Therefore, the study established that ADR holds the potential of serving as an effective method of resolving ASUU related disputes and which is more effective, less hostile and fair as compared to the legal procedures. It stresses up the need for improving legal provisions of ADR, increasing recognition about ADR use and minimizing the intervention of ministers over it to address the issues of trust and its application. Such measures bet to change the Nigerians face of the conflict resolution, thereby enhancing industrial relation and stability of academics.

Keywords: Arbitration, Trade Union, Disputes, Enforcement, jurisdiction, litigation, Alternative

Word Count: 310

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Every form of human relationship is capable of leading to disputes as it is an ubiquitous concept which could arise in every form of domestic and commercial relationships; it is then safe to conclude that dispute is inherent whenever anything is at stake. One of such relationship which has taken a cantankerous turn especially in Nigeria over the decades is the trade relationship mostly between the trade unions and the government as it relates to industrial relations; the prominent labor organizations which have been involved in disputes with the government include various registered trade organizations in the different sectors of the economy including education, electricity, oil and gas, judiciary and health. Area of worthy consideration is the *Academic Staff Union of Universities in Nigeria*.

There are different types of trade disputes within the context of Academic Staff Union of Universities in Nigeria, the various forms of trade disputes include individual disputes which include employment disputes such as termination of appointment, promotion of staffs, salary increment to mention a few, it could also be a form of discrimination and harassment, this could also be grievances which could be as a result of the workload and poor working environment, trade dispute could also be academic disputes, administrative disputes, financial disputes, inter-organizational disputes, constitutional and statutory disputes to mention a few. When trade dispute arise between ASUU and lecturers, ASUU and Federal Government e. t. c, the next issue will be to resolve the lingering dispute.

Dispute settlement or resolution is as old as the existence of man and has taken various forms or shapes in different cultures and nations of the world and across various generations¹. Meanwhile, the manner to deal with every kind of dispute is by exploring any accepted means of dispute resolution. This may include the adversary system or the non-adversary system of dispute resolution known as the Alternative Dispute Resolution (ADR) system. The ADR system is an alternative system to the grievance remedial technique of social control.² Alternative Dispute Resolution systems include Arbitration, Mediation, Conciliation, negotiation, Med-Arb among others.

The Academic Staff Union of Universities' has a long history of disputes with the Federal Government majorly on funding, salaries, welfare of staffs and working conditions. Litigation as a method of resolving disputes aside from the fact that it is time consuming, it is also money consuming and it end up with a long-lasting enmity between university workers and federal government. The major reason why the feud between ASUU and Federal Government has lingered till date without no concrete settlement. The students are always at the receiving end and most of them end up spending more than their expected years in school.

Over time, the Nigerian *CorpusJuris* has been developed a formal way of submitting every dispute to litigation while exploring the rights of every citizen to approach the court to be heard of his grievance as enshrined in Section 36 (1), Constitution of the Federal Republic of Nigeria (CFRN).³ Undoubtedly, the litigation system rarely creates a framework for a win-win situation between parties but rather thrives in a win-lose situation where parties see

¹ A.K. Ubeku, *Industrial Relations in Developing Countries: The Case of Nigeria*, (Macmillian Press, 1983), 35.

² A. Sanni, *Introduction to Nigerian Legal Methods*, (Obafemi Awolowo Press Limited, 2006), 93.

³ 1999, as altered in 2010.

themselves as competitors and the judge sees himself as an umpire who sits like a referee in a football match.⁴

Another inadequacy of the adversarial method of dispute resolution was lampooned by Oputa JSC (as he then was) in *Ajani v. Giwa*,⁵ a case where parties spent 16 years on litigation from the High Court to the Supreme Court only for the court to order a retrial of the case, in that case, the learned justice of the supreme court stated that “there is something definitely wrong with a system that took 16 years before a claimant can know whether or not he is the owner of a piece of land.”⁶

In Nigeria today, litigation is highly expensive and time-consuming, the courts are overburdened, with poor prison facilities and congestion, poor remuneration of court officials, small numbers of courtrooms, and corruption among judicial officers meaning justice goes to the highest bidders thereby eroding people’s confidence in the justice system. Also, the after taste of bitterness left behind after many years of being in the courts means business relationships do not survive after a prolonged case among many other reasons gives credence to the cry for an alternative medium for dispute resolution in the country.⁷

Arbitration and Conciliation in Nigeria has the backing of the law and a legal framework for its operations⁸making other aspects of ADR unattractive and less effective.⁹ Arbitration unlike litigation appears to be a consensual arrangements where parties agree to some dispute resolution system which is binding on the parties but the procedure of which is more flexible

⁴*Grace Akinfe v. The State*(1988) LCN/2382(SC).

⁵(1986) LPELR-283 (SC).

⁶*Ibid*, P. 16, per Oputa JSC.

⁷ M.A. Owoade, *Global Trends in Court connected Alternative Dispute Resolution: Quo Vadis the Nigerian Judiciary; Beyond Bar Advocacy: Multi-Disciplinary Essays in Honour of Anthony Okoye Moogboh*, SAN cited in C.C. Nwere; A. J. Offiah, and A.O. Mogboh, and A.O, Umuahia, *Bar Advocacy in Nigeria*(Impact Global Publishers Ltd, 2011), 9.

⁸ The Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria, 2004.

⁹For instance, the mediation and negotiation offered by the Multi-door courts house are not in themselves binding except made the judgment of court.

than the litigation system. The idea of submitting disputes to arbitration is an arrangement between parties who are involved in certain disputes which the law does not prevent parties from exploring settlement, in other words, in the settlement of dispute, parties decide such factors as quorum and forum within their own autonomy.¹⁰

Labor relations are basically governed by private law; the law and the employment contracts allow for certain industrial rights which are due to employees and the employers in the course of the employment contract. Essentially, whether in the private or public sector, industrial dispute is inherent in the relationship between employers and their employees. In furtherance of this, Nigerian employees in particular sectors and those in the civil service have the custom of driving their grievances through their organized labour unions registered in accordance with the Trade Union Act.¹¹ Prominent among these unions include the Nigeria Labour Congress (NLC), Academic Staff Union of Universities (ASUU), Judicial Staff Union of Nigeria (JUSUN), Nigeria Medical Association (NMA) etc. These unions and their employers over the years have had to settle disputes bothering on welfare of their members at the workplace and the disputes were usually settled via hostile methods like strike actions, lockout, work shutdown and litigation. A classic example is the recent embarrassing industrial face-off between the Academic Staff Union of Universities and the Nigerian government, this led to a strike action which lasted for about 8 (eight) months and put on hold, all academic activities in Nigerian public universities. It was not until the National Industrial Court of Nigeria ruled that the Academic Staff Union of Universities resume work activities, this decision was reached after the federal government had approached the court in *Federal Government of Nigeria & Anor v. Academic Staff Union of Universities*¹² for an order

¹⁰ S.A. Fagbemi, "The Doctrine of Party Autonomy in International Commercial Arbitration: Myth or Reality", *Afe Babalola University Journal of Sustainable Development, Law & Policy* (2015) 6 (1), 228.

¹¹ CAP T14, Laws of the Federation of Nigeria, 2004.

¹² (Unreported) suit no: NICN/ABJ/270/2022 delivered on 21st September, 2022.

compelling the labor union to resume work after a long period of suspended academic activities.

Despite nullifying the said academic strike, there is a great element of bad blood between the government of Nigeria and the workers' union which is obviously a win-lose situation between both parties. Hence, the situation creates hostility as aftermath of the litigation.

It is however, not recorded whether industrial dispute in Nigeria has ever been submitted to any form of ADR system although, it is common place for the government ministers and labor unions to meet at roundtable discussions which usually end up in deadlocks. It is also worth noting that the Labor Act¹³ in Section 81 which deals with settlement of disputes empowers the National Industrial Court of Nigeria (NICN) to have jurisdictions over labor disputes and does not refer to any form of ADR procedure. Meanwhile, by *Order 24, Rule 1 of the rules of court*,¹⁴ the president of the NICN has the powers to refer any case filed before the court to the ADR centre of the court.

The gap which this study therefore intends to fill is the creation or expansion of the framework for performance of ADR in the settlement of labor union disputes between ASUU members and governments at all levels.

1.2 Statement of Problem

Corruption has eaten deep the fabric of the society and it is no more news that Academic Staff Union of Universities (ASUU) is an association that is not free from corruption. Many of the officials of the association have been compromised by federal and state governments. Many government agencies have whittled down their enormous powers in fighting for the rights of the members. It can be said that corruption has reduced the performance of

¹³CAP L1, Laws of the Federation of Nigeria, 2004.

¹⁴The National Industrial Court of Nigeria (NICN) (Civil procedure) Rules, 2017.

Academic Staff Union of Universities (ASUU). Thus, this study will proffer solutions and recommendations on how this corruption can be drastically reduced if not totally eradicated.

Also, Section 41 of the 1999 Constitution of the Federal Republic of Nigeria provides for freedom of association. This serves as an enabling statute for the promotion and development of joining an association as a member of a trade union. Meanwhile, this study seeks to resolve any possible conflict that may arise between the freedom of association and the sole powers of an organization which may feel that another body cannot be registered to cater for the welfare and the interest of members.

Furthermore, trade union dispute is notoriously known to be resolved by litigation and the use of alternative dispute resolution is not popular to solve trade union dispute. Workers or employees believe in the use of strike while the employers believe in lock out and the aftermath of resolving issue of a formal way of resort to court. Meanwhile, it is on record that alternative dispute resolution mechanisms is still treading a new path in the Nigerian Legal System. The unpopularity of the concept of Alternative dispute resolution as well as the delay encountered in litigation processes necessitated this research work. The main focus is therefore to ensure proper dispensation of justice with the combined use of Arbitration and the traditional court process.

A system is judged based on its working, once a problem is identified, this is the foundation upon which a solution is built, thus the problem of judicial crisis has been identified, the proposed solution is therefore supplementing the court process with various mechanisms of Alternative Dispute Resolution.

This study will also address the incessant strike of ASUU in tertiary institutions in Nigeria.

1.3 Aim and Objectives of the Study

The Aim is to appraise the legal framework of ADR mechanisms in addressing ASUU issues in Nigeria while the objectives are to:

1. Identify the causes of trade union disputes in Nigeria
2. Identify how trade union disputes in Nigeria can be effectively addressed.
3. Examine the place of Arbitration in dispute resolution between ASUU and other registered associations that cater for the welfare of academic groups in Nigeria
4. Examine the extent of ASUU's constitutional powers and identify the limitations of trade unions within the Nigerian legal system.

1.4 Research Questions

1. What is the causes of trade union disputes in Nigeria?
2. How can trade union disputes be effectively addressed?
3. what is the place of Arbitration in dispute resolution between ASUU and other registered associations that cater for the welfare of academic groups in Nigeria?
4. To what extent can ASUU exercise its powers under the 1999 Constitution, and what are the limitations faced by trade unions within the Nigerian legal system?

1.5 Scope and Limitation of the Study

A trade union represents the interest of her members at every time. It is a right recognized under the Nigeria law.

However, this research work will be focusing critically on the performance of Academic staff of universities as a trade union and how trade dispute can be resolved internally and externally without forming a parallel association and without resolving to strike which will

jeopardize the future of students. This study is limited by time constraint and access to current research materials.

1.6 Significance of the study

It is necessary to create a healthy working environment in every industrial relation. The relevance of arbitration as a form of dispute resolution vis-à-vis the current practice of litigation in Nigeria cannot be over-emphasized. The relationship between the employees' union and the employer, most especially the government being the employer of civil servants is continuously taking a hostile dimension if not effectively handled, is capable of crippling the entire labour sector of the Nigerian economy.

While acknowledging the fact that disputes in this labour space is unavoidable, this study however, provides an avenue to expand the settlement options to one which is more adaptable to modern trends. This study is therefore useful to:

- i. Policy makers and the ministry of labor and employment in the process of addressing issues related to labor union disputes.
- ii. Researchers in the field of arbitration and arbitration bodies as it relates to the expanding the area of knowledge.
- iii. Reduce or eradicate the effect of trade dispute Academic staff of universities as trade union on students.

