

INDUSTRIAL DEMOCRACY AND ITS PROSPECTS IN NIGERIA: A COMPARATIVE ASSESSMENT

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Introduction

The concept of Industrial Democracy presupposes that employees or workers in any given enterprise ought and should be afforded an opportunity to participate in matters and/or decisions affecting their overall well-being at the workplace. The concept of Industrial democracy connotes *inter-alia* theories such as 'co-determination, workers representation and/or worker participation'¹

Notwithstanding the variations as to form and magnitude of involvement from one labour locality² to another, the basic philosophy behind the concepts or theories remains the same.

The paper would attempt an examination of the concept of industrial democracy as well as the underlining rationale for sustaining democracy within the industrial sector. We would also analyse primary features of democracy in other labour localities and/or jurisdictions and thereafter conduct an examination of the prospects of industrial democracy in Nigeria.

Concept Of Industrial Democracy

The concept of industrial democracy reflects the power structure in a corporation in particular and the industry in general.³ The concept envisages a conducive platform for joint participation⁴ in the management and control of industrial corporations by all the parties involved within the industrial regime. The concept seeks to introduce a radical restructuring of the legal foundations of corporate management by accrediting workers the right to be represented by directors in the company in which they are employed.⁵ Philippa Strum contends while reviewing the work of Brandeis on employer/employee relationship:

A rather ambitious propagation of the notion equated it with the checks and balances of the political sphere: putting employers and employee unions on an "equal" basis by balancing the financial power of employers with the power of the unions to keep businesses from functioning unless they paid fair wages.⁶

Consequent upon the proposed harmony suggested by Brandeis in employer/employee relationship, Strum agitates that:

...Labour unions should strive to make labour share, all the earnings of a business except what is required for capital and management.

¹ The various name employed in the identification of concept of industrial democracy is a matter of semantics as well as convenience. For example, 'Co-determination' in many; 'Worker participation' in Italy and 'Worker representation' in Japan, and etcetera.

² A labour locality presupposes a jurisdiction with a common labour law.

³ Note that a typical corporation has a distinct organ of power, which includes management arm on the one part and workers association/union on the other part. Both exercise varying degree of power over workers.

⁴ That is participation by both workers and employers

⁵ Okorodudu, M T "Evolution of the Concept of and Practice of Industrial Democracy," (1986) *Journal of Private and Property Law*. 29 (hereafter Okorodudu, "Industrial Democracy")

⁶ Strum Philippa Brandeis: *Beyond Progressivism*. University of Kansas, 1993 Chapter 2.

Shareholders should be given a fair return on their investment, but after that and the needs of the business had been taken care of anything remaining belonged to the workers....⁷ But beyond the division of profits there has to be a division of responsibilities.⁸ It is against this backdrop that Wolfgang Daubler⁹ suggests that 'we must insist upon labour sharing the responsibilities for the result of the business'

Philosophy Of Industrial Democracy

A philosophy of industrial democracy connotes amongst other jurisprudential school of thoughts, theory on knowledge, epistemology and sophistry about industrial democracy at work place.¹⁰ Philosophy of industrial democracy sprouted from the revolt of workers against the socio-economic injustices perpetrated on the emerging industrial working class in Europe. The legislations relating to workers in industrial settings were restrictive and oppressive and therefore operated as a prop in foisting socio-economic injustices.¹¹ For example, in Britain, combination laws were enacted preventing workers from belonging to trade unions or associations.¹² Consequent upon the foregoing, the UK Criminal Conspiracy Act curbed the activities of unionists.

