

## **Re-Shaping Institutions for Industrial Dispute Settlement in Nigeria: Perspectives on the Status of the Industrial Arbitration Panel**

**Kooffreh Bassey Essien**

LL.B, B.L, LLM Research Candidate Faculty of Law, University of Calabar, Calabar,  
Nigeria, kooffrehjnr@gmail.com

### **ABSTRACT**

*This work intends to make an analysis of the Industrial arbitration panel as an institution for Trade dispute resolution in Nigeria under the Trade Dispute Act of 1990. Subsequently, an examination into the defects that has rendered the institution ineffective will be made and thereafter to proffer solution with a view to re-shaping the machinery for Trade dispute resolution in Nigeria. A comparative study of the dispute settlement mechanism in South Africa, Tanzania and the United Kingdom would be carefully appraised with a view to highlighting distinctive features common to these institutions. Furthermore, a reflection on the status of the Industrial Arbitration Panel after the National Industrial Court Act of 2006 and under the new constitution of the Federal Republic of Nigeria (third alteration) Act 2010. It is hereby recommended that the Industrial Arbitration Panel should be re-established in both structure and operations as a commission, independent of the state, political party, trade union or minister. More so, an independent body will hasten the ease of redress for workers in trade dispute settlement.*

**KEYWORDS:** Institutions, Trade Dispute, Resolution, Mechanisms, Arbitration

## INTRODUCTION

It posits that owing to the disparities in the bargaining positions of the parties to the contract, conflicts are bound to arise.<sup>1</sup> Ordinarily, labour disputes would mean all employment disputes or disputes relating to employer and employee relationship either in their relationship as individual employees or in their collective employment relations.<sup>2</sup>

The labour conflict requires management through processes other than normal litigation, and systems have been developed to have labour disputes resolved in a more flexible, simple, relatively cheap, less acrimonious and expeditious way.<sup>3</sup> In the quest for speedy and amicable resolution of conflict, the Alternative Dispute Resolution (ADR) mechanisms evolved over time. It therefore follows that ADR offers a means of bringing workplace justice to more people, at lower cost and with greater speed than do the conventional government channels.<sup>4</sup>

In Nigeria, section 47 of the Trade Dispute Act defines a trade dispute “as any dispute between employers and workers or between workers and workers, which is connected with the employment or non-

employment, or the terms of employment and physical conditions of work of any person. Anyim (2009) states that in Nigeria, the Minister of labour and productivity is empowered to refer the dispute after due process for conciliation, arbitration (IAP), adjudication (NIC) or appoint a Board of Inquiry as the case may be. According to Chukwu (1995) Arbitration is semi-judicial means of settling disputes in which both sides agree in advance to be bound by the decision of a neutral arbitrator or a panel of arbitrators. Akpala (1982) remarked that when conciliation fails and internal machineries for settlement have been exhausted, the matter could go to arbitration in between the disputing parties.

One of the cardinal points of the National Policy on Labour is the expeditious or swift settlement of disputes by the institutions created for this purpose. However, experience has shown that the Industrial Arbitration Panel (IAP) takes up to 12 months or more to make its decision known to parties, thus creating room for erosion of confidence and frustration for the parties.<sup>5</sup>

## THE INDUSTRIAL ARBITRATION PANEL: ESTABLISHMENT, FUNCTIONS, AND CHALLENGES

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<sup>1</sup> Bosch, D et al., *The Conciliation and Arbitration Handbook: A comprehensive guide to labour dispute resolution procedures*. Durban: LexisNexis Butterworths 2002

<sup>2</sup> Worugi, I. N. E., Archibong, I.A, and Aloba, E. “The NIC Act (2006) and the Jurisdictional Conflict in the Adjudicatory Settlement of Labour Disputes in Nigeria: An Unresolved Issue”. *Labour Law Review* Vol. 1 No.2 (2007): 25-33.

<sup>3</sup> Bosch, D et al., Op. cit

<sup>4</sup> Zack, A.M. “Can alternative dispute resolution help to resolve employment disputes?” *International Labour Review* Vol.136, No. 1 (1997): 95.