1.7 Operational Definition of Terms

Trade Disputes: this is known as labor dispute and it could be intra labour dispute which is characterized by disagreement or conflict between employers and employees, employees and employee and it could also be inter labor dispute which could be employees and the government, employers and the government both at the local and international level.

Arbitration: is a private process where disputing parties agree that one or several individuals make a decision about the dispute after receiving evidence. This could be oral or documentary. This process is similar to a trial in that the parties make opening statements and present evidence to the arbitrator. Arbitrations are usually faster compared to traditional trials and are less formal; this is because of the absence of strict adherence to rules of court governing rules of evidence and admission of documents. After the conclusion of hearing, the arbitrator issues out an award. Some awards simply announce the decision called a “bare bones award” and others may give reasons called “reasoned award”. The arbitration process may be either binding or non-binding. When arbitration is binding, the decision is final, can be enforced by a court of law and can only be appealed on very narrow grounds. When arbitration is non-binding, the arbitrator’s award is advisory and can only be final if accepted by the parties.

Negotiation is a voluntary and usually an informal process in which parties identify issues of concern, explore options for the resolution of the issues and search for a mutually acceptable agreement to resolve the issues raised. The disputing parties may be represented by attorneys in negotiation.

Lock-out: a powerful tool in the hands of the employers to ensure that the employees do not embark on strike.

Strike: it is a procedure use by employees to bring their employers to meet their needs

Labour Union: this is a registered association for an organization or a group of people with common profession or expertise and with common goals.

Law: it is a rule of conduct that guide human endeavors.

Online: this is anything done on electronic platform.

Dispute Resolution: this is a way of resolving disputes between one or two people.

Online Dispute Resolution: this is a way of resolving dispute electronically without physical attendance in court.

ADR Mechanisms: these are various methods and ways of using ADR to solve conflicts and issues.

Effectiveness: this refers to adequate use of something

Evidence: the testimony used to convince the court to enter judgment in one's favour

Litigation: this is a method of resolving dispute via court system.

Alternative Dispute Resolution: this a method of resolving conflict amicably without going through the rigor of litigation.

Conflict: this a dispute arising between two or more persons.

CHAPTER TWO

Literature Review

Many legal scholars have written on the concept of trade unions, trade disputes and alternative dispute resolution in Nigeria. The authors have identified the major advantages of alternative dispute resolution and how it can be used to solve labour-related disputes in Nigeria, a lot of fundamental questions have been raised on how alternative dispute resolution can be best used to resolve labour disputes but none of these authors was able to provide a probable and palpable solutions to how alternative dispute resolution is better than litigation. This chapter also covers nature and meaning of different concept related to the subject matter. Thus, this chapter examines the contributions of authors and scholars to the contributions of jurisprudence and concept of resolving labor disputes and the performance of ASUU via arbitration in Nigeria; the process involved in the eradication and/or reducing the practice of dispute and it will also appraise different concepts associated with the discourse.

2.1 The idea of Labor Union in Nigeria

The idea of a labor union in Nigeria is simply the existence of associations formed for the purpose of pursuing the interest of employees who are invariably members of such unions.¹⁵From time immemorial, people form themselves into interest groups to advance certain objectives or aims which may be allied to politics, religion, trade and activism among others. The formation of these associations or unions can be traced to the provision of the Constitution which vests every Nigerian citizen the right to belong to an association.¹⁶The right to freedom of association as guaranteed under the law will then include the following:

- i. the right to form an association

¹⁵ T. Adefolaju, "Trade Unions in Nigeria and the Challenge of Internal Democracy" *Mediterranean Journal of Social Sciences*, 4 (6) (2013), 97.

¹⁶ CFRN 1999, s.40.

- ii. the right to belong to an association of one's choice
- iii. conversely, the right to choose not to belong to an association.

This right to freedom of association cannot be derogated upon whether or not the association is registered and except where the association is one formed in pursuance of aims which are against the law.¹⁷ A reasonably justifiably law in a democratic society may validly limit the enjoyment of the right to freedom of association.¹⁸

To this exception, formation and membership of labor union is subject to the provisions of the extant law, for instance, the choice of trade union to join by a worker or employer must be made within the parameters of the Trade Union Act because the right to join a union is only valid for the industry in which that union operates.¹⁹ To this end, members of armed forces, police officers and some other public employment cannot form or join any trade union.²⁰

The Court stated in *National Union of Petroleum and Natural Gas Workers v. Maritime Workers Union of Nigeria*²¹ that the necessity to streamline trade unions was due to the proliferation of trade unions and the disorderly nature of labor. In reinforcing the justification for the qualification, the Trade Union Act reorganized labor unions into named unions, whose jurisdictional boundaries are outlined in the Third Schedule at Parts A, B, and C of the Trade Unions Act,²² this means that membership of these unions are only restricted to workers within that sector alone, for instance, paragraph 10, Part B, Third Schedule restricts the jurisdiction of the National Union of Road Transport Workers (NURTW) to all workers involved in the transportation of passengers and goods by road.²³

¹⁷ Ibid, s. 45.

¹⁸ Ibid.

¹⁹ CAP T14, Laws of the Federation of Nigeria (LFN), 2004.

²⁰ See Trade Union Act, s.11.

²¹ Suit No: NICN/ABJ/71/2014, delivered on 15th April, 2014.

²² CAP T14, LFN, 2004.

²³ Ibid.

The National Industrial Court examined in *Precision, Electrical and Related Equipment Senior Staff Association V. The Senior Staff Association of Statutory Cooperation and Government Owned Companies*,²⁴ the question of whether the Precision, Electrical and Related Equipment Senior Staff Association (PERESSA) may organize workers in the telecommunications and communications sector into a union. The Court rightly held that the PERESSA's jurisdiction is restricted to steel and engineering workers and as such, workers in the telecommunication industry cannot be formed into union by PERESSA.

The formation of a labor union (referred to as trade union under the extant laws) in Nigeria is primarily governed by the Trade Unions Act²⁵ and Section 2 thereof prohibits the operation of any organization as trade union without being registered in accordance with the law.²⁶

It is argued that trade unions have five goals, namely:

- i. To provide the greatest possible level of job security in accordance with the employees' enjoyment of terms and conditions of service.
- ii. To make an effort to ensure that its members have better terms and conditions of employment.
- iii. To improve its members' bargaining strength by supporting them collectively against employers.
- iv. As long as a member of the organization is a part of it, it should work to raise their level and position.
- v. Incorporate more democratic practices into choices and issues that affect the members of their organizations.²⁷

²⁴[2009] 14 NLLR (Pt. 39) 306.

²⁵CAP T14, Laws of the Federation of Nigeria (LFN), 2004.

²⁶Ibid.

²⁷ E.E Okafor & Bode-Okunade: *An Introduction to Industrial and Labour Relations*, (Ibadan, Spectrum Printing Limited 2006), 5.

Meanwhile, based on particular national situations, trade union functions have changed throughout time.²⁸ In other words, among other factors, the state's character influenced how the union and the government held power. Regarding Nigeria, the working class's rights and interests have been actively protected and promoted by the nation's labour movement since colonial era.²⁹ Generally speaking, the Nigerian labour movement has been and continue to be involved in defending the rights of the citizenry.³⁰ As a result, the Nigerian labour union has emerged as the most powerful voice against the authoritarian, unchecked, and unjust inclinations of the state against the people.³¹

2.1.1. Historical Background of Labour Unions in Nigeria

Britain is credited to be the origin of trade unionism. The industrial Revolution that started in Britain about 1760 provided the conditions for the growth of trade unions. Although before that time, there existed craft unions such as those of the hatter, tailors printers, shoemakers (cordwainers). These crafts established local trade unions in various towns but they were generally small and scattered.

In Nigeria, almost every aspect of the labor and trade sector has its recognized union, for instance, in the judiciary there is the Judicial Staff Union of Nigeria (JUSUN), Nigerian Union of Teachers (NUT), National Union of Local Government Employees (NULGE), Nigerian Union of Journalist etc. In fact, some sectors have more than one association in the academia for example, there is an Academic Staff Union of Universities (ASUU) coexisting alongside the Congress of Nigerian University Academics (CONUA). Meanwhile, there are

²⁸ L. I Ugudian, "The New Trends in Government- Labour Relations in The Downstream of The Oil and Gas industry in Nigerian Fourth Republic," *International Journal of History and philosophical Research*, (2017), 5 (2), 24.

²⁹ Ibid.

³⁰ N. Ebele & L. C. Ezeaku, "Growth in Labour Unionism in Nigeria: Analyses of Contributory Factors" *Journal of Economic Studies*, (2009), 8 (1), 85.

³¹ Ibid.

umbrella trade and labor bodies which are the Nigerian Labour Congress and the Trade Union Congress which both serve as umbrella bodies for other Labour and trade Unions.³²

Historically, pre 1914, traditional guilds and trade associations existed amongst artisans and craftsmen, issues or conflicts do get resolved through calling offending sides, wade in and settle the issues between the parties. This mode of resolution involves primarily the informal sector or those we know and recognize as illiterates. This traditional settlement issues metamorphosed into what we is known as Alternative Dispute Resolution. The existence of labor union did not start during post-independence.³³ Labour organizing began in the early 20th century, primarily among workers in the railway and port sectors. The first significant union was the Nigerian Railway Union established in 1931 and subsequently the Trade Union Ordinance of 1938 was formally recognized but of course it imposed certain restrictions on both parties. It is observed that the formation of the early labour unions were reactions of the indigenous workers to the colonial administration. Ugbudian³⁴ opines that the development of trade unions in Nigeria can be attributed to four main factors, including: (i) the colonial government's more or less military nature under Colonel Frederick Lugard's leadership; (ii) the colonial agents' use of harsh laws during conquest campaigns to extract and secure the support of interest groups; and (iii) the political order that emerged and was maintained by the might and force of the British rulers.³⁵

Since the time of colonialism, Nigerian workers have felt the need to protect their rights, and as a result, labour unionism has played a role in the country's economy since 1912, when

³² L. I Ugbudian, "The New Trends in Government- Labour Relations in The Downstream of The Oil and Gas Industry in Nigerian Fourth Republic", *International Journal of History and philosophical Research*, (2017), 5, (2), 19.

³³ N. Ebele& L. C. Ezeaku, "Growth in Labour Unionism in Nigeria: Analyses of Contributory Factors", *Journal of Economic Studies*, (2009), 8 (1), 86.

³⁴L. I Ugbudian, "The New Trends in Government- Labour Relations in The Downstream of The Oil and Gas Industry in Nigerian Fourth Republic", *International Journal of History and philosophical Research*, (2017) 5, (2), 21.

³⁵Ibid.

Henry Libert, a Sierra Leonean transferred from Freetown, and other members of the Southern Nigeria Civil Service Union founded it. This organization changed its name to the Nigeria Union of Civil Servants in 1914, when the Northern and Southern protectorates of the current Nigeria united.³⁶Fashoyin explains that Labour unionism in Nigeria may be discussed under three broad periods. These periods are discussed below.³⁷

The First Phase (Emergence)

There were roughly 12 labor unions active between 1912 and 1938, albeit all but two of them fell primarily into the category of social clubs, namely the Nigerian Union of Railway Employees (NUR) of 1931 and the Nigerian Union of Teachers (NUT) of 1938. They weren't really forced to focus more on labor unionism's cause by economic or political forces until the Second World War³⁸. Formation of first union, Lagos Trades Unions 1914, Nigerian Workers Union 1925 and wages, working condition as well as colonial exploitation was the major focus of the pre-colonial era.

The Second Phase (Growth and Consolidation)

The government adopted a clear labor policy during this time, which is defined as 1938 to 1977. In 1938, the Trade Union Ordinance was enacted. This law made labour unions in Nigeria legal, which increased their potency. The government was also able to exert control over labour union activity because of this statute. Collective bargaining, which had long been used in the developed nations of Britain, the United States, and Japan, was made possible by this legislation.³⁹

³⁶ N. Ebele& L. C. Ezeaku, "Growth in Labour Unionism in Nigeria: Analyses of Contributory Factors", *Journal of Economic Studies*, (2009), 8 (1), 85.

³⁷ T. Fashoyin, *Industrial relations in Nigeria*.(Longman, 1980), 23.

³⁸ Ibid.

³⁹ C. P. Okenwa, *Concept of industrial relations in Nigeria*. Nigeria: (Snaap Press Ltd, 2001), 67.