It is against this backdrop that Wolfgang Daubler contends that the attempt to influence events occurring in an enterprise is as old as the trade union movement itself and that strikes, or more generally, refusal to cooperate, and collective agreements, are in a general sense forms of co-determination: they have the advantage of allowing employees and their organizations a clear determination of their own position and own interests¹³ Continuing, Wolfgang stated:

But this non-institutional form of co-determination as practiced in nearly all West European countries, has in the past excluded all questions of company policy, such as the determination of the production programme and prices, the establishment and closing of plants, the investment of capital and the transfer of production into a foreign country: all of these have been, and still are, subjects which the owners and their representatives exclusively determine in management. Co-determination by collective agreement and strike therefore limits itself to relatively secondary questions, which are already to a great extent preempted by the dispositions of management.¹⁴

In Britain, Lord Wedderburn provided the primary motivation for call for worker representation. Wedderburn¹⁵ asserts that to most British trade unions, as well as employers of labour, industrial democracy had always meant collective bargaining. This was the way industry became more democratic. On the other

⁷ Ibid at 27

⁸ Ibid 37. Note also that the employees must have the opportunity of participating in the decisions as to what shall be their condition and how the business shall be run.

⁹ Wolfgang Daubler "Co-determination: The German Experience," (1975) 4 *The Industrial Law Journal*, 218

¹⁰ Collins *Roget's International Thesaurus* 3rd Ed. 323

¹¹ Okorodudu "Industrial Democracy," 2

¹² Workers who attempted trade unionism were either imprisoned or deported to the colonies.

¹³ Wolfgang Op. Cit. p.218

¹⁴ Ibid pp. 218-219

¹⁵ Lord Wedderburn *The Worker and the Law* 3rd Ed. 1986 Pp.66-67. See also Davies P.L. "Employee Representation on Company Boards and Participation in Corporate Planning," (1975) *Modern Law Review*, 254.

hand, trade unions had found that whatever the support given to it, collective bargaining had not overcome certain limitations, in particular the inability to make management - especially, those of the huge transnational enterprises and multinational corporations - negotiate on issues that they choose to exclude from the bargaining table, such as plans for closures, pricing structures and the investment on which jobs depended. In 1974 therefore, the great majority of unions in the trade union congress determinedly changed tact and produced proposals for trade union participation in new structures of the enterprise, including even representation on company boards.

The German co-determination experience was a product of a unique feature of its labour law.¹⁶ Her labour law is governed by the principle of social co-operation, which is rooted in the First World War. A glaring effect was the mandatory requirement that works council be introduced as obligatory institutions. Post war effect signaled massive cooperation between employers and unions as a cardinal feature of her industrial relations. Basically, this development encouraged the employer's associations to withdraw their resistance to trade unions and thereby recognize them as representatives of workers in return for a renunciation of revolutionary plans change society. This newfound cooperation took a forceful form during the Nazi party era and eventually attended the post World War II reconstruction effort that began to involve both employers and employees as partners. It is against this background that trade unions stepped up agitation for influence and participation within management. Consequently, both employers and employees associations were represented on equal basis within the managerial cadre.¹⁷ As an aftermath, co-determination rights of workers in other private enterprises in Germany became amplified and deep rooted¹⁸

The Japanese model of participation¹⁹ evolved after a period of turbulent and rancorous relations between the major participants in the Industrial regime, consequent upon the economic crisis attending World War II. Radical and militant labour movements were encouraged by the authorities to democratize the industrial regime. The concomitant effect became the institutionalization of schemes like 'production management strategy' and 'management democratization', which deprived employers of their managerial rights. Takashi Araki²⁰ observes that although economic recovery and a change in government policy acted as a catalyst in the weakening of union power as well as the reassertion of management rights in the 1950's, the Japanese government policy favoured joint consultation as the surest guarantee for industrial peace and increased productivity. This culminated in the founding of the Japanese productivity center under the auspices of the employers and the American government with an aim of promoting the productivity increases movement and joint consultation practice. It is against this background that the National

¹⁶ Thilo Ramm "Co-determination and the German Works Constitution Act, 1972," (1974) 3 *The Industrial Law Journal*, 2.

¹⁷ This equal representation was transmuted for the first time in a German legislation on enterprises of the mining, iron and steel producing industries, 1951.