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<sup>5</sup> Anyim C., Francis C., and Odogwu Christopher. “Trade Disputes and Settlement Mechanisms in Nigeria: A Critical Analysis” *Interdisciplinary Journal of Research in Business* Vol. 2, (2012)

The Industrial Arbitration Panel (IAP) was created under the Trade Dispute Decree No. 7 of 1976 Cap 438.<sup>6</sup> The Panel is charged by section 9(1) of the Trade Dispute Act<sup>7</sup> with the responsibility of arbitrating on industrial dispute between employers and employees inter and intra union disputes upon referral by the Honourable Minister of Labour and Productivity. The Minister of Labour and Productivity acts as a supervising body to the Panel and the Panel can only arbitrate on matters referred to it by the Minister of labour and Productivity.

The Industrial Arbitration Panel has a mission to maintain industrial relation and harmony between workers and employers from both public and private sectors to enhance the political and socio-economic development of workers and employers in various working environments in the Nation. The panel as a quasi-judicial agency is to service the need of stakeholders in both the private and public sector of the Nigeria Economy, maintain peaceful atmosphere in all sectors of Nigeria.

The Act provides that the Industrial Arbitration Panel shall consist of a Chairman, the Vice Chairman and not less than 10 other members all of whom shall be appointed by the minister out of the 10 members, 2 shall be persons nominated by organizations appearing to the minister as representing the interests of the workers.<sup>8</sup>

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<sup>6</sup> Now cited chapter T8 Laws of the federation of Nigeria 2004.

<sup>7</sup> Cap T8 Laws of the federation of Nigeria.

<sup>8</sup> Ibid, Section 9(2)

When a trade dispute is referred to the Panel it shall constitute an Arbitration Tribunal, which may be a sole Arbitrator assisted by assessors, one or more arbitrators nominated by or on behalf of representatives of employers and workers in equal numbers with the Chairman or Vice Chairman presiding.<sup>9</sup>

The Industrial Arbitration Panel is expected to make its award with 21 days or such longer period as the Minister may direct.<sup>10</sup> Upon the making of the award, a copy of it should be sent to the minister who shall send copies to the parties and publish same, setting out its award and specifying the time within which objections to the award should be made.<sup>11</sup> If no objection is made within the time stipulated a notice confirming the award shall be published in the Federal Gazette and the award shall be binding on the parties<sup>12</sup> and a breach of which will render the party guilty of an offence and liable upon conviction.<sup>13</sup> If a notice of objection to the award is given to the minister within the stipulated time, the minister shall refer the dispute to the National Industrial Court.<sup>14</sup>

## CHALLENGES FACING THE IAP:

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<sup>9</sup> Ibid, Section 9(3) & (5)

<sup>10</sup> Ibid, Section 13(1)

<sup>11</sup> Ibid, Section 13(2)

<sup>12</sup> Ibid, Section 13(4)

<sup>13</sup> Ibid, Section 14(4)

<sup>14</sup> Ibid, Section 14(1)

It is observed that the IAP is faced with the following problems.

1. Because of the wide powers given to the minister under section 5, 6, 7, and 8, of the Act,<sup>15</sup> it appears the IAP is a department under the Ministry of labour and productivity and being administered by the minister. This does not give room for independence as advocated under the doctrine of separation of power.

2. The awards of the IAP are not binding and there is no legal process to enforce such awards. This reduces the efficacy of the tribunal as employers deliberately pay no attention to the awards of the panel. An example of this situation was the case between National Union of Chemical and Non-Metallic products workers V. Management of Glaxo (Nig) Ltd,<sup>16</sup> where the management refused to obey the orders of the Industrial Arbitration Panel.

3. The IAP delay in delivering its award reduced the practical effect of the award. The award is first forwarded to the minister who may delay in communicating it to the parties.<sup>17</sup> This delay may lead to frustrated expectations and create a group for resumption of the dispute

4. IAP could be likened to the civil courts but unlike the civil courts, litigant cannot go to it directly. It must be done through the Minister of Labour. This is a major hindrance to fast and speedy dispensation of justice.

5. Parties to a suit before the Industrial Arbitration Panel were not allowed access to the decision or award of the Panel in respect of their cases by virtue of the provisions of Part 1 of the TDA. It was only the Minister of Labour who had the right to disclose and it was felt that this practice did not quite accord with the rules of natural justice and fair hearing.