Second, the high price level brought on by the inflationary effects of the Second World War made it difficult for employees to make ends meet, especially in distant Nigeria. As a result, the employees became more militant, which in turn led to a devastating spell of labor unrest. This ushered in a successful general strike, led by the NUR in 1945.⁴⁰

Following the strike, a large number of non-unionized workers found the strike action to be highly satisfying and were inspired to create and join unions of their choosing without feeling any pressure from the union organizers or leaders. Third, anti-colonial feelings that developed as a result of the fact that the early history of labor unionism in Nigeria overlapped with the history of nationalist movements greatly contributed to the emergence of labor unionism.⁴¹ Consequent from the foregoing, there was increase in membership and the establishment of various sectoral unions after Nigeria gained independence in 1960 amongst others.

Third Phase (nationalism and Anti-Colonialism)

The effective consolidation of the over 700 unions into 42 and then 29 unions, as well as the establishment of the Nigeria Labour Congress (NLC) as the leading labor organization, are all part of the third phase of labor unionism in Nigeria from 1977 to the present. Each industrial union is independent and autonomous under this setup, yet it is unable to sever its ties to the NLC. This further led to NLC's affiliation with international Confederation of Free Trade Unions (ICFTU) wherein NLC partnered with international bodies such as International Labour Union, World Federation of Federation Unions WFTU to mention a few.

As seen above, the Nigeria Labour Congress (NLC) is the main labour organization, which offers a shared platform for its members. It represents the power and cohesion of the nation's labor movement⁴² and performs advisory roles to other labour unions affiliated to the

⁴⁰ N. Ebele & L. C. Ezeaku, Op. cit.

⁴¹ Ibid.

⁴² C. P. Okenwa, *Concept of industrial relations in Nigeria*. (Snaap Press Ltd, 2001), 67.

NLC.⁴³Its main responsibility to the entire Nigerian labor force is to negotiate with the government on issues that affect employees, such as minimum wage laws, petroleum product prices, the casualization of workers, and other public policies that have an impact on the nation's labor force. These factors collectively have a sizable positive impact on union membership in Nigeria. While there were only 4,692 union members in 1940, there were 1,426,651 in 1982, and there were 1,242 408 in 1987.⁴⁴ In 1999, a membership increase of 18,319, 584 was noted, and by 2002, a phenomenal membership increase of 66,808, 814 was noted.⁴⁵

It was initially established in 1978 as the only national federation of trade unions in the nation. Prior to the establishment of the NLC, the existing labour unions in Nigeria were The United Labor Congress, the Labour Unity Front, the Nigeria Workers Council, and the Nigeria Trade Union Congress. The formation of the NLC put an end to years of conflict and animosity between the four organizations.⁴⁶

The operation of labour union has a troubled past, having endured the dissolution of its national organs three times, each time with the appointment of state administrators as a result. The first occurred in 1988 during General Ibrahim Babangida's military dictatorship, when the organization rejected the structural adjustment programme initiated by the regime.⁴⁷ The second military intervention took place in 1994, during General Sani Abacha's administration, which had become tired of the labor movement's campaign for the return of democracy. Military regimes restricted union activities, leading to protests and strikes e.g. Similar to the

⁴³ Ibid. p. 67.

⁴⁴ Ibid, p. 69.

⁴⁵ Ibid. p. 69.

⁴⁶ P.S Giame, V. U Awhefeada, K. E Omerionwan, "An Overview of the Right to Strike in Nigeria and Some Selected Jurisdictions", *Beijing Law Review*, (2020), 11, 465.

⁴⁷ Ibid.

first instance, the military government disbanded the National Executive Council of the NLC and named a Sole Administrator in its place.⁴⁸

1981 Military Strike

The 1981 military strike in Nigeria often referred to as the Nigerian railway corporation strike, was a significant labour action that arose in response to the disturbing working conditions, unpaid wages, unpaid salaries and government neglect. The strike started on the 13th February 1981 and ended on the 16th February 1981, same was led by a group of middle-ranking military officers. The strike was sparked by complaint, disputes, concerns and dissatisfactions over pay, promotions and poor conditions of service.⁴⁹ The following was identified as the causes of the strike: low salaries and allowance, poor living conditions, lack of promotions and career advancement opportunities, corruption and favoritism in the military hierarchy, and government's failure to address soldier's welfare. During the strike, soldiers in lagos and majpr cities began protesting and taking over key installations this was followed by the force with which the then senior Military officer in hierarchical order, General Olusegun Obasanjo responded leading to the clash between loyalist and rebel troops, the rebels led by Major Gideon Orkar, announced the overthrow of the sheu shagari government. The consequences of the strike is one to be talked about and the fact that 100 soldiers got killed with many injured, destruction of properties, increased military repression and delayed democratic transition. This strike was eventually resolved through settlement between the warring factors to wit military NLC and the military government.

⁴⁸Ibid.

⁴⁹Bayo Adekanye, 1983 *Nigeria the 1981 Military Coup*, (Independent Publisher, 55).

2.1.2 Trade Unions Regulatory Framework

Trade union members are governed under the union's bye laws or constitution (known as union books). In *Elufioye v. Halilu*,⁵⁰ the Supreme Court determined that the union rules book is a contract between the members and the union on one hand and the members individually on the other. Meanwhile, it will be stated that these union constitutions are subject to the provision of the Constitution of the Federal Republic of Nigeria which provides in Section 1 (3) that where any other law is inconsistent with the provision of the Constitution, the provision of the Constitution shall override and the provision of such law is void.⁵¹

Barring any inconsistency with the Constitution, the unions have the power to regulate their internal affairs, upon belonging to an association, members are bound by the internal rules of the association as held in *Chinwo v. Owhonda*.⁵² The court will not interfere with the internal rules of a voluntary association which it employs to control or regulate the activities of its members as held in *Musa v. Peoples' Redemption Party*.⁵³

2.1.3 Employer's Recognition of Trade Union

The legislation requires employers to recognize trade unions established within the workplace as long as they are legally registered and operating within the employee's place of employment. When a trade union is created, it may be eligible for check-off dues that can be withheld from employees' pay. However, before recognizing a trade union, the employer must ensure that it is legitimately registered and that it operates in the sector in which it was established. This stance is supported by Section 17 of the Trade Unions Act, which requires employers to authenticate or verify registration and recognition prior to deducting check-off

⁵⁰(1990)LCN/0102(CA).

⁵¹Section 1 (3), CFRN, 1999.

⁵² (2008) 3 NWLR (Pt. 1074) 341.

⁵³ (1981) 2 NCLR 763 at 770.

dues. Upon the registration and recognition of any of the trade unions, the employer has a duty to:

- a. make a deduction from each employee's pay who belongs to a union for the purpose of funding the trade union's registered contributions; and
- b. within a reasonable amount of time, or within the time frame that the Registrar may from time to time establish, remit such deductions to the trade union's registered office.

2.2 Nature of Labour Disputes in Nigeria

Although, dispute is not defined under the Trade Disputes Act, it can however be deduced from the Black's Law Dictionary that dispute may be synonymous to conflict giving rise to a settlement procedure which may be a lawsuit or negotiation.⁵⁴

It will be stated that the term "labour dispute" is referred to as trade disputes under the Nigerian law, trade disputes by virtue of Section 47 (1) of the Trade Disputes Act and Section 54 (1) of the National Industrial Court of Nigeria Act⁵⁵ is defined as any dispute which borders on employment, form of employment and the physical condition of work between; (i) workers and workers (ii) workers and employers. The Supreme Court had further adopted this definition in the case of *National Union of Electricity Employees v. Bureau of Public Enterprise*⁵⁶ where it was held that all the ingredients above have to co-exist before a dispute may be referred to as trade dispute. In Nigeria, as some other parts of the world, the existence of labour disputes appears to be unavoidable.⁵⁷

⁵⁴ B.A Garner, *The Black's Law Dictionary*, (9th ed. USA: Thomson Reuters, 2005), 540.

⁵⁵ Act No. 38, 2006.

⁵⁶ (2010) 7 NWLR (Pt. 1194) 538.

⁵⁷ See J.A Akinbode, *Industrial Disputes in Nigeria*, (Unpublished) Lecture Delivered at the Award and Induction of Members of Chattered Institute of Labour and Industrial Relations, (2019), 1.

Undoubtedly, there are a number of causes for labour disputes. Some are connected to the workplace, while others are essentially unrelated to it.⁵⁸ In Nigeria, labour disputes are usually caused by factors such as; (i) welfare of members of labour unions, (ii) social and public matters.⁵⁹

For instance, the welfare and work condition of work is a pivotal factor that has always led to strike actions by the ASUU and the NLC. An instance of this is the strike action embarked upon by the academic union between February and September, 2022, where the demands of ASUU were based on various welfare provisions such as;

- i. The demand that the federal government injects the university revitalization fund of N1, 300, 000, 000. 00 (One Billion, Three Hundred Million Naira) into the university system.
- ii. The demand that all the unpaid allowances of university lecturers be paid
- iii. The demand that the federal government review the condition of service of the university academics
- iv. The demand that the Integrated Payroll and Personnel information System which the federal government intends to adopt as the payment system for all workers should not apply to university lecturers.⁶⁰

The experience in Nigeria has also shown that labour union disputes are often created by matters which concern public and social issues, for instance, in 2012, the Nigeria Labour Congress and the Trade Union Congress announced a nationwide strike in opposition of the

⁵⁸ P.S Giame, V. U Awhefeada, K. E Omerionwan, "An Overview of the Right to Strike in Nigeria and Some Selected Jurisdictions, *Beijing Law Review*", (2020), 11, 467.

⁵⁹Ibid. p. 466.

⁶⁰See Business Day Newspaper, 23rd September, 2022, available at <[EXPLAINER: ASUU's demands and what government has met \(businessday.ng\)](https://www.businessday.ng)> last assessed on 30/12/2023.

government's policy to remove subsidy from petroleum products and the strike and rallies were continuous until the government reviewed the said policy.⁶¹

In the event of a trade dispute, parties including both the employer(s) or their organizations and the employee(s) or their organizations use various tactics to compel the other side to comply with their demands. The commonest tool usually employed by labour unions in Nigeria is strike action while the employers usually make use of the "no work, no pay" tactics to ensure that labour unions end their strikes. Any type of work-related unhappiness is considered industrial action or labour dispute and manifests itself in a variety of ways, including absenteeism, go-slowness, man-hour losses, high labour turnover, work-to-rule situations, picketing, strikes, sabotage, walk-ins and sit-ins, a ban on working beyond the call of duty, a high rate of illness, lockouts, suspensions, and a high rate of question issuance. Only a handful (lockout, suspension, and issue of a query) are used by employers to reprimand employees and act as a deterrent to others; the majority of them are instruments in the hands of the employees.⁶²

There have been numerous labour disputes and strikes in Nigeria's industrial sector from independence to the present. Given the nation's current democratic system of government, the occurrence and inclination of strikes have increased dramatically since the turn of the twenty-first century.⁶³

2.3. Parties involved in Labour Disputes

⁶¹See Vanguard Newspaper, 5th January, 2012, available at <[Labour declares total strike Monday - Vanguard News \(vanguardngr.com\)](http://www.vanguardngr.com)> last assessed on 30/12/2023.

⁶²C.U Wokoma, "THE Effects of Industrial Conflicts and Strikes in Nigeria: A Socio-Economic Analysis", *International Journal of Development and Management Review (INJODEMAR)*, (2011), 6, p. 32.

⁶³Ibid.

Although, the Trade Disputes Act does not explain the term “party” to a dispute other than providing that party means “party to the dispute” in Section 1 (2).⁶⁴ Meanwhile, the parties involved in a labour dispute are usually the employers and the employees, the labour disputes will further cover disputes between labour unions and the employers, and it may also be between labour unions as long as the central cause of the dispute relates to employment or condition of employment in a sector.

2.3.1 Employers

Employer in this case will include any person, organization, firm, body corporate or government agencies who have entered into a contract of employment to employ any other person as employee or apprentice.⁶⁵

Thus, employers in this case will include the private firms and the government at the federal, state and local government levels. This is so since the government at all levels have employment agreement with employees in the civil service and public service.