¹⁸ This statutory grace was through the Works Constitution Act of 1952.

¹⁹ Takashi Araki "The Japanese Model of Employee Representational Participation" (1994) 15 (No 2) *Comparative Labour Law Journal*, 146.

²⁰ *Ibid* at 147

Confederation of Moderate Unions²¹ and the Center confirmed three basic principles of the productivity increase movement to wit:

- (i) Employment security.
- (ii) Strong communication through joint consultation and,
- (iii) Fair distribution of the enhanced productivity among management, employees and consumers in accordance with the conditions in the national economy.²²

In France, the Waldeck Rousseau Laws of 1884 gave workers the legal right to organize trade unions. Employers on their part continued resisting all legislations enacted in favour of workers. Employers association objected to the provisions of the statute regulating conditions of employment on the ground that it encumbered freedom of contract. For instance, in the British case of *Rookes v Barnard & Ors.*²³, the plaintiff instituted an action against the defendants for damages for using unlawful means to induce the plaintiff's employers the British Overseas Airways Corporation to terminate its contract of service with the plaintiff. To this end, the House of Lords held that the tort of intimidation extends to cover threats of breaches of contract and, on the facts; the defendants had committed the tort of intimidation.

Consequent upon the reaction of employers of labour towards statutory aid afforded workers, the same employers devised a latent measure aimed at regulating workers.²⁴ This pre-emptive check introduced by employers' elicited reactions from workers. Consequently, workers union denounced the existing social order that denied them fair deal. French workers at this juncture had no other option than to resort to revolutionary means in actualizing their collective aim.

A common gamut amongst the different labour localities within Europe was widespread demand for social reform and reorganization of the socio-economic regime: which ultimately lead to workers antagonism towards the state and management. This era in Europe became a philosophical melting point, which philosophies informed the birth of revolutionary ideology preceding the modern workers industrial democracy.²⁵

Selected Comparative Models of Workers Participation

Consequent upon the adumbrated historical preambles, certain factors compelled labour movements in developed countries to be unable to evolve common form of worker participation as well as determine the extent of such participation within the management structure cadres of industries. To this end, labour movement has devised cognizant approaches in accommodating the

²¹ This is popularly called the "Sodomei"

²² These adumbrated principles became the fulcrum upon which basic principles of industrial relation were established. See Okorodudu note 5.

²³ [1964] AC 1129

²⁴ Employers introduced the *Yellow Dog Contract*, which required prospective employees to agree to shun workers unionism as well as renouncing subsisting obligations created. Compare *Rookes v Barnard*, (Supra) where the Association of Engineering & Shipbuilding Draughtsman insisted on sacrificing the plaintiff on the altar of union obligations.

²⁵ This era guaranteed democratization of the industrial regime and afforded workers abundant opportunity to influence the conditions and decisions, which affect them as co-productive members of the industrial society.

Herculean task.²⁶ Collective bargaining as a union right has extended to all entrepreneurial decisions.²⁷

In the same vein, labour relation practices in the USA and UK, places heavy reliance on the process of collective bargaining as a mechanism for representing interests of workers against employers, without requiring representation of workers' interest within the corporate structure through worker representation on management boards. In both systems (USA and UK), there exist an effective method for articulating practical expressions akin to notions of industrial democracy - collective bargaining.²⁸ Flowing from the above, we are able to subsume broad facets of industrial democracy into two practices.²⁹

(a) *Co-Determination in Germany*³⁰

As stated earlier, co-determination thrived first in Germany through the instrumentality of legislation for workers in enterprises of the mining, iron and steel producing industries. There exist a supervisory board consisting of five shareholders and representatives of workers respectively, as well as a neutral member as an arbiter. The five representatives from each body are elected in a general meeting of the respective bodies. However the workers' general meeting are bound by the nominations of the executives of trade unions of three nominees, while the remaining two (a manual and white collar worker) are nominated by the works' council. The Supervisory Board thereafter elects a board of directors by a simple majority, of which one must be a labour director, whose election must not be inconsistent with votes of the majority of the workers' representative on the supervisory board.³¹ One of the statutory purveyor of co-determination is the Works Constitution Act, 1952.³² It stipulates a two-tier management structure for private enterprises to wit: Supervisory Board³³ and Board of Directors. Wolfgang Daubler in expatiating this German legal framework had this to say,