### **THE STATUS OF THE INDUSTRIAL ARBITRATION PANEL IN DISPUTE SETTLEMENT IN NIGERIA**

- AFTER THE NIC ACT 2006

The NIC was established in 1976 to decide trade and union disputes and to create a sustainable industrial harmony. The founding legislation is the Trade Disputes Act, Cap 432, Laws of the Federation of Nigeria, 1990 (“TDA”).

The TDA created the NIC as a specialised tribunal, whose jurisdiction is solely to the exclusion of all other courts, on ‘matters relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employees, workers and matters incidental thereto or connected therewith.’<sup>18</sup>

One major innovation of the NICA is that it took the NIC out of the TDA and gave it a separate enabling law. Before the Nic Act 2006, a precursor to filing a labour dispute case with the NIC mandated that the matter must concern an award from the

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<sup>15</sup> TRADE DISPUTE ACT Cap 432, LFN 1990

<sup>16</sup> IAP/L201/87

<sup>17</sup> Section 12 T.D.A, 1990

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<sup>18</sup> Section 7(1) of the National Industrial Court Act (2006)

Industrial Arbitration Panel (IAP) under section 24 of TDA providing for a right of appeal to the NIC from the award of the IAP. It is provided that where the award of the IAP is objected to and notice of this has been given to the Minister within the stipulated time, as provided for in the Act, the Minister is to refer the disputes to the NIC whose award will be final and binding on the parties, as from the date of the award.

There is no appeal to any other body as this is the apex court for the settlement of trade disputes.<sup>19</sup> The award of the NIC is final and binding on the parties in dispute. With the NIC Amendment Act (2006), the NIC is now a superior court of record just like the State High Courts, Federal High Courts, Court of Appeal and the Supreme Court for labour matters. As a superior court of record, the NIC will no longer be subject to the supervisory jurisdiction of the State and Federal High Courts. It no longer shares jurisdiction with the High Courts and enjoys exclusive jurisdiction over labour, trade union and industrial relations matters.

Unlike, under the old Trade Dispute Act, with the 2006 NIC Amendment Act, a party can approach the NIC as a court of first instance. A party does not need to first go to the IAP before having access to the NIC.<sup>20</sup>

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<sup>19</sup> Sec 9 Nic Act 2006

<sup>20</sup> Chidi, Odogwu C., "Collective Bargaining and Dispute Settlement in the Food, Beverage and Tobacco Industry in Lagos State, Nigeria." *European Journal of Business and Management* Vol.6, No.2, (2014)

With respect to the relationship between the NIC and the Minister of Labour and Productivity, in the new 2006 Act, the NIC has no direct relationship with the Minister. An individual has the right to refer the decision of the Industrial Arbitration Panel (IAP) to the NIC and not through the Minister.<sup>21</sup>

- AFTER THE NEW CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (THIRD ALTERATION) ACT 2010.

In 2010, there was an alteration to the 1999 Constitution via a legislative intervention providing for the establishment of the NIC as a superior court of record under the Constitution. Further, the 2010 Act also provided an elaborate scope of the NIC's specified jurisdiction by the insertion of a new enactment in Section 254C of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010.<sup>22</sup> The 2010 Act conferred the NIC with the exclusive adjudicating power on labour and industrial relations laws.<sup>23</sup>

One of the innovative provisions of the Third Alteration Act is Section 254 (c) (3) which provides that the NIC may establish an Alternative Dispute Resolution Centre

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<sup>21</sup> Ibid

<sup>22</sup> Olumide, Kolawole O. "Enlargement of rights of appeal from the decisions of the Nigerian National Industrial Court" Proshare. Sunday, January 26, 2014. Web. 12 may. 2014  
<http://www.proshareng.com/articles/2639/Enlargement-of-Rights-of-Appeal-from-the-Decision-of-the-Nigerian-National-Industrial-Court>.