As a matter of fact, most trade disputes in Nigeria are more pronounced and intense when it involves the government and the labour unions.

2.3.2 Employees

An Employee means any person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis.⁶⁶

In this case, employee will also mean collective or group of persons formed as a union. It then means that employees for the purpose of this study will include individuals and group.

⁶⁴TDA, s1(2)

⁶⁵See Section 73, Employees’ Compensation Act, 2010.

⁶⁶Ibid.

CHAPTER THREE

Legal and Institutional Framework of Trade Union in Nigeria

3.1. Trade Unions Regulatory Framework

Trade union members are governed under the union's bye-laws or constitution (known as union books). In *Elufioye v. Halilu*,⁶⁷ the Supreme Court determined that the union rules book is a contract between the members and the union on one hand and the members individually on the other. Meanwhile, it will be stated that these union constitutions are subject to the provision of the Constitution of the Federal Republic of Nigeria which provides in Section 1 (3) that where any other law is inconsistent with the provision of the Constitution, the provision of the Constitution shall override and the provision of such law is void.⁶⁸

Barring any inconsistency with the Constitution, the unions have the power to regulate their internal affairs, upon belonging to an association, members are bound by the internal rules of the association as held in *Chinwo v. Owhonda*.⁶⁹ The court will not interfere with the internal rules of a voluntary association which it employs to control or regulate the activities of its members as held in *Musa v. Peoples' Redemption Party*.⁷⁰

3.1.1 Employer's Recognition of Trade Union

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withheld from employees' pay. However, before recognizing a trade union, the employer must ensure that it is legitimately registered and that it operates in the sector in which it was established. This stance is supported by Section 17 of the Trade Unions Act, which requires employers to authenticate or verify registration and recognition prior to deducting check-off dues. Upon the registration and recognition of any of the trade unions, the employer has a duty to:

- a. make a deduction from each employee's pay who belongs to a union for the purpose of funding the trade union's registered contributions; and
- b. within a reasonable amount of time, or within the time frame that the Registrar may from time to time establish, remit such deductions to the trade union's registered office.

3.1.2 Labour Act

It will be stated that the term "labour dispute" is referred to as trade disputes under the Nigerian law, trade disputes by virtue of Section 47 (1) of the Trade Disputes Act and Section 54 (1) of the National Industrial Court of Nigeria Act⁷¹ is defined as any dispute which borders on employment, form of employment and the physical condition of work between; (i) workers and workers (ii) workers and employers. The Supreme Court had further adopted this definition in the case of *National Union of Electricity Employees v. Bureau of Public Enterprise*⁷² where it was held that all the ingredients above have to co-exist before a dispute may be referred to as trade dispute. In Nigeria, as some other parts of the world, the existence of labour disputes appears to be unavoidable.⁷³

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⁷⁴ P.S Giame, V. U Awhefeada, K. E Omerionwan, OP. CIT. P. 467.

⁷⁵Ibid, 466.

⁷⁶See Business Day Newspaper, 23rd September, 2022, available at <[EXPLAINER: ASUU's demands and what government has met \(businessday.ng\)](https://www.businessday.ng/news/2022/09/23/explainer-asuu-demands-what-government-has-met)> last assessed on 30/09/2023.

government's policy to remove subsidy from petroleum products and the strike and rallies were continuous until the government reviewed the said policy.⁷⁷

In the event of a trade dispute, parties including both the employer(s) or their organizations and the employee(s) or their organizations use various tactics to compel the other side to comply with their demands. The commonest tool usually employed by labour unions in Nigeria is strike action while the employers usually make use of the "no work, no pay" tactics to ensure that labour unions end their strikes. Any type of work-related unhappiness is considered industrial action or labour dispute and manifests itself in a variety of ways, including absenteeism, go-slowness, man-hour losses, high labour turnover, work-to-rule situations, picketing, strikes, sabotage, walk-ins and sit-ins, a ban on working beyond the call of duty, a high rate of illness, lockouts, suspensions, and a high rate of question issuance. Only a handful (lockout, suspension, and issue of a query) are used by employers to reprimand employees and act as a deterrent to others; the majority of them are instruments in the hands of the employees.⁷⁸

There have been numerous labour disputes and strikes in Nigeria's industrial sector from independence to the present. Given the nation's current democratic system of government, the occurrence and inclination of strikes have increased dramatically since the turn of the twenty-first century.⁷⁹

3.1.3 Trade Dispute Act

⁷⁷See Vanguard Newspaper, 5th January, 2012, available at <[Labour declares total strike Monday - Vanguard News \(vanguardngr.com\)](http://www.vanguardngr.com)> last assessed on 30/09/2023.

⁷⁸C.U Wokoma, "THE Effects of Industrial Conflicts and Strikes in Nigeria: A Socio-Economic Analysis", *International Journal of Development and Management Review (INJODEMAR)*,(2011), 6, p. 32.

⁷⁹Ibid.

By the Trade Disputes Act, every arbitration process is initiated by the minister of labour who has the power to refer disputes to the IAP⁸⁰ or the National Industrial Court⁸¹ as the case may be. In the case of the IAP, it is only the minister of labour who can vest jurisdiction for arbitration on the panel.⁸² Meanwhile, by Section 6 (6) (a) and (b) of the Constitution which has a superior force to all laws, the National Industrial Court has an inherent jurisdiction to entertain arbitration matters even where they were not initiated by the minister.⁸³ Thus, it could be stated that the National Industrial Court may entertain a trade dispute arbitration where the minister refers same to the National Industrial Court. Also, a judge of the National Industrial Court has the power to refer a labour dispute in any trial to arbitration conducted by an officer of the court.⁸⁴

Also, a judge or the President of the Court may refer a matter already submitted for trial to the Alternative Dispute Resolution (ADR) Centre of the National Industrial Court.⁸⁵ However, it appears that the ADR centre is only created for the purpose of mediation and conciliation as the rules of court does not mention arbitration as part of the function of the centre.⁸⁶ Order 24, Rule 2 of the NICN Rules provides that upon receipt of referral, the registrar, the registrar of the centre shall set the matter down for conciliation or mediation. The National Industrial Court of Nigeria Alternative Dispute Resolution Rules, 2015 further defines ADR to include mediation or conciliation conducted at the centre.⁸⁷ Thus, applying the principle of *expressio unis est exclusio alterus*,⁸⁸ arbitration is not covered by the ADR centre of the NICN, the

⁸⁰ Ibid, Section 9.

⁸¹ Ibid, Section 14 (1).

⁸² Article 3, Industrial Arbitration Rules, 2021.

⁸³ Section 254C places jurisdiction on the NICN without the need for any referral.

⁸⁴ Sections 31 & 32 (1), National Industrial Court Act, 2006.

⁸⁵ Order 24, Rule 1, National Industrial Court of Nigeria (Civil Procedure) Rules, 2017.

⁸⁶ Ibid, Order 24, Rule 2.

⁸⁷ Order 2, Rule 2.

⁸⁸ The express mention of a list is to the exclusion of all other things not contained in the list.

court can only refer to arbitration by appointing an arbitrator who is an officer of the court and whose decision is binding on even the court and made the findings of the court.⁸⁹

3.1.4 Industrial Arbitration Rules, 2021

Industrial Arbitration Rules, 2021 is applicable to the proceedings of the Industrial Arbitration Panel. Meanwhile, the provision of the Arbitration and Conciliation Act does not apply to the arbitration conducted by the IAP.⁹⁰ This is probably because the IAP has its own rule. The procedure for settling labour union disputes through arbitration will depend on the body conducting the process; thus, the procedure can be discussed as follows:

3.1.4.1 Reference of Matters to Arbitration

By the Trade Disputes Act, every arbitration process is initiated by the minister of labour who has the power to refer disputes to the IAP⁹¹ or the National Industrial Court⁹² as the case may be. In the case of the IAP, it is only the minister of labour who can vest jurisdiction for arbitration on the panel.⁹³ Meanwhile, by Section 6 (6) (a) and (b) of the Constitution which has a superior force to all laws, the National Industrial Court has an inherent jurisdiction to entertain arbitration matters even where they were not initiated by the minister.⁹⁴ Thus, it could be stated that the National Industrial Court may entertain a trade dispute arbitration where the minister refers same to the National Industrial Court. Also, a judge of the National Industrial Court has the power to refer a labour dispute in any trial to arbitration conducted by an officer of the court.⁹⁵

⁸⁹ Section 32 (3), National Industrial Court Act, 2006.

⁹⁰ Ibid, Section 12 (1).

⁹¹ Ibid, Section 9.

⁹² Ibid, Section 14 (1).

⁹³ Article 3, Industrial Arbitration Rules, 2021.

⁹⁴ Section 254C places jurisdiction on the NICN without the need for any referral.

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Also, a judge or the President of the Court may refer a matter already submitted for trial to the Alternative Dispute Resolution (ADR) Centre of the National Industrial Court.⁹⁶ However, it appears that the ADR centre is only created for the purpose of mediation and conciliation as the rules of court does not mention arbitration as part of the function of the centre.⁹⁷ Order 24, Rule 2 of the NICN Rules provides that upon receipt of referral, the registrar, the registrar of the centre shall set the matter down for conciliation or mediation. The National Industrial Court of Nigeria Alternative Dispute Resolution Rules, 2015 further defines ADR to include mediation or conciliation conducted at the centre.⁹⁸ Thus, applying the principle of *expressio unis est exclusio alterus*,⁹⁹ arbitration is not covered by the ADR centre of the NICN, the court can only refer to arbitration by appointing an arbitrator who is an officer of the court and whose decision is binding on even the court and made the findings of the court.¹⁰⁰

3.1.4.2 Conduct of Arbitration at the IAP

The panel's arbitral authority is restricted to labor disputes because the arbitration at this stage is a statutory arbitration resulting from the provisions of Section 9(2) of the Trade Disputes Act. The Minister may refer the disagreement to the Industrial Arbitration Panel under Section 4(2)(a) of the Act (IAP).¹⁰¹

The beginning of arbitral hearing in a labor dispute starts at the IAP.¹⁰² The chairman, vice-chairman, and at least ten other members of the Panel are selected by the Minister as

⁹⁶ Order 24, Rule 1, National Industrial Court of Nigeria (Civil Procedure) Rules, 2017.

⁹⁷ Ibid, Order 24, Rule 2.

⁹⁸ Order 2, Rule 2.

⁹⁹ The express mention of a list is to the exclusion of all other things not contained in the list.

¹⁰⁰ Section 32 (3), National Industrial Court Act, 2006.

¹⁰¹ See Section 9 (1), Trade Disputes Act.

¹⁰² C. C. Obi-Ochiabutor, Trade Disputes Resolution under Nigerian Labour Law, *Nigerian Juridical Review*, (2010) 9,77.

members of the panel for the purpose of adjudication, with the exception of two members who are each nominated by the parties who represent their particular interests.¹⁰³

It is clear that the panel's jurisdiction is solely derived from reference by the minister upon the conditions as follows:

- i. When a mediator has been chosen by the parties under Section 4 (2) of the Act, yet the dispute is not resolved;¹⁰⁴
- ii. Where conciliation under Section 8 fails;¹⁰⁵
- iii. When the minister by discretion chooses to refer the dispute to the panel directly

The procedure adopted by the panel is a flexible one and which is devoid of technicalities as against the conventional court procedure, while performing its functions, the panel has the powers to:

- i. Request that any person provide the information on the dispute that has been referred to it,
- ii. Compel any person to produce documents necessary to the hearing in order to examine such.
- iii. proceed in the absence of a party who has been duly summoned, or served with a notice to appear
- iv. Admit or exclude the public, or the press, from any of its sittings.
- v. Give all the instructions and do all the actions that are required or practical for handling the problem at hand quickly and fairly.¹⁰⁶

¹⁰³ Ibid, Section 9 (2).

¹⁰⁴ Section 9 (1), Trade Disputes Act.

¹⁰⁵ Section 8, Trade Disputes Act.

¹⁰⁶ C. C. Obi-Ochiabutor, op. cit. 79.