The supervisory board elects the board of directors, who direct the business of the company and represent it. Besides, it has the right and duty to control the activities of the board of directors and can therefore make certain kinds of transaction depending upon its consent. Important basic problems of the company's policy are, however, left to the general meeting i.e., to the

²⁶ That is to say, company policy formulation as in collective agreement at FIAT Motors resulting in investment in Southern Italy.

²⁷ For e.g., the French leftist parties as well as Swedish Social Democrats. See Daubler, Op. Cit. pp. 218-219.

²⁸ Paul Davies "The Representation of Workers in the United Kingdom from Collective

Laissez-Faire to Market Individualism." (1994) 15 (No 2) *Comparative Labour Law Journal*, 169-170

²⁹ Firstly, the practice of representation of workers interest within the corporate structure (For e.g., representation on boards of directors) as in German's Co-determination and secondly, the practice of collective bargaining and consultation as in the UK and Japan.

³⁰ It was the basis of the European Community Draft Fifth Directive. Note also that German model of Co-determination has recorded tremendous success to the extent that it was once regarded as a solution for the European Joint- Stock Company. See also, Gower *Principles of Modern Company Law*. 5th Edition, 62.

³¹ Daubler Op. Cit. Pp. 220-222.

³² Now repealed by the Works Constitution Act, 1972

³³ The Board of a company limited by shares has one third representatives of the employees, delegated by the staff of the factories belonging to the company in general, through equal, secret and direct ballot. This rule applies to limited companies, mutual insurance associations and co-operative societies, provided they employ more than 500 workers.

shareholders, who decide on alterations to the memorandum as well as increases and reductions of the share capital and elect those members who are not representatives of the employees, i.e., two-thirds of the members of the supervisory board.³⁴

However, in practice it appears that the representation of employees/workers is reduced to a mere right to be heard. This opinion is informed by the fact of majority representation of shareholders who almost always exercise majority voting right thereby denying staff interests in the supervisory board. This is glaring in the election of the members' board of directors. Staff representatives lack significant influence.

There is no situation where workers representatives on the board of directors have succeeded with their votes.³⁵ For instance, in the coal and steel industry sector, workers are nonplussed over the dividends of co-determination. This atmosphere of uncertainty on the part of workers in respect of advantages accruing from co-determination was aptly captured by the German labour commentator Daubler when he contended that "the benefits of co-determination to workers representative looks more apparent than real, a development predicated on the following factors:

- i. Union members frequently hint at the high salaries of supervisory board members from the labour side, which may slightly alter their perspective [Sic] responsibilities.
- ii. The demands of law that every member of the supervisory board or the managing board should maintain the care of an orderly and conscientious business manager, means that they have to go all out for the highest possible profit for the company, thus inhibiting their ability to represent staff interest consistently.
- iii. The provision of the law prohibiting worker representatives (even on controversial issues) to mobilize the workforce, but to make decision isolated from their base.³⁶

Consequent upon the foregoing factors, the provision of the co-determination law which restricts obligation to report to the employees, and prevents voluntary information to those who 'co-determine' breach of which attract damages, ensures that staff, works councilors and unions are largely lacking in formation thereby hindering effective control³⁷

(b) Employee Representational Participation In Japan

A remarkable feature of Japanese industrial relations is the enterprise unionism.³⁸ The underlying reason for enterprise unionism is embedded in the

³⁴ Daubler Op. Cit. 220.