<sup>23</sup> ibid

within the Court premises on matters within her jurisdiction.<sup>24</sup> This is a Court-connected (annexed) ADR. The Court is about to give effect to this provision by establishing an ADR Centre within the Court premises.<sup>25</sup> There are plan in place to design and start ADR pilot scheme in the court premises starting with Lagos and Abuja.<sup>26</sup>

One envisages that the Court could adopt the multi door concept model, using experienced personnel who will refer the parties to the appropriate ADR door or litigation; or the Court may make provisions in its rule for compulsory submission to ADR, and that litigation commences on the failure of ADR to resolve the matter. Once an agreement is reached through conciliation, mediation or arbitration or a hybrid model, the terms of settlement is then drawn and signed by the parties and the facilitator. The signed memo is then filed before the Court and treated as consent judgement enforceable against the parties.<sup>27</sup> NIC has and can

exercise appellate and supervisory jurisdiction over the centre.<sup>28</sup>

To this extent, therefore, the following can be inferred:

(a) That the ADR Centre is not independent of the court i.e. In terms of judicial review and administrative structure.

(b) That decisions / outcomes of the Centre's ADR procedures are not final and appeals lie to the NIC

A pertinent question to ask is whether the Third Alteration Act had the IAP in mind in empowering the NIC to establish an Alternative Dispute Resolution Centre in its premises? According to Hon. Justice Kanyip, a matter which had to go through the process of part 1 of the Trade Disputes Act (TDA) continues to go through the process (mediation, conciliation and arbitration) even after the passing of the NIC Act.

However, as his lordship further observed, these dispute resolution processes of part 1 of the TDA has a high emphasis placed on ministerial discretion. The role of the minister is profound.<sup>29</sup> For instance, disputants cannot go directly to the IAP except through the instrumentality of the minister.<sup>30</sup>

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<sup>24</sup> Section 7(3) of the National Industrial Court Act (2006)

<sup>25</sup> Hon Justice Babatunde A. Adejumo. "Building Effective Conflict Management Mechanism for Sustainable Development in Nigeria." being a Paper presented at the 7<sup>th</sup> edition of the National Labour Relations Summit organised by the Micheal Imoudu National Institute For Labour Studies, Ilorin on Nov 17<sup>th</sup> 2011, p.19-20.

<sup>26</sup> Ibid p. 19.

<sup>27</sup> Animashaun, Oyesola. "Court-Connected ADR and Industrial Conflict Resolution: Lessons from South Africa and Guatemala" Web. 14 May. 2014. <<http://nicn.gov.ng/publications/Court-Connected%20ADRpdf>>

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<sup>28</sup> Ibid.

<sup>29</sup> Justice Benedict Bakwaph KANYIP. "The National Industrial Court of Nigeria: The Future of Employment/Labour Disputes Resolution" Web. 14 May. 2014. <<http://www.nicn.gov.ng/k7.php>>

<sup>30</sup> ibid

It is in view of the above that the IAP, though may provide facilities for the conduct of arbitration; it cannot replace the functions or scope of the Alternative Dispute Resolution Centre. The IAP waits for disputes to be referred to it, while in the Alternative Dispute Resolution Centre, parties can walk in and request arbitration or any other ADR process.

## **INTERNATIONAL BEST PRACTICES: LESSONS FROM SOUTH AFRICA, TANZANIA AND THE UNITED KINGDOM**

### **SOUTH AFRICA**

The application of ADR in resolving Labour disputes in South Africa is supported by the establishment of 'the Commission for Conciliation, Mediation and Arbitration as a juristic person.'<sup>31</sup> The CCMA is independent of the State, any political party, trade union, employer, employers' organization, federation of trade unions or federation of employers' organizations.<sup>32</sup> It has jurisdiction in all the provinces of the Republic;<sup>33</sup> The primary function of the CCMA is to conciliate and arbitrate disputes referred to it in terms of sections 133(1) (a) and (b) and 134 of the LRA and other labour statutes such as the Basic Conditions of Employment Act 75

of 1997 (BCEA), Employment Equity Act 55 of 1998 (EEA)<sup>34</sup>

### ***Section 134 of the LRA stipulates:***

(1) Any party to a dispute about a matter of mutual interest may refer the dispute in writing to the Commission, if the parties to the dispute are,

(a) on the one side,

(i) one or more trade unions;

(ii) one or more employees; or 2 one or more trade unions and one or more employees; and

(b) on the other side –

(i) one or more employers' organisations;

(ii) one or more employers; or

(iii) one or more employers' organisations and one or more employers.