Although binding, the award of the panel may be objected to and where this is done, the minister may refer the dispute to the National Industrial Court of Nigeria in accordance with Section 14. As a matter of law, the panel's award is to be submitted to the Minister who may return same to the panel for a re-consideration, this factor may rob the award of its independent nature and degrade it to a mere recommendation.¹⁰⁷ Meanwhile, by the provision of Section 254C of the Constitution, the parties may appeal directly to the National Industrial Court of Nigeria without having to object to the minister.¹⁰⁸

The conduct of arbitration before the IAP can be discussed under the following categories:

3.1.4.3 Commencement of action

The point had been made that it is the minister who has the power to refer disputes to the panel. Upon receipt of the reference, the panel has the duty of serving a hearing notice on the parties requesting the claimant to file a memoranda,¹⁰⁹ statements on oath of witnesses and copies of documents sought to be relied on. The memoranda shall contain (a) statement of fact (b) names of parties (c) points in dispute (d) remedies sought. The hearing notice to be served by the panel here can be done by delivering it to the residence or business place of the addressee.¹¹⁰

¹⁰⁷ Ibid, 78.

¹⁰⁸ E. O Wingate & P. N Okoli, "Judicial Intervention in Arbitration: Unresolved Jurisdictional Issues Concerning Arbitrator Appointments in Nigeria", *Journal of African Law*, 65 (2), 2021, p. 233.

¹⁰⁹ Article 16 (1), Industrial Arbitration Rules, 2021.

¹¹⁰ Ibid, Article 2 (1).

The claimant therefore has to file this process not later than three days to the hearing of the arbitration.¹¹¹ Upon filing the memoranda, the defendant is by Article 17, Rule 5 (1) obliged to file a statement of defence replying to the claimant's memoranda.

The conduct of arbitration at the IAP is regulated by the Industrial Arbitration Rules, 2021¹¹² made by the minister of labour in accordance with Section 37 (2) of the Trade Disputes Act.

3.1.4.4 Quorum and Duration

By Article 21 of the Industrial Arbitration Rules, the procedure of the IAP is summary in nature as the award as to be made within twenty-one days from the period of filing the claimant's memoranda till the grant of the award.¹¹³ However, the panel may seek extension of time by leave of the minister.¹¹⁴

In any arbitration procedure before the panel, the quorum as required by Section 9 (4) (a), (b) and (c) of the Trade Disputes Act may be;

- a. A single arbitrator who must be a member of the IAP
- b. A single arbitrator assisted by assessors
- c. The chairman or vice-chairman of the IAP with one or more arbitrators nominated by the parties from members of the IAP.¹¹⁵

Meanwhile, where the panel is presided upon by a sole arbitrator and the arbitrator dies or any vacancy occurs for any purpose, the arbitrator will be replaced and the process has to start de-novo. However, where there are more than one arbitrators presiding over the matter, the one whose position becomes vacant shall be replaced and the matter may either continue

¹¹¹ Ibid, Article 17.

¹¹² See Article 1, Industrial Arbitration Rules, 2021.

¹¹³ Ibid, Article 21.

¹¹⁴ Ibid, Article 26 (1).

¹¹⁵ Ibid, Article 6.

or may be heard de-novo depending on the decision of the tribunal on the application of either party.¹¹⁶

3.1.4.5 Evidence and Hearing

In arbitration conducted by the IAP, establishment of cases proceed upon the basis that “he who asserts must prove” and as such, it is for he who alleges the existence of a fact to prove same.¹¹⁷ Also, in taking evidence, the panel has the liberty to either be bound by the provisions of the Evidence Act, 2011 or not,¹¹⁸ this means that the rules gives the panel the discretion to apply its own rules of evidence.

In order to save the time of the panel, the rule allows the panel to adopt the frontloading system where the evidence of witnesses any be in writing on oath and frontloaded beforehand.¹¹⁹

¹¹⁶ Ibid, Article 10.

¹¹⁷ Ibid, Article 22 (1).

¹¹⁸ Ibid, Article 22 (3) and (4)

¹¹⁹ Ibid, Article 22 (7).

3.1.4.6 Enforcement of Awards

The IAP's enforcement of the judgment against the party in breach is incredibly lax.¹²⁰ This is because, unlike the formal Court, which has a planned and workable system of executing any judgment of the court, the award rendered by an IAP is distinct from that. Enforcement can be carried in the following ways:

- a. By cooperation of the parties, in particular the party who initiates the action. The judgment is enforced if he does everything he is required to do by the right of appeal, if he so desires to challenge the judgment.¹²¹

In the case of a contempt, the victorious party may enforce the award under the Sheriff and Civil Processes Act¹²² wherein the judgment creditor seeks the leave of the court to execute the award. In this case, the execution of the defendant will be carried out by the court bailiff. Because he disobeyed the IAP's ruling, the judgment debtor could possibly face a contempt proceeding.

3.2 Institutional Framework

This sub-heading study deals with the bodies that are created by law and it shows that the Nigerian legal framework recognizes the possibility of the settlement of labour disputes by means of arbitration. These bodies include;

- i. The National Industrial Court of Nigeria
- ii. The Minister of Labour.

¹²⁰C. C. Obi-Ochiabutor, op. cit. 82.

¹²¹ Ibid, 82.

¹²² CAP S 16, Laws of the Federation of Nigeria, 2004.

3.2.1 The National Industrial Court of Nigeria

National Industrial Court of Nigeria is a creation of Section 254A of the Constitution,¹²³ this provision vests the court with the status of a superior court. Hitherto, the NICN was an inferior court under the repealed Section 20 of the Trade Disputes Act, 1964¹²⁴ Industrial relations law and practice prior to the enactment of the Trade Disputes Decree and specifically before 1968, were based on the non-interventionist and voluntary model of the British approach.

The Trade Disputes Act, 2014 (Arbitration and Inquiry) Act contained the legal framework for trade dispute resolution. By the then Trade Disputes (Arbitration and Inquiry) Act which was initially passed in 1941, the Minister of Labour was given authority step in if negotiations had failed through conciliation, formal investigation, and arbitration.¹²⁵

The present jurisdiction of the National Industrial Court of Nigeria to conduct arbitration proceedings in labour matters can be traced to its general jurisdiction under Section 254C of the Constitution.¹²⁶ Section 254C (1) – (4) vests exclusive jurisdiction on the National Industrial Court of Nigeria over all matters related to labour and industrial relations. Section 254C (1) (a) and (b) for instance, have provisions vesting the NICN with the jurisdiction to hear all matters related to employment, trade unions, industrial relations and workplace matters like welfare of workers and their condition of service. Subsection 1 (b)¹²⁷ further vests the NICN with the jurisdiction to hear matters arising from the Trade Disputes Act, Trade Union Act, Employees' Compensation Act and other Acts which have similar objects.

¹²³ CFRN, 1999.

¹²⁴ Decree No. 7 of 1976.

¹²⁵ E. E Ekanem & B. J Ekanem, An Analysis of the Jurisdiction of the National Industrial Court of Nigeria as a Court of First and Last Resort in Civil Matters, *Journal of Humanities and Social Science*, (2017), 22 (4), 59.

¹²⁶ CFRN, 1999.

¹²⁷ Ibid.

Specifically, Section 254C (1) (j) vests the NICN with the jurisdiction to entertain matters relating to the interpretation of;

- i. Collective agreement
- ii. Award in respect of an arbitration tribunal which relates to a trade dispute or trade union dispute.
- iii. Terms of settlement of any trade disputes

The proviso to Subsection (3) further vests appellate and supervisory jurisdiction on the NICN over an arbitral tribunal, Subsection (3) therefore, empowers the NICN to establish Alternative Dispute Resolution centres within the court premises.¹²⁸ This is in line with the settlement of labour disputes being the major jurisdiction of the court although, the jurisdiction the ADR centre does not extend to arbitration as it is limited to mediation and conciliation.

In all, the jurisdiction of the NICN in labour union arbitration cases are as follows:

- i. Interpretation and Application of Arbitration and Settlement awards done outside the NICN ADR centre.
- ii. Appellant and supervisory jurisdiction over arbitration process outside the court.
- iii. Original Arbitration jurisdiction through the appointment of an arbitrator of the court by a judge of the court in matters already subjected to litigation.
- iv. Arbitration by reference from the Minister of Labour as in the Trade Disputes Act.¹²⁹

It will be added that the jurisdiction of the NICN as it relates to labour union relations and other disputes are exclusive and although, being a court of coordinate jurisdiction with the

¹²⁸ See also, the National Industrial Court of Nigeria Act, 2006.

¹²⁹ Section 14 (2), Trade Disputes Act.

High Court of States and the Federal High Court, it is only the NICN that has original jurisdiction in this regard. Because of section 254C (1),¹³⁰ the other High Courts cannot exercise their jurisdiction concurrently or share it with them in the same position of authority or power. The phrase "exclusive jurisdiction" is defined in the Black's Law Dictionary as "a court's power to judge an action or class of actions to the exclusion of all other courts."¹³¹

Based on the aforementioned, the rulings of the Supreme Court of Nigeria in the cases of *Attorney General, Oyo State v. National Labor Congress and National Union of Electricity Employer & Other v. Bureau of Public Enterprises*,¹³² which restricted the NICN's jurisdiction and put it on par with the jurisdictions of the Federal High Court, the State High Court, and the High Court of Federal Capital Territory, Abuja, have been declared invalid. The current jurisdiction of the NICN is unique to it and cannot be shared with other courts, according to the combined effects of section 7 of the NICN Act, 2006 and section 254C (1) of the Constitution (Third Alteration) Amendment Act, 2010. This is to say that prior to the third alteration of the Constitution in 2010, the High Court of states and the Federal High Court had the jurisdiction to hear labour-related matters but upon the promulgation of the third alteration, no other court except the NICN has such jurisdiction.

The Supreme Court recently upheld the NICN's exclusive jurisdiction over labor-related issues in general and the master-servant relationship in particular. According to Section 254C of the 1999 Constitution (as amended), the NICN has exclusive jurisdiction over issues originating from employer-employee relationships, the Court concluded in *Coca-Cola v. Mrs. Titilayo Akinsanya*.¹³³

¹³⁰ CFRN, 1999.

¹³¹ B.A Garner, *The Black's Law Dictionary*, (9th ed. USA: Thompson Reuters), 927.

¹³² (2010) 7 NWLR (Pt. 194) 538.

¹³³ (2017) SC/542/13. Judgement was delivered by the Supreme Court on Friday, 30th June, 2017.

3.2.1.1 Procedure and Practice of Arbitration at the NICN

The procedure for conducting arbitration in the National Industrial Court of Nigeria is not spelt out under any rules as against mediation and conciliation which is contained in the National Industrial Court of Nigeria Alternative Dispute Resolution Rules. The civil procedure rules of the NICN only allows the judge of the court to refer labour matters to arbitration by appointing an arbitrator who is an officer of the court and whose decision is binding on even the court and made the findings of the court.¹³⁴

Since the decision of the arbitrator will be binding on the court as if it was the decision of the court, it is submitted that the arbitrator may be guided by the rules of international best practices and labour practices since the Order 23 Rule 4 of the NICN rules allows parties to cite such rules before a judge where the rules of the court does not have any provision for a particular matter.

3.2.1.2 Enforcement of Awards at the NICN

Enforcement of a court's judgment is part of the inherent jurisdiction of any court, it has been pointed out earlier that the award of the arbitrator appointed by the court is binding on the court. Thus, in the enforcement of awards, the following provisions are applicable;

- i. Section 10 of the National Industrial Court of Nigeria Act, 2006 which empowers the court to enforce its own judgment to the extent of committing defaulters on contempt.
- ii. The Sheriffs and Civil Process Act which allows judgment of court to be enforced by judgment debtor summons, writ of execution and other means of enforcing judgments.

¹³⁴ Section 32 (3), National Industrial Court Act, 2006.

This chapter further investigates the question as to what extent is arbitration applicable in labour union disputes. This chapter therefore, discusses issues like arbitrability of labour union disputes, the arbitration process in labour union disputes, bindingness of awards in labour union disputes, the enforcement procedure in arbitration awards, arbitration and other means of settling labour disputes, challenges of arbitration in the settlement of labour disputes.