³⁵ Ibid P. 221

³⁶ Ibid Pp.222-224

³⁷ Ibid Pp. 226-227

³⁸ See Takashi Araki Op. Cit. This is a system in which a union established on an individual enterprise basis conducts collective bargaining with a single employer and concludes the agreements at the enterprise level, notwithstanding

Japanese lifetime or long-term employment practice whereby employees remain with a particular company throughout their entire career.³⁹ The primary concern of Japanese workers is the working conditions in the internal labour market. Enterprise unions and enterprise level collective bargaining remain the most suited to workers' demand within the labour market.⁴⁰

When may a labour union in Japan proceed from joint consultation to collective bargaining? Recall that the Union Law of 1949 in force in Japan envisages negotiation/bargaining between employers and labour unions. However, if the negotiation/bargain fell through, a dissatisfied enterprise union can proceed to another process: collective bargaining, in which capacity the union could wield maximum right.

Prospects For Industrial Democracy In Nigeria

Nigeria became independent of British rule in 1960. In exercise of powers consistent with acts of statehood, she became a member of the International Labour Organisation.⁴¹ Nigeria is classified as a developing country⁴², and consequent upon this fact is the premise that certain infrastructural facilities are lacking coupled with the political-economic setbacks.⁴³

However, the study of Nigeria as a labour locality reveals the existence of elements of worker's participation in the realm of management *scilicet*—joint consultation and collective bargaining.⁴⁴ This twin form of participation⁴⁵ evolved as a deliberate official policy sometime during the British colonial administration in colonial Nigeria.

The Morgan Commission⁴⁶ on Review of conditions of service of junior cadre of employees of government of Nigeria states categorically:

the fact that the trade union law of 1949 encompasses industry or nation-wide unions as well as enterprise unions. P.144

³⁹ For example, a worker is hired not for a specific job but as a member of the company. This scenario marked the course of an employee's work career, which invariably does not accommodate industry or national level negotiations, unlike the practices in Western Europe. In a particular company, an employee experiences many kinds of jobs while simultaneously receiving education and training; job rotation with on the job training. The employee's promotion and wages are determined mainly by his or her length of service as well as his or her level of performance. See Takashi, pp.145- 146.

⁴⁰ Employee participation in Japan, takes several forms, and principal amongst them include-Labour unions, Joint labour-management consultation bodies, and etceteras. However the main channels for employee representational remains collective bargaining and joint consultation. Takashi points out that an added beauty of Japanese labour practice is embedded in the widespread voluntary consultation, which is indirectly fortified by the combined effect of statutory guarantee of union rights, the constitutional guarantee of labours' right to organize, bargain, and act collectively under the constitution and the mandatory stipulations under the trade union laws 1949, establishing a system of unfair labour practices which ipso facto obligates Japanese employers to bargain with labour unions.

⁴¹ The International Labour Organisation is one of the specialized agencies. Its' activities is coordinated by the Economic & Social Council (ECOSOC). See Bowett D.W. *The Law Of International Institutions*. 4th Ed. "One of the main tasks envisaged for the council was the coordination of the work of the various specialized agencies which to that end, were to be brought into relationship with the United Nation. That relationship was to be established by agreements, concluded under Articles 57 and 63,with organizations fulfilling the criteria of Article 57 (1)...namely, establishment by inter-Governmental agreement (thus excluding NGO's), having "wide international responsibilities," and in "economic, social, cultural, educational, health and related fields." P 65

⁴² See the New International Economic Order.

⁴³ In over 40 years of independence, Nigerian government has been characterized as well as punctuated by frequent military rules.

⁴⁴ Damachi *Industrial Relations: A Development Dilemma in Africa*, Lagos, Development Press, 1989, 56.

⁴⁵ See Joint consultation and Collective bargaining.

⁴⁶ Morgan Commission on the review of Wages, Salaries and Conditions of Service of the junior employees of the Governments of the Federation and in the Private Establishments 1963-64.