(2) The party who refers the dispute to the Commission must satisfy it that a copy of the referral has been served on all the other parties to the dispute.

### ***Conciliation under CCMA:***

The law is to the effect that when a dispute has been referred to the Commission, the Commission must appoint a commissioner to attempt to resolve it through conciliation.<sup>35</sup> The appointed commissioner must attempt to resolve the dispute through conciliation within 30 days of the date the Commission received the referral. However, parties may agree to extend the 30-day period.<sup>36</sup> In case of a dispute of unfair dismissal or dispute about

<sup>31</sup> Labour Relations Act No. 66 of 1995 as amended by Labour Relations Amendment Act, No 12 of 2002, s.112.

<sup>32</sup> Ibid, s.113

<sup>33</sup> Ibid, s.114 (1).

<sup>34</sup> Du Toit, D. *Labour Relations Law: A Comprehensive Guide*. 4th edition LexisNexis Butterworths 2003.

<sup>35</sup> Labour Relations Act, s. 135 (1)

<sup>36</sup> Labour Relations Act, s. 135 (2).

unfair labour practice, the dismissed employee may only refer the same to the commission within 30 days of the date of dismissal if the party to the dispute does not fall in any of the council.<sup>37</sup>

The commissioner must determine a process to attempt to resolve the dispute, which may include mediating the dispute; conducting a fact-finding exercise; and making a recommendation to the parties, which may be in the form of an advisory arbitration award.<sup>38</sup> This reflects the application of ADR in resolving labour disputes. There is no right of legal representation for the conduct of mediation before the CCMA.<sup>39</sup>

### ***Arbitration before CCMA:***

Arbitration under section 138 of the LRA by the CCMA is more akin to expedited litigation with no pleadings because the essential elements of consensus and party autonomy are missing.<sup>40</sup> Reference of the case to arbitration is provided for under section 138 (1) of LRA. The law requires the arbitrator to use less formality in determining disputes before the CCMA. In addition the commissioner may elect instead of resolving the dispute by way of arbitration, subject to the consent by the parties, suspend the arbitration proceedings and attempt to resolve the

dispute through conciliation.<sup>41</sup> The issue of legal representation to the parties before arbitration is refused under the Act<sup>42</sup> and the same has received judicial acceptance.<sup>43</sup> The LRA requires the arbitrator to issue the award within 14 days of the conclusion of the proceedings.<sup>44</sup>

In CCMA arbitration, the parties also bear their own costs. Originally the LRA only permitted an arbitrator to order costs if a party or a representative acted frivolously or veraciously, by pursuing or defending a claim, or in its conduct during the proceedings.<sup>45</sup>

Today, alternative dispute resolution has now emerged as a mechanism to avoid the normal court litigation process. In South Africa, the statistics from CCMA show that a total number of 13,118 cases were referred to CCMA in the month of February 2010. This shows that for a year the total number of cases referred to CCMA would be 157,416. With this large number of cases, the CCMA has helped to reduce the number of cases that would have been referred to the Magistrate and High Courts. The establishment of CCMA has helped greatly in the dispensation of justice since justice delayed is justice denied<sup>46</sup>

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<sup>37</sup> The council referred here includes Bargaining Council established under section 27 of the Labour Relation Act and statutory councils as may be established as per part E of the Labour Relation Act

<sup>38</sup> Labour Relations Act, s. 135 (3)

<sup>39</sup> Ibid, s. 135 and the CCMA Rules for the Conduct of Proceedings, rule 7

<sup>40</sup> Bosch et al, op. cit., p.15-18.

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<sup>41</sup> Labour Relations Act, s.138 (3).

<sup>42</sup> This is the position of the law after the repeal of ss. 138 (4) and 140 (1) of the LRA by Act No 12 of 2002.

<sup>43</sup> Netherburn Ceramics v Mudau (2009) 30 ILJ 269 (LAC).

<sup>44</sup> Labour Relations Act, s.137 (1).