3.2.2 The Roles of the Minister in Labour Union Arbitration

The minister in this case refers to the minister of labour and productivity,¹³⁵ the position of the minister is a creation of Section 147 (1) of the Constitution¹³⁶ which provides that the President of the Federal Republic of Nigeria has the power to establish such numbers of ministries manned by ministers of the government of the federation. In a very short term, the roles of the minister in relation to labour disputes arbitration are;

- i. Apprehension of disputes
- ii. Referral of disputes to the IAP or the NICN
- iii. Review of the IAP's awards
- iv. Promulgation of the Industrial Arbitration Rules

Under the Trade Disputes Act, the Minister is saddled with so many responsibilities which come with a level of discretion. The roles of the minister proceeds from the apprehension of a labour dispute up to the period of the settlement of same.¹³⁷

The Trade Disputes Act, Section 4, gives the Minister of Labour and Productivity the authority to investigate a trade dispute, name a conciliator, or submit the matter to the

¹³⁵ Section 48 (1).

¹³⁶ CFRN, 1999.

¹³⁷ M. K Adebayo & S. Olokooba, "Employment Disputes and Industrial Relations in Nigeria: The Role of Alternative Dispute Resolution", *Kampala International University Journal of Humanities*, (2008), 3 (1): 123–137.

Industrial Arbitration Panel.¹³⁸ The Minister will send the matter to either the Industrial Arbitration Panel (IAP) or the National Industrial Court if the mediator chosen by the employer and the employees is unable to resolve the conflict within 14 days (NIC).¹³⁹

Also, where parties have explored mediation in the settlement of disputes but the disagreement is not resolved within seven days of the mediator's appointment, it must be notified to the Minister by one of the parties within three days of the end of the seven-day period.¹⁴⁰ The report must be in writing and list the disagreements between the parties as well as the actions they have already made to seek a settlement.

The Minister may designate a suitable individual to serve as a conciliator in order to accomplish settlement.¹⁴¹ This person will look into the circumstances and reasons of the disagreement and work to resolve it through negotiation with the parties. If this issue is resolved within seven days of the conciliator's appointment, he or she must notify the Minister and send him a memorandum outlining the details of the agreement that was signed by all parties.¹⁴²

But if a resolution to the conflict cannot be achieved in that time, the conciliator must immediately inform the Minister of the situation as well. The Minister must refer the dispute to the Industrial Arbitration Panel for resolution within 14 days of receiving the report.¹⁴³ The panel will be made up of a chairman, a vice-chairman, and at least ten other members, including individuals who will represent the interests of the employer and the employees, respectively.¹⁴⁴ The arbitrator will draft and issue the arbitration tribunal's decision. The

¹³⁸ Trade Disputes Act.

¹³⁹ Ibid, Sections 9 and 14.

¹⁴⁰ Ibid, Section 6.

¹⁴¹ Ibid, Section 8.

¹⁴² Ibid, Section 8 (3).

¹⁴³ M. K Adebayo & S. Olokooba, op. cit., 133.

¹⁴⁴ Section 9 (2) (a) and (b), Trade Disputes Act.

award must be made within 21 days of its constitution, unless the minister grants a longer grace period. The Minister will immediately receive a copy of the award after it is made.¹⁴⁵

The Minister will arrange for the parties or their representatives to receive a copy of the award. In the announcement outlining the awards. If either party disagrees to the award notice, that party must notify the Minister of their objections within seven days. Upon receiving the notice of objection, the Minister may, if he so chooses, refer the award back to the Tribunal for further review.¹⁴⁶ If the Minister does not receive a notice of disagreement with the decision within the timeframe and in the way specified, the Minister must issue a notice in the government gazette confirming the award, and the award will then be binding on the parties.

It is clear from the foregoing that the role of the minister spans through all the stages of labour union dispute resolution, in essence, it can be said that the role of the ministers are as follows:

- i. Apprehension of labour-related disputes
- ii. Reference of disputes to arbitration and conciliation
- iii. Receiving reports from arbitration panel except the arbitration processes conducted at the National Industrial Court.

¹⁴⁵Ibid, Section 9 (6).

¹⁴⁶M. K Adebayo & S. Olokooba, op. cit. 134.

CHAPTER FOUR

4.1 Arbitrability of Labor Union Disputes

Arbitrability refers to the fact that a matter can be a subject of arbitration. It also refers to the ability to resolve and provide a lasting solution and the ultimate resolution of labor union disputes, most especially cases where a neutral third party mediates or arbitrates to make a binding solution to the lingering disputes. Ezejiolor explains that disputes that can be referred must be justiciable issues which can be tried as civil matters.¹⁴⁷ These include all matters in dispute about any real or personal property, disputes as to whether contract has been breached by either party thereto, or whether one or both parties have been discharged from further performance thereof.¹⁴⁸ A matter may be arbitrable if the statutes or general law allows same to be a subject of arbitration.¹⁴⁹ It has been stated earlier in this study that it is not all matters that can be subject to arbitration,¹⁵⁰ the arbitration procedure is usually applicable in matters of private law. In certain public matters, the law will not allow disputes to be capable of being settled by arbitration, for instance, by virtue of the Federal Inland Revenue Service Act¹⁵¹ and the Constitution,¹⁵² the Federal High Court has the exclusive jurisdiction to hear matters relating to payment of tax and as such, cannot be subject to arbitration.

Statutorily, the Trade Disputes Act, being the applicable law in labour union disputes makes trade disputes one of the matters that can be subject to arbitration. The provision is found in Section 9 of the Trade Disputes Act which allows the minister of labour to refer disputes to arbitration.¹⁵³

¹⁴⁷ See Ezejiolor G, *The Law of Arbitration in Nigeria*, (Longman Publishers, 1997), p. 3.

¹⁴⁸ Ibid.

¹⁴⁹ For instance, labour union matters are arbitrable by virtue of the Trade Disputes Act.

¹⁵⁰ Chapter Two, ante.

¹⁵¹ Federal Inland Revenue Service Act, 2007.

¹⁵² Section 251 (1) (b), CFRN, 1999.

¹⁵³ CAP T8, Laws of the Federation of Nigeria, 2004.

4.2 Bindingness of Arbitral Awards in Labour Union Disputes

The law does not make any special provision for the enforcement of arbitration awards in special kind of disputes except in the usual manner of enforcing arbitration awards generally. This study had earlier undertaken the study of enforcement and recognition of arbitration awards.

Once made, an arbitral award made in pursuance of the Trade Disputes Act or the jurisdiction of the National Industrial Court is binding on parties and recognized by the court for the purpose of enforcement.

Arbitral awards made by the Industrial Arbitration Panel is binding to the extent that it is not reviewed by the Minister who may refer the matter back to the Industrial Arbitration Panel or the National Industrial Court.¹⁵⁴ The law in relation to this, provides for criminal liability for disobedience of an arbitral award.¹⁵⁵ Section 14 (4) makes it a criminal offence for any person who fails to comply with the arbitral awards of the IAP.¹⁵⁶

The law further provides that upon conviction, where the offender fails to comply, the offender will be liable to pay the fine daily.¹⁵⁷ In the case of arbitral awards made by the National Industrial Court, it is apposite to state such awards will have effect like a conventional judgment of the Court and Section 10 of the National Industrial Court Act, 2006 empowers the court to commit for contempt, any trade union or person who does not comply with the decision of the court.¹⁵⁸

¹⁵⁴ Section 14 (1), Trade Disputes Act.

¹⁵⁵ Section 14 (4) (a) and (b), Trade Disputes Act.

¹⁵⁶ Once convicted, the person shall be liable to fine of N200 (Two Hundred Naira) or imprisonment for a period of six months but where the offender is a corporate organization, the offence attracts a fine of N2, 000, 000. 00 (Two Million Naira).

¹⁵⁷ Ibid, Section 14 (5).

¹⁵⁸ National Industrial Court Act, 2006.

4.3 Comparison between Arbitration and other Conventional Dispute Resolution Means

It has been stated earlier that the common means by which employees in Nigeria demand their dues from their employers are strike actions, litigation, lockout and other means which have been described as having destructive effects.

The use of Arbitration as noted earlier in this study for the purpose of resolving any dispute creates a form of flexible environment which is friendlier than the other conventional means of dispute resolution.¹⁵⁹ An instance considered here is the recent strike action embarked upon by the ASUU, this action created a great deal of hostility between the minister and the Union, this led to the registration of another academic union by the minister, this act of registration was largely seen as a way by which the government tried to undermine the union powers of the ASUU.¹⁶⁰

The aftermath of the strike was that the government initiated a “no work, no play policy against members of the union who embarked on the strike. Undoubtedly, the result of the strike is destructive to students whose academic journeys suffered setbacks during the strike, the university teachers’ pay also suffered.¹⁶¹ Also, Arbitration creates an inquisitorial system of dispute resolution wherein the parties are not necessarily seen as competitors unlike litigation where the judge sits as an umpire in a procedure that appears like a football competition.

In every labour arbitration process, the arbitrator has the power to appoint experts to give the necessary opinions and make reports about special labour matters, this is however, not the case in litigation as parties can only present an expert before the court since the court is only

¹⁵⁹ M. K Adebayo & S. Olokooba, op. cit. 138.

¹⁶⁰ See Vanguard Newspaper, 5th January, 2012, available at <[Labour declares total strike Monday - Vanguard News \(vanguardngr.com\)](http://www.vanguardngr.com)> last assessed on 30/09/2023.

¹⁶¹ Ibid.

concerned with the facts placed before the judge.¹⁶² The judge is not in the position to *suo motu* appoint an expert for the parties since it will amount to filling the vacuum for the parties' case.

It is the attribute of law to be subject to certainty, thus, the legal system in Nigeria and other common law jurisdictions operate on the basis of *stare decisis*. However, most of the arbitration cases are not reported and as such, it is far from certainty. Thus, the fact that reports of arbitration procedures in labour-related matters are not reported in Nigeria is submitted to either be as a result of its confidentiality or the poor usage of the arbitration to settle labour disputes.

The procedure of conducting arbitration by the Industrial Arbitration Panel is such that makes mockery of the quasi-judicial jurisdiction of the panel. First, the parties are not afforded the right to approach the panel except where the minister refers dispute, this is submitted to be a negation of the principle of independence and voluntariness. This is against the principle of fair hearing where parties have access to court in litigation whenever they have grievances as expressed in the maxim “ubi jus, ibi remedium” which means that where there is a wrong, there is a corresponding remedy.

The procedure adopted by the initiation of disputes by the minister does not conform to the principle of “a person not being a judge in his cause”, the government in Nigeria, is the largest employer of labour. It is therefore, not fair to place the power of review and referral of disputes in the hands of the minister who is clearly an appointee of government.

Also, the rule of flexibility which the arbitration procedure used to enjoy in Nigeria has turned out to be more of a litigation exercise since most of the arbitral bodies now enact rules which resemble the High Court Civil Procedure Rules which accommodates lawyers during

¹⁶² Industrial Arbitration Rules.

the procedure to tender lots of documents and arguments which take too much time and eventually delay the whole proceedings.¹⁶³

Another issue which serves as an impediment to the employment of arbitration in labour union disputes is the fact that arbitration does not have an internal enforcement mechanism like litigation where enforcement is inherent in the power of the court. The successful party in an arbitration exercise is left with the option of applying for the leave of court to enforce his awards. It becomes more complicated in labour-union disputes where most of the remedies sought are declaratory in nature, the complication gets worse in an arbitration proceeding where workers' union gets a declaratory award against the government and seeks to enforce same with the instrument of the state.

4.4 ADR methods of settling Labour Disputes in Nigeria

It would be seen above that strike actions and other tools used to exhibit labour disputes have their destructive effects and may not be capable of resolving the disputes. Examining the Alternative Dispute Resolution procedures provided for under the TDA, as amended, for the resolution of trade disputes in Nigeria. Negotiation, Mediation, Conciliation and Arbitration are among processes that are recognized by the TDA.¹⁶⁴ Since the major focus of this research work is arbitration, it is pertinent to explain a bit of other processes.

4.4.1 Negotiation

The first step in any earnest attempt to resolve trade dispute is negotiation between the parties to it, without the involvement of any third party.¹⁶⁵ As a result, the TDA effectively mandates that, in the event of a trade dispute between employers and employees, the parties involved

¹⁶³O. J Enyia & C.A Njong, "A Critical Analysis of Arbitration as an Instrument for Resolving Commercial Dispute in Nigeria", *Journal of Arts, Literature, Humanities and Social Science*, (2022), 82, 248.