It is nonetheless the policy in Nigeria that salaries and wages-indeed, the whole fabric of industrial relations-should be fashioned, altered and sustained by means of free collective bargaining ...'

The government of Nigeria has not relented in her effort in embracing the position earlier reached by the Morgan commission. For example in 1955, she re-echoed her stand as follows:

Government reaffirms its confidence in the effectiveness of voluntary negotiation and collective bargaining for the determination of wages. The long term interest of government, employers and trade unions alike would seem to rest on the process of consultation and discussion which is the foundation of democracy in industry.⁴⁷

Okogwu in the same vein reiterated this positional stand of the government of Nigeria when he stated, "...we have followed in Nigeria the voluntary principles which are so important an element in industrial relations in the United Kingdom."⁴⁸

This government policy of encouraging and sustaining democracy in the industrial sector has permeated the industrial sector till date. Prospects for industrial democracy in Nigeria is not a mechanical affair but would largely depend on a number of factors.⁴⁹ Workers participation in management is hinged on a two-fold perspective – situational⁵⁰ and/or human⁵¹ (resource) factors. The prospect of industrial democracy or workers' participation in Nigeria is solely dependent on the adumbrated determining factors. Professor Damachi identifies scilicet:

The government,
The multinationals,
The indigenous private companies,
The small scale businesses and,
The Asiatic companies- as the categories of employers prevailing in Nigeria.⁵²

a) A cursory look at government as the dominant employer of labour tend to suggest that government employment accommodates workers' participation premised on government's intention to mobilize popular support for developmental purposes.⁵³ However, government's attitude to

⁴⁷ Okogwu G.C. "An Overview Of Collective bargaining in both Sectors of the Nigerian Economy," *Collective Bargaining in the Economy*, 1992, 25

⁴⁸ Ibid 26

⁴⁹ Damachi Op.Cit. 56. It is the opinion of the author that future trends of workers' participation is premised on requisite existential factors.

⁵⁰ Ibid p.57. "The situational factor include the autonomy of the enterprise, technological factors, the size of the enterprise coupled with the organizational structure of the enterprise."

⁵¹ Damachi Workers participation in Management, 1982. "The human factors consist [Sic] of workers' attitude and objectives in relation to participation and workers' perceived power and capacities to participation...and management's acceptance of workers' participation." pp. 16-17

⁵² It is imperative to note that the rankings of employers have changed especially commencing from the new millennium which has recorded more indigenous owned private schools (tertiary and post primary), and corporations registered as religious bodies as competing categories of employers of labour

⁵³ In practice however, worker participation in government owned enterprise is relatively limited to collective bargaining and joint consultation.

her employees undermines the effectiveness of these mechanisms. Government attitude in this regard did not cut ice with Professor Adeogun, who contends that:

It seems very odd that despite the establishment of Whitley Councils since 1948 for negotiations between the government and its own employees, practically every major demand by workers for wage increase or reviews since the Second World War has been settled, not through this collective industrial machinery, but by arbitration.⁵⁴

The attitudinal indifference of government towards collective bargaining and the tenets of democracy at the industrial regime are not latent but easily discerned by commentators in the field of industrial relation. This is glaring from the observation of a former president of the Nigerian Employers Consultative Association (NECA). According to Michael Omolayole:⁵⁵

We do not believe government practices ardently what it preaches vigorously. Government preaches the doctrine of collective bargaining, which it says is the cornerstone of industrial relations in this country. It does not appear to us that government practices it as strongly and stringently as it advises the private sector to do. Otherwise, why is it that there are more collective agreements registered by the Ministry of Labour in respect of issues resolved by 13 employers' associations than those registered by the public sector? The Ministry can tell us how many agreements have been registered by the total public sector within the last five years.