<sup>45</sup> Labour Relations Act, s. 138 (10) (a) & (b)

<sup>46</sup> Prof. A.A Okharedia."The Emergence Of Alternative Dispute Resolution In South Africa: A Lesson For



## TANZANIA

The resolution of labour disputes in Tanzania also has a long history. The Employment Ordinance Cap.366 was enacted in 1955 and came into force in the year 1957. However, the Ordinance did not provide for the resolution of labour disputes by ADR.<sup>47</sup>

Other legislations were enacted after independence and these included the Security of Employment Act 1964 and the Industrial Court Act of Tanzania Act 1967 ADR was found in the Industrial Court Tanzania Act, since collective industrial disputes were resolved by way of negotiation and compulsory conciliation.<sup>48</sup>

The government decided to review the labour laws and on the question of dispute resolution procedures, it was noted by the task force that, the procedures were lengthy and complex noting the situation where the Minister was responsible for deciding disputes involving termination of employment.<sup>49</sup>

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Other African Countries" A Paper Presented At The 6<sup>TH</sup> IIRA African Regional Congress Of Industrial Relations, Lagos Nigeria, Jan. 24 -28. 2011

<sup>47</sup> Part XI of the Employment Ordinance stipulated the procedures for the settling of differences and disputes between employees and employers arising from contracts of employment. This procedure was typically adversarial.

<sup>48</sup> Compulsory conciliation was provided for under section 4(3) of the Industrial Court Act, 1967. A negotiated agreement which was not operative or binding upon parties unless it is duly registered by the court was dealt with under sections 5 and 23 of the Act.

<sup>49</sup> Cornel K. Mtaki, "The new labour laws in Tanzania: Implications for employers, employees and the economy" A Paper presented at a Policy Dialogue Seminar on New Labour Laws in Tanzania at the

It was admitted that it was not feasible for a single person to decide such cases in a growing economy without causing hardships to the parties.<sup>50</sup>

Moreover, it was not appealing in a market economy for labour disputes of this nature to be resolved at political level.<sup>51</sup>

The Employment and Labour Relations Act 2004 (ELRA) and Labour Institutions Act 2004 (LIA) were then enacted. In as far as dispute resolution is concerned; these Acts introduced the method of resolving labour disputes by way of mediation and arbitration which is an alternative to adjudication.

### *Commission for Mediation and Arbitration*

The LIA established the Commission for Mediation and Arbitration (CMA).<sup>52</sup>The CMA is an independent department of the government which is not subjected to the direction or control of any person or authority. The CMA is also independent of any political party, trade union, employers association, and federation of trade unions or employers' association.<sup>53</sup>

The functions of the commission are provided for under section 14 of the LIA and among others the CMA has the functions to mediate any dispute referred to in terms of any labour law and

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Conference Hall of the Economic and Social Research Foundation, 12th September, 2005.

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Labour Institutions Act, s.12

<sup>53</sup> Ibid, s.13 (1)

determine disputes referred to it by arbitration subject to section 14 (1) (b) (i)-(iii) of the LIA.

### ***Mediation under CMA***

Mediation under CMA provides a good example of the ADR method of dispute resolution.<sup>54</sup> Mediation is a compulsory process in resolving labour disputes. Parties should try to solve their dispute under guidance of the mediator before going to arbitration or adjudication.<sup>55</sup> The conduct of mediation is provided for by the rules enacted under section 15 (f) of the LIA, namely, the Labour Institutions (Mediation Arbitration Guidelines) Rules, 2007. The rules provides for four stages process in mediation starting from introduction, gathering information from the parties, exploring options and developing consensus and lastly conclusion.<sup>56</sup>

Mediation under CMA is a confidential process and in that regard no evidence unless the parties states otherwise can be used in arbitration or labour court as against either party if mediation fails.<sup>57</sup>

Mediator may not also be a witness in the dispute which he was a third party at the mediation stage.<sup>58</sup> The law is to the effect that the mediator shall resolve the dispute

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<sup>54</sup> Employment and Labour Relations Act, s.86 (1) requires the dispute referred to the CMA to be in the prescribed form.

<sup>55</sup> Ibid, s. 86 (3).

<sup>56</sup> Government Notice Number 67 of 23 March 2007, rule 9 (1).

<sup>57</sup> Ibid, rule 8 (1) and (2).

<sup>58</sup> Ibid, rule 8 (3).

within 30 days of the referral or within any longer period to which the parties agree in writing.