¹⁶⁴ Felix Amadi, Gogo Otuturu, "Alternative Dispute Resolution processes for the settlement of Trade Union disputes in Nigeria: Lessons from South Africa", *Century Publications, England, united Kingdom*, 11 (2021) 30-45.

¹⁶⁵Ibid p.7.

shall first attempt to resolve the dispute through any agreed-upon means, whether as a result of the terms of any agreement between organisations representing employers' interests and organisations of workers or any other agreement.¹⁶⁶

Discussions between the parties with the goal of resolving their disputes and arriving at a settlement that will be advantageous to both of them characterize negotiation. Negotiation is based on competing interests of the parties, as opposed to litigation, which is based on opposing rights of the parties.¹⁶⁷ To obtain a collective agreement on both substantive matters, such as pay, housing benefits, and other job conditions, and procedural concerns, like grievance or dispute resolution method, the parties essentially barter or negotiate their interests. Dispute resolution procedures and other measures for reviewing the terms and conditions that, if not managed appropriately, may give rise to problems are typically included in collective agreements¹⁶⁸

4.4.2 Mediation

According to the provisions of section 4(2) of the TDA, mediation is the involvement of a third party, known as a mediator, who is mutually agreed upon and chosen by or on behalf of the parties with a view to the peaceful resolution of the dispute.¹⁶⁹ The statutory requirements make it plain that the mediator is a neutral third person who the parties mutually agree has knowledge and experience in labour and industrial relations concerns and who they mutually designate to help them settle their disagreement.¹⁷⁰

¹⁶⁶TDA s 4(1).

¹⁶⁷ Felix Amadi, Gogo Otuturu, *Alternative Dispute Resolution processes for the settlement of Trade Union disputes in Nigeria: Lessons from South Africa*, (2021) vol 11(2021) 30-45. Century Publications, England, United Kingdom p.7.

¹⁶⁸Ibid p 7.

¹⁶⁹TDA, s4(2).

¹⁷⁰ Felix Amadi, Gogo Otuturu, *Alternative Dispute Resolution processes for the settlement of Trade Union disputes in Nigeria: Lessons from South Africa*, (2021) vol 11(2021) 30-45. Century Publications, England, United Kingdom, 7.

4.4.3 Conciliation

According to section 8(1) of the TDA, conciliation is the involvement of a neutral third party known as the conciliator, chosen by the minister of labour, in an attempt to resolve a trade dispute. The conciliator in this situation is typically a senior labour officer, skilled in issues relating to labour and industrial relations.¹⁷¹

In two circumstances, the Minister may send a trade dispute to a conciliator for resolution. The first occurs when the parties are unable to resolve the conflict through negotiation under the direction of a mediator, and the second occurs when the Minister becomes aware of a trade dispute and, without first waiting for the conclusion of any internal dispute resolution procedures, appoints a conciliator to mediate the matter.¹⁷² In the former situation, the Minister is only obligated to communicate with the parties or their representatives to notify them that he anticipates a trade dispute and to outline the procedures he intends to take to resolve it.¹⁷³

A conflict settlement must be reached by the conciliator within seven days. A memorandum containing the terms of settlement signed by the parties or their representatives must be forwarded to the Minister by the conciliator if the dispute is resolved. The terms described therein shall be obligatory on the employers and the employees to whom they apply as of the date of signature, or such earlier or later date as may be mentioned therein.¹⁷⁴ Any action that violates the settlement conditions outlined in the memorandum is unlawful for either party to do.¹⁷⁵

¹⁷¹TDA, s8(1).

¹⁷²Ibid, s.7.

¹⁷³Ibid, s.5.

¹⁷⁴Ibid s.8(3).

¹⁷⁵Ibid, s8(4).

However, if a settlement of the disagreement is not reached within seven days of the conciliator's appointment or if the conciliator is unsuccessful in resolving the dispute through dialogue with the parties, they must immediately notify the Minister of Labour.¹⁷⁶ The Labour Minister must refer the matter to the Industrial Arbitration Panel for resolution within 14 days of receiving the report.¹⁷⁷

4.4.4 Arbitration

By the provisions of section 9(1) of the TDA, arbitration is the referral of a trade dispute to the Industrial Arbitration Panel by the Minister of Labour for resolution in accordance with the Act's provisions.¹⁷⁸ In two situations, the Minister may submit a dispute to the Industrial Arbitration Panel (IAP) for resolution. The first occurs when a conciliator assigned to mediate the issue is unable to do so, and the second occurs when the Minister notices a trade dispute and steps in by sending it to the IAP for resolution. In the latter situation, the Minister sends the dispute to the IAP for resolution instead of using any internal conflict resolution procedures or a conciliator to resolve it.¹⁷⁹

The IAP is a professional organisation created under the TDA, with a Chairman, a Vice-Chairman, and at least 10 other members selected by the Minister of Labor. Two nominees from groups representing employers' interests and two nominees from groups representing workers' interests must be chosen among the remaining 10 members.¹⁸⁰

The Chairman of the IAP shall appoint an arbitration tribunal in accordance with the Act's provisions to arbitrate any dispute that the Minister refers to it for resolution. According to the Act, an arbitration tribunal may consist of a single arbitrator aided by an assessor, a single

¹⁷⁶Ibid, s8(5).

¹⁷⁷Ibid, s9(1).

¹⁷⁸Ibid, s9(1).

¹⁷⁹Ibid, s5.

¹⁸⁰Ibid, s9(2).

arbitrator acting alone, or a group of arbitrators headed by the Chairman or Vice-Chairman of the IAP and consists of one or more arbitrators chosen by the relevant employers and an equal number chosen by the affected employees.¹⁸¹

The statutory requirements make it clear that while the members of the Industrial Arbitration Panel are chosen by the Minister of Labor, the arbitration tribunal is chosen by the Chairman of the Industrial Arbitration Panel. He is the only one who selects the arbitrators for disputes referred to the Panel.¹⁸²

The arbitrators should ideally be selected by the parties themselves. This fundamental idea is supported by the Act, but only if there will be more than one arbiter. The Act gives the Chairman of the Industrial Arbitration Panel complete authority to choose the arbitrator to hear the case when the arbitration tribunal consists of a single arbitrator.¹⁸³

However, a single arbitrator sits with assessors nominated in equal numbers by the parties to the dispute from a panel of employers' and workers' representatives assembled by the Minister of Labour. A sole arbitrator sits alone without the support of any assessors.¹⁸⁴ The single arbitrator or sole arbitrator, as the case may be, must sign the award in any scenario. A majority of the arbitrators in a group will decide the award in that situation.¹⁸⁵

The Industrial Arbitration Panel's deadline to issue an award is 21 days, which must be taken into consideration.¹⁸⁶ The Act does provide for a twenty-one day extension, though, by the

¹⁸¹Ibid, 9(4).

¹⁸² Felix Amadi, Gogo Otuturu, *Alternative Dispute Resolution processes for the settlement of Trade Union disputes in Nigeria: Lessons from South Africa*, AJSS vol 11(1) 2021 30-45. Century Publications, England, united Kingdom, 11.

¹⁸³ Ibid p11.

¹⁸⁴ TDA, s 9(5).

¹⁸⁵ Ibid s 9(6).

¹⁸⁶ Ibid, s. 13(1)(a).

Minister of Labor.¹⁸⁷ The Industrial Arbitration Panel is not required to act in a formal way and is not constrained by the rules of evidence.¹⁸⁸

The arbitration tribunal's decision is not publicised and is not disclosed to the parties involved directly. Instead, it is relayed to the Minister of Labor, who will then inform the parties.¹⁸⁹ In *National Union of Hotels and Personal Services Workers v. National Union of Food, Beverage and Tobacco Employers*,¹⁹⁰ the applicant union argued that this was a violation of sections 36(1) and (3) of the Constitution.

The National Industrial Court ruled that an administrative body that resembles a court of law, such as the Industrial Arbitration Panel, is not covered by the provisions of section 36(1) and (3) of the Constitution. According to section 36(2) of the 1999 Constitution, the decision of a quasi-judicial administrative body other than a court of law regarding the rights of any person shall not be invalidated if the decision is not final and conclusive. In the case of the Industrial Arbitration Panel, the fact that its decisions are not given in public and are subject to the approval of the Minister of Labour is in accordance with this provision. As a result, the Court held that the process does not infringe on the section 36(1) and (3) of the Constitution on the provision of the right to a fair hearing.¹⁹¹

Upon receiving the award, the Minister has two options: either notify the parties of the award and outline the deadline for objections, failing which the Minister may confirm the award.¹⁹²

¹⁸⁷ Ibid, s. 13(1)(b); see also *The Provost, College of Legal Studies, Yola v. NASU* (2012) 29 NLLR (Pt. 82). 34, 87 (Kanyip PJ).

¹⁸⁸ Trade Disputes Act 2004, ss. 36 and 37.

¹⁸⁹ TDA, s. 13(1)(b).

¹⁹⁰(2004) 1 NLLR (Pt. 2) 286.

¹⁹¹ Ibid, 303.

¹⁹² TDA, s. 13(2).

Alternatively, he may delay his authority to confirm the award until the tribunal has had a chance to review it and remit it back to him for reconsideration.¹⁹³

A decision made by the Industrial Arbitration Panel, however, cannot be formally withdrawn, overturned, or annulled by the Minister. In *Abdul-Raheem & Ors v. Olorunfoba-Ojo*,¹⁹⁴ the appellants argued that the trial court lacked jurisdiction to hear the case involving the dismissal of the respondent lecturers at the University of Ilorin who participated in an ASUU strike that interfered with exams because the Industrial Arbitration Panel had already considered the matter and rendered a decision in favour of the third appellant, the University of Ilorin. The fact that an award was made by the IAP was not contested by the respondents, but they argued that the award had been suspended by the minister of labour. According to the Court of Appeal, the Industrial Arbitration Panel's award cannot be legally rescinded, overturned, or annulled by the Minister of Labor.¹⁹⁵

The parties have seven days to object to the award after receiving notice of it from the Minister. The Minister must issue a notification confirming the award in the Federal Gazette if there are no objections. The award will only become enforceable against the employers and employees to whom it applies as of the award date or any earlier or later date that may be specified in the award once it has been confirmed by the Minister.¹⁹⁶

However, the Minister is compelled to send the matter to the National Industrial Court for resolution if notice of objection to the award of an arbitration tribunal is provided to the Minister within the time frame and in the manner stated in the notice.¹⁹⁷

4.5 Prospects and Challenges of Labour Dispute in Nigeria

¹⁹³ Ibid, s. 13(3).

¹⁹⁴ [2006] 15 NWLR (pt. 1003) 581.

¹⁹⁵ (2006) 15 NWLR (Pt. 1003) 581.

¹⁹⁶ TDA, s. 13(4).

¹⁹⁷ Ibid, s. 14(1).

The point has been made that labour disputes affect every sector of the economy and as such, the impact of the dispute is ubiquitous, this means that labour disputes have impacts on the economy, the judiciary, the health sector and all other sectors of the country. Industrial disputes, notably strikes, are becoming commonplace.¹⁹⁸ There is not a single industry that is unaffected by the disagreements and industrial disputes brought about by the numerous local and national unions.¹⁹⁹ The fact that industrial crises is afflicting every sector of the economy shows that the nation's economy is slowly coming to a stop. This rising strike frequency suggests that significant socioeconomic challenges are threatening the basic foundation of the Nigerian economy.²⁰⁰ These can be found anywhere.

Labour disputes have both economic and non-economic costs for the employer. In the public sector, the citizens and residents of a state being beneficiaries of the public services rendered by the labour force are primarily affected. For instance, during the periods when Academic Staff of Universities embarked on strike, it is commonplace that academic activities are suspended and students are prevented from having access to education, thereby, having negative effect of the educational sector. As a result, Ofoele made the case in support of his position on this matter that industrial activities like strikes might occasionally cause academic calendars to be extended, making it impossible for students to graduate on time.²⁰¹ He also asserted that when such a situation arises, parents are required to go above and beyond with their spending because their earlier plans to have their children out of school may have been impacted by the current circumstances.²⁰²

Another instance is the untold hardship which the common Nigerians are frequently subjected to during disputes between the government and the petroleum workers union. A dispute in

¹⁹⁸S.A. Fajana, *Industrial Relations in Nigeria: Theories and Features Lagos: (Labofin, 2000), 32.*

¹⁹⁹Ibid.