Government seems to be speaking from both sides of her mouth in her avowed embrace of collective bargaining in Nigeria. In the recent past, government did not agree the Academic Staff Union of University (ASUU) in finding a lasting solution to the academic union's demand. Meantime, the matter is pending before the industrial court.⁵⁶

- b) The identified pattern of workers' participation prevailing in multinational corporations is in the form of collective bargaining and joint consultation. According to Damachi, "We cannot see the introduction of works council or workers' representation on company boards in the near future. This is due to the fact that some of these companies are themselves remotely controlled by their parent companies abroad."⁵⁷ In practice, the arm of management carrying out business operation in Nigeria remains an appendage of the foreign parent company and implicit in the foregoing is the fact that workers have no opportunity of participating in the company board due to structural and geographical encumbrances occasioned by parent-subsidiary dichotomy.

⁵⁴ Adeogun A.A "The Legal Framework of Industrial Relations in Nigeria," (1975) *Nigerian Law Journal*, 34

⁵⁵ Michael Omolayole quoted in Damachi *Industrial Relations* 1989 at 58

⁵⁶ As if the instant incident is not a sufficient testimony of Government's equivocation in the realm of labour relation, government has again reneged in its agreement with Nigerian Labour Congress over deliberations on review of pump price of petroleum products. Despite the agreed pump price of petroleum products with the labour union, she made a *volte-face* in reneging the terms of the agreement by pretentiously employing the services of the major marketers as a smokescreen to raise the pump price on October 1 2003.

⁵⁷ See Damachi, Op. Cit. note 45 at 58.

- c) The Indigenous Companies. Participation by workers in the affairs of the indigenous companies is remote. The indigenous employer seem to be reluctant to recognize unions let alone according the unions any iota of participation in decision making.⁵⁸ The structure of indigenous companies are paternalistic and consequently provokes suspicion between workers and their representatives.
- d) The small-scale business. This category of business employs relatively few workers. Workers participation at this level is insignificant.⁵⁹
- e) The Asiatic Companies. These are migrant business moguls. Asiatic companies are usually organized as a “family affair”⁶⁰ Consequently employments extended to Nigerians are purely ceremonial aimed at fulfilling internal governmental policies. The structural set up of the companies is a hindrance to workers’ participation. This is operating in Nigeria remains an integrated part of the parent company domiciled abroad.

For purposes of carrying out business in Nigeria, the companies are required to be incorporated under the Company and Allied Matters Act premised on the fact that an average Nigerian worker rather than seek for effective participation in the running of the affairs of the company prefers to become an entrepreneur.⁶¹

A Pragmatic Approach

The gamut of commonness running through the foregoing is the fact that the Nigerian situation seems to hold little potentials for workers participation in management. It is only appropriate against this backdrop that we proffer some pragmatic measures. If worker participation vide representation on the boards of directors of companies is unfeasible, we are nonetheless left with the existing machinery of collective bargaining and consultation as the vehicle for such participation.

The question that naturally arises is, Can collective bargaining and consultation ever be as effective as representation of workers on boards of directors, in the process of realizing the aspiration of workers in influencing company policy formulations? Recall that some of the weaknesses of collective bargaining remains the inability of labour to make management negotiate on issues that fall outside their terms of employment and physical conditions of work such as plans for closures, pricing structure and investment policies upon which jobs depend. However, even the most acclaimed model of worker representation on boards of directors⁶² co-determination, also has its own weaknesses.⁶³ The difficulty here is that trade unions cannot fight a policy adopted by persons who

⁵⁸ Id. at p.58.

⁵⁹ The cadre of workers employed at this level is largely untrained and possessing no special skill

⁶⁰ The management usually apportioned available positions in the company to blood relations or persons of same descent.

⁶¹ See Damachi, Op. Cit. note 45 at 59

⁶² See the German system of co-determination, above.