However, despite the time limit in conducting mediation section 88 (8) of the ELRA provides that notwithstanding the failure to resolve a dispute within the 30 day period, the mediator shall remain seized of the dispute until the dispute is settled, and may convene meetings between the parties to the dispute in order to settle the dispute at any time before or during any strike, lockout, arbitration or adjudication.

The mediator shall decide the manner in which the mediation shall be conducted and if necessary may require further meetings within the 30 days.<sup>59</sup> Where the mediation fails to resolve a dispute within 30 days, a party to the dispute may - if the dispute is a dispute of interest - give notice of its intention to commence a strike or lockout.<sup>60</sup> If the dispute is a complaint, a party may refer the complaint to arbitration or to the Labour Court.<sup>61</sup>

### ***Arbitration under CMA***

The CMA uses arbitration as one of the ADR mechanism in resolving labour disputes. Unlike in mediation where there is part autonomy, arbitration under CMA process involves hearing where the parties present evidence and argument and the decision of the arbitrator is provided with

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<sup>59</sup> Employment and Labour Relations Act, s.86 (5).

<sup>60</sup> Ibid, s. 86 (7) (a).

<sup>61</sup> Employment and Labour Relations Act, s.86 (7) (b) (i) and (ii).

reasons in a written award.<sup>62</sup> Arbitration award is binding on the parties and is enforceable before the court.<sup>63</sup>

The Act provides that arbitration under CMA comes after the failure of settlement in the mediation process.<sup>64</sup>

The Commissioner can appoint an arbitrator before the dispute has been mediated.<sup>65</sup> There are five stages as provided for under the rules. The arbitration starts by introduction; followed by opening statement and narrowing of issues; evidence; argument and award.<sup>66</sup>

The process of arbitration under CMA is simple as it follows the tenets of ADR in resolving labour disputes by observing fairness and quick disposal of disputes. In addition to that, arbitrator is obliged to deal with the substantial merits of the dispute with minimum legal formalities.<sup>67</sup>

### ***Arbitration award***

An arbitrator may make any appropriate award but may not make an order for costs unless a party or a person representing a party acted in a frivolous or vexatious manner.<sup>68</sup> Within 30 days of the

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<sup>62</sup> Government Notice Number 67 of 23 March 2007, rule 18 (2) and (3)

<sup>63</sup> Ibid, rule 18 (4).

<sup>64</sup> Employment and Labour Relations Act, s.88 (2) (a) and (b)

<sup>65</sup> Ibid, s.88 (3) (a).

<sup>66</sup> Government Notice Number 67 of 23 March 2007, rule 22 (2).

<sup>67</sup> Employment and Labour Relations Act, s. 88 (4) (a) and (b).

<sup>68</sup> Ibid, s. 88 (8) and (9)

conclusion of the arbitration proceedings, the arbitrator shall issue an award with reasons, signed by the arbitrator.<sup>69</sup> An arbitration award shall be binding on the parties to the dispute and an arbitration award may be served and executed in the Labour Court as if it were a decree of a court of law.<sup>70</sup>

The award by the CMA may be set aside by the labour court upon application by the party;<sup>71</sup> and the Labour Court may set aside an arbitration award made under the ELRA on the grounds that there was misconduct on the part of the arbitrator or the award was improperly procured.<sup>72</sup>

In any arbitration hearing, a party to a dispute may be represented by a member or official of that party's trade union or employers' association or an advocate.<sup>73</sup>

## **United Kingdom Model**

### **ACAS**

The Advisory, Conciliation and Arbitration Service (ACAS) was created in 1975 with a general duty to promote the improvement of industrial relations and to encourage the reform and development of collective bargaining.<sup>74</sup> It was to provide a range of collective and individual dispute resolution services, including non-legally

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<sup>69</sup> Ibid, s. 88 (8) and (9).

<sup>70</sup> Ibid, s.89 (1) and (2)

<sup>71</sup> Ibid, s.88(8).

<sup>72</sup> Ibid, s. 91 (2) (a) and (b)

<sup>73</sup> Ibid, s. 88(7); Government Notice Number 67 of 23 March 2007, rule 21 (1).