²⁰⁰Ibid.

²⁰¹Ofoele, *Management of Industrial Disputes (Aba: Meta Printing Co. Ltd, 1986), 34.*

²⁰² Ibid.

May 2017 between ExxonMobil and the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) forced the suspension of days' worth of daily crude oil production. Similar to this, Ogiewonyi of PENGASSAN alleged in April 2018 that 30,000 barrels of crude oil products were lost daily within 12 days of arguments between Addax Petroleum Development Nigeria Limited's employees and management. A recent disclosure by the largest telecom company in Nigeria, MTN, asserted that the cost of an industrial conflict was \$12 billion, which it said it lost in just four days of picketing in July 2018.

The effects of an industrial crisis, which typically arise when employees and employers are unable to come to an agreement, are typically not advantageous to the economy. Both local and macro repercussions result from the effects.²⁰³ The workers in the involved unions experience a drop in welfare since they lose their immediate income and, consequently, their market purchasing power. The firm whose employees are on strike, however, loses the union services and is consequently unable to fulfil customer orders, which always has an impact on their returns and profit margin. At the macroeconomic level, it causes a decline in the production of goods and services.²⁰⁴

²⁰³ E.S.C Osabuohien, "Advent of Private Universities in Nigeria and Effects on the Endangered Species", *International Journal of Research in Education*,(2005), 2 (1 &2), 78-87.

²⁰⁴ Ibid, p. 83.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Summary

The central idea of this study is the analysis on Trade Union and Performance of Academic Performance of Academic Staff Union of Nigeria. This is done by way of considering the dispute resolution systems provided under the extant laws within Nigeria. It also appraises how labour disputes are resolved and settled between the Federal Republic of Nigeria and the Academic Staff Union popularly known as 'ASUU'. The study points out the primary legislations which serve as the enabling laws for the operation of labour union in Nigeria couple with the performance of the Academic Staff Union of Nigeria. .

The study further examines the institutions empowered by the law to administer the dispute resolution procedure and the extent of their powers. The study also examines the binding nature of the arbitration awards in relation to labour disputes most especially in cases between the Federal Government of Nigeria and the Academic Staff Union of Nigeria.

5.2 Conclusion

The focuses of this study can be delineated as follows:

- i. Whether the legal frameworks in Nigeria provide for a viable arbitration procedure in the settlement of labour union disputes
- ii. Whether the arbitration procedure is capable of keeping up with the modern trends of labour union disputes in Nigeria

On the first point above, it would be stated that truly, the Nigerian legal framework as contained in the Trade Disputes Act, the National Industrial Court Act²⁰⁵ and the Constitution

²⁰⁵ CAP T8, LFN, 2004.

of the Federal Republic of Nigeria, 1999²⁰⁶ make provisions for the initiation of arbitration for the settlement of labour union disputes. Also, the law vests on the Minister of Labour, the Industrial Arbitration Panel and the National Industrial Court of Nigeria, the powers to administer the arbitration procedure in labour union matters.²⁰⁷

However, labour union disputes in Nigeria does not have a robust dispute resolution via the use of arbitration processes, this may be due to the fact that most arbitration procedures are held in confidentiality as there is no known arbitration reports like the law reports on judicial decisions or that the parties involved do not just take steps to explore the statutory remedies before proceeding on strike and other industrial actions.

Meanwhile, the Section 18 (1) (e) of the Trade Disputes Act prohibits any group of employees from proceeding on a strike action before a labour dispute had been decided by any of the arbitral bodies created by law. This position was upheld in the recent decision of the National Industrial Court of Nigeria in *Federal Government of Nigeria & Anor v. Academic Staff Union of Universities*.²⁰⁸

Consequently, it can be said that the arbitration procedure established by the extant laws is viable and capable of resolving labour union disputes in Nigeria. However, the shortcomings here is seen in the fact that the Trade Disputes Act does not afford the Industrial Arbitration Panel of the independent status which an arbitral body should have since its decisions are still subject to review by the executive body (the minister).²⁰⁹

On the second point, it will be stated that any modern day arbitration procedure should be independent and should observe the principle of fair hearing, “nemo iudex in causa sua” which means that a person cannot be a judge in his own case.

²⁰⁶ CFRN, 1999.

²⁰⁷ Trade Disputes Act.

²⁰⁸ (Unreported) Suit No: NICN/ABJ/270/2022 delivered on 21st September, 2022.

²⁰⁹ Section 13 (3), Trade Disputes Act.

In most recent times, most of the labour union disputes in Nigeria are usually between the government and the organized labour unions, it may therefore, be against the principle of natural justice and modern day justice that the minister has the right to initiate the same proceedings in which the government is a party.

5.3 Recommendation

1. It is important that the provision of the law be strictly adhered to by labour organizations before industrial actions are employed.
2. The existing system of mandatory reporting and resolving of labour disputes be substituted with voluntarily initiated conciliation and arbitration processes that are not subject to the control of the Minister of Labour.
3. Trade dispute mediation and arbitration should be handled by a neutral, independent body that has the authority to authorise commercial organizations that are qualified to offer these services.²¹⁰
4. The review of the awards of the IAP should only be limited to the appellate and supervisory jurisdiction of the National industrial Court of Nigeria and not the executive discretion of the minister who will normally have vested interests in the outcome of the procedure.
5. The Trade Dispute Act should be modified to provide the legal foundation for the accreditation of private arbitration bodies, especially professional arbitration bodies created by charter, in order to assist the new dispute resolution regime.

²¹⁰ Felix Amadi, Gogo Otuturu, *Alternative Dispute Resolution processes for the settlement of Trade Union disputes in Nigeria: Lessons from South Africa*, Century Publications, England, *United Kingdom Journals*, (2021)11 (1), 44

6. The Trade Dispute Act should also indicate which conflicts, particularly those involving employees performing essential services, must be submitted to binding arbitration.²¹¹
7. Further studies may consider other statutory means of settling labour union disputes since this will add to knowledge of ensuring that labour union disputes are settled in accordance with the prevailing circumstances of the dispute.
8. Continuous education and enlightenment campaign must be initiated by the union at all chapters' level to change negative union members' attitudes towards union activities.
9. Executive members must work together harmoniously and always pursue a collective interest that can foster members positive attitudes towards union course at all times.
10. There is the need for the establishment of a Labour Appeal Court in the industrial judicial system in Nigeria that will take over the role of the Court of Appeal as an appellate court over labour union disputes.²¹²

BIBLIOGRAPHY

BOOKS

²¹¹ Ibid, 44.

²¹² Ibid, 44.

Abiola Sanni, *Introduction to Nigerian Legal Methods*, Ile-Ife: Obafemi Awolowo Press Limited, 2006.

Afe Babalola, *Enforcement of Judgments*, Ibadan: Afe Babalola Publishers, 2003.

B.A Garner, *The Black's Law Dictionary*, 9th ed. USA: Thompson Reuters

C. P. Okenwa, *Concept of industrial relations in Nigeria*, Nigeria: Snaap Press Ltd, 2001.

D. Girsberger & N Voser, *International Arbitration: Comparative and Swiss Perspectives*, 4th ed., Nomos Co, 2021.

E McKendrick, *Goode and McKendrick on Commercial Law*, 6th ed. UK: Penguin Books, 2020.

E.E Okafor & Bode-Okunade, *An Introduction to Industrial and Labour Relations*, Ibadan: Mubak Prints, 2006.

F Ajogwu, *Commercial Arbitration in Nigeria: Law & Practice*, 2nded. Lagos: Centre for Commercial Law Development, 2013.

G Ezejiofor, *The Law of Arbitration in Nigeria*, Nigeria: Longman Publishers, 1997.

Halsbury's Laws of England 3rdedition, Vol. 2

J.O Asein, *Nigerian Copyright Law and Practice*, 2nded., Abuja: Books and Gavel Publishing, 2001.

J.O Orojo & M. A Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria*, Lagos: Mbeyi & Associates Ltd, 1999.

Ofoele, *Management of Industrial Disputes*, Aba: Meta Printing Co. Ltd, 1986.

S.A. Fajana, *Industrial Relations in Nigeria: Theories and Features*, Lagos: Labofin and Co, 2000.

T Fashoyin, *Industrial relations in Nigeria*, Nigeria: Longman, 1980.

Ubeku, A.K, *Industrial Relations in Developing Countries: The Case of Nigeria*, Nigeria: Macmillian Press, 1983.

JOURNAL ARTICLES

C. C. Obi-Ochiabutor, Trade Disputes Resolution under Nigerian Labour Law, *Nigerian Juridical Review*, Vol. 9, 2010.

C.A Obiozor, The Machinery for Enforcement of Domestic Arbitral Awards in Nigeria: Prospects for stay of execution of non-monetary award, *UNIZIK Journal of International Law*, Vol. 1, 2010.

C.U Wokoma, The Effects of Industrial Conflicts and Strikes in Nigeria: A Socio-Economic Analysis, *International Journal of Development and Management Review (INJODEMAR)*, Vol. 6, 2011.

E. E Ekanem & B. J Ekanem, An Analysis of the Jurisdiction of the National Industrial Court of Nigeria as a Court of First and Last Resort in Civil Matters, *Journal of Humanities and Social Science*, Vol. 22 (4), 2017.

E. O Wingate & P. N Okoli, Judicial Intervention in Arbitration: Unresolved Jurisdictional Issues Concerning Arbitrator Appointments in Nigeria, *Journal of African Law*, Vol. 65 (2), 2021.

E.S.C Osabuohien, Advent of Private Universities in Nigeria and Effects on the Endangered Species”, *International Journal of Research in Education*, Vol.2 (1 &2), 2005.

Felix Amadi & Gogo Otuturu, Alternative Dispute Resolution processes for the settlement of Trade Union disputes in Nigeria: Lessons from South Africa, *AJSS*, Vol. 11(1).

J.A Akinbode, *Industrial Disputes in Nigeria*, (Unpublished) Lecture Delivered at the Award and Induction of Members of Chattered Institute of Labour and Industrial Relations, 2019.

L. I Ugbudian, *The New Trends in Government- Labour Relations in The Downstream of The Oil and Gas Industry in Nigerian Fourth Republic*, *International Journal of History and philosophical Research*, Vol.5, (2), 2017.

L.A Ayinla, A.K Adebayo & B.A Ahmad, *An Appraisal of the Nexus and Disparities between Arbitration and Alternative Dispute Resolution*, *Nnamdi Azikwe University Journal International Law and Jurisprudence*, Vol. 8 (1), 2017.

M. K Adebayo & S. Olokooba, *Employment Disputes and Industrial Relations in Nigeria: The Role of Alternative Dispute Resolution*, *Kampala International University Journal of Humanities*, Vol. 3 (1), 2017.

M.A Owoade, *Global Trends in Court connected Alternative Dispute Resolution: Quo Vadis the Nigerian Judiciary; Beyond Bar Advocacy: Multi-Disciplinary Essays in Honour of Anthony Okoye Moogboh, SAN.*

N. Ebele& L. C. Ezeaku, *Growth in Labour Unionism in Nigeria: Analyses of Contributory Factors*, *Journal of Economic Studies*, Vol. 8, 2009.

P.S Giame, V. U Awhefeada &K. E Omerionwan, *An Overview of the Right to Strike in Nigeria and Some Selected Jurisdictions*, *Beijing Law Review*, Vol. 11, 2020.

S.A Fagbemi, *The Doctrine Of Party Autonomy in International Commercial Arbitration: Myth Or Reality*, *Afe Babalola University Journal of Sustainable Development, Law & Policy*, Vol. 6 (1), 2015.

T Adefolaju, Trade Unions in Nigeria and the Challenge of Internal Democracy, *Mediterranean Journal of Social Sciences*, Vol. 4, 2013.

THE INTERNENT

Lord Woolf, 'Acess to Justice. Interim Report on the Civil System Reform. From www.dc.gov.uk/index.htm, now available at www.justice.gov.uk (last visited 30/09/2023).

Vanguard Newspaper, 5th January, 2012, available at <[Labour declares total strike Monday - Vanguard News \(vanguardngr.com\)](#)> last assessed on 30/09/2023.

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