<sup>74</sup> www.acas.org.uk, accessed on 13/05/2014

enforceable arbitration; advisory and information services aimed at dispute prevention and the promotion of good practice; and required to examine and make recommendations on applications for trade union recognition under the then existing statutory procedure.<sup>75</sup>

Constitutionally, Acas was established as a 'non-departmental public body' and legislation provided (and still provides) that it cannot be "subject to directions of any kind from any Minister as to the manner in which it is to exercise its functions under any enactment." Acas is directed by a Council consisting of a part-time Chair and 10-12 members drawn from the social partners and independent persons such as labour lawyers and academics. If the complaint is settled by ACAS through conciliation, the agreement is legally binding. Although agreements do not have to be made in writing to be legally binding, the terms of the agreement are recorded on an ACAS form to be signed by both parties as proof of the agreement. If a complaint has been made to a tribunal, settlement through conciliation will close the case. ACAS may appoint an independent arbitrator in cases concerning unfair dismissal or a complaint under the flexible working regulations that have not been resolved in conciliation. Arbitration under ACAS auspices is voluntary.

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<sup>75</sup> Keith Mizon. "The Resolution Of Employment Disputes In The UK" A paper for the Industrial Relations Society of Western Australia State Convention October 2007

Mediation is offered by ACAS in cases where a tribunal claim has not yet been made, but where conflict exists and where parties want to maintain the employment relationship. There is a charge for mediation in these circumstances. ACAS distinguishes conciliation from mediation on the basis that a conciliator does not suggest solutions but tries to help the parties settle their differences on their own terms, whereas a mediator can recommend a way forward if both parties want this and are unable to reach their own settlement.

### **CAC**

The Central Arbitration Committee (CAC) was created in 1976.<sup>76</sup> The Central Arbitration Committee is a permanent independent body with statutory powers whose main function is to adjudicate on applications relating to the statutory recognition and derecognition of trade unions for collective bargaining purposes, where such recognition or derecognition cannot be agreed voluntarily.

In addition, the CAC has a statutory role in determining disputes between trade unions and employers over the disclosure of information for collective bargaining purposes, and in resolving applications and complaints under the following regulations: Where an employer does not agree voluntarily to recognise a trade union(s) for collective bargaining purposes, the trade union(s) may make an application to a quasi-judicial body called the Central Arbitration Committee (CAC)

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<sup>76</sup> [www.cac.gov.uk/index.htm](http://www.cac.gov.uk/index.htm), accessed on 13/05/2014.

to adjudicate as to whether it should be recognised.<sup>77</sup>

## CONCLUSION

The paper has carefully examined the status of the IAP in dispute settlement in Nigeria. However, it is pertinent to state that there exists a need to re-shape the IAP for its continued relevance in dispute settlement in Nigeria. The IAP suffers from several defects some of which have been highlighted in the paper, a careful appraisal of the dispute settlement mechanism in South Africa, Tanzania and the United Kingdom has shown that institutions such as the CCMA, CMA, ACAS and CAC operate as a juristic person, independent of the state, political party, trade union or Minister.

These distinctive features common to these institutions as a non-departmental public body has fostered dependence and confidence in the body amongst employers, workers and trade union alike. Furthermore, the status of the IAP dwindled after the NIA Act of 2006 and with the creation of the proposed ADR centre of the NIC under the new constitution of the Federal Republic of Nigeria (third alteration) Act 2010. The proposed ADR centre however, lacks autonomy, as it would operate as an offshoot of the administrative structure of the NIC. The paper therefore concludes amongst others that in view of the challenges encountered by the IAP, there remains the need to re-shape the structure

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<sup>77</sup> Op cit. p. 75

and operations of the IAP. This is because the body has overtime lost its relevance as a result of its inadequacies; bearing in mind the present reality of contemporary institutions such as the CCMA, ACAS and CAC in dispute settlement.

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### **LIST OF ABBREVIATIONS**

ACAS: Advisory, Conciliation and Arbitration Service

CAC: Central Arbitration Committee

ADR: Alternative Dispute Resolution

NIC: National Industrial Court

IAP: Industrial Arbitration Panel

TDA: Trade Dispute Act

CCMA: Commission for Conciliation, Mediation and Arbitration

LRA: Labour Relations Act

CMA: Commission for Mediation and Arbitration