⁶³ S. Simitis, “Worker Participation in the Enterprise Transcending Company Law,” (1975) 38 *Modern Law Review*. ‘The implication of strikes are rather obvious: in fact if Co-determination is understood not only as a right to participate in the decision-making process but also as a means to accept and defend the results of the process, strike activities may prove more and more questionable, at least as long as they are motivated by claims directly connected with the enterprises.’

according to most models represent their collective interest. Simitis argues that against the backdrop of the defects of co-determination, other means of achieving the aims of co-determination, such as collective bargaining should be resorted to. There exist abundant opportunities offered by collective bargaining, which Simitis says is grossly underestimated. Simitis however, argues that adopting collective bargaining requires complete overhaul of the legal restrictions imposed by the multifarious laws applicable in different jurisdictions.⁶⁴ He urges:

The larger therefore the field of bargaining, the less necessary the development of complementary mechanisms. Co-determination is thus no more than auxiliary means. Collective agreements and not mechanisms of participation determine the position of the employees. Hence it is also up to these agreements to ensure in the interest of workers a control of private economic activity. Both the necessity and the details of co-determination models should consequently only be discussed in connection with goals that evidently cannot be achieved by collective agreements.

In fact redundancy due to closure or mergers are examples of danger, which apparently could only be mitigated and sometimes even be avoided by a direct co-determination of enterprise policy. Agreements may well evolve in a sense allowing for measures, which prevent to a large extent such developments.⁶⁵

If co-determination through workers' representation on boards could return such dismal dividends for workers, then perforce the thesis put forward by Simitis supporting collective bargaining and amply reinforced by our position above, predicated on the Japanese practice of joint consultation, which invariably serves as catalyst for infusing *animus* into management policy, then, there appears to be preponderance of customary practice in favour of collective bargaining and consultation.

Consequently, we entertain no hesitation in advocating for Nigeria a continuing of industrial practice along this path, but with a rider for the strengthening of the machinery for collective bargaining, as well as the adoption of joint consultation premised on Japanese model, thus, harmonising the jurisprudence of industrial relations. The issue of collective bargaining has been rotating between the industry and / or enterprise level. Most industrialized market economies have a mix of both, even though not in equal measure,⁶⁶ save and except the United States, which generally concentrate its practice of bargaining mainly in specific sectors such as coal, steel, trucking and construction.⁶⁷

The positional shift towards more enterprise or plant level bargaining was premised on a number of factors including decline in union membership,

⁶⁴ Id., at P.21

⁶⁵ Id. See the agreement concluded in March 1973 between FIAT and the Union Metal Workers (FLM) which might prove to be a step of historical importance towards the necessary enlargement of the functions of collective bargaining. By the agreement, the management of FIAT was obliged to invest in Southern Italy and thereby upholding the Unions' rejection of a further industrial expansion in the overcrowded Northern part of Italy. The agreement aimed therefore not only at the amelioration of the actual living conditions of Fiat workers but attempted with the help of long-term measures to avoid closures and redundancy. To this end, Simitis argued that workers might influence enterprise policy by collective bargaining in a way far exceeding the possibilities offered by the membership of supervisory boards. Furthermore, it helped to avoid the widespread impression that there is no alternative to participation.

⁶⁶ See *The Punch*, Wednesday August 27, 2003 at p.28

⁶⁷ Ibid

increasing unemployment, difficult business conditions and unfavourable disposition of some governments to private sectors and etceteras.⁶⁸ Though laudable the tendency to bargain at the enterprise level, with the attendant leverage exerted by employers in areas such as productivity, quality, performance, skills development, competitiveness and rapid changes in adapting to global market place, bargaining at the national or central level remains the best option for Nigeria. This is borne out of the need to adhere to the concept of tripartism belatedly recognized by the International Labour Organization which envisages union, employers association and governments in general, in a concerted effort towards resolving industrial related issues.⁶⁹ Many employers view central bargaining as facilitating a more equal distribution of incomes (which is one reason why many nations prefer centralized bargaining)....⁷⁰ With the attendant unequal distribution of incomes, illiteracy, minorities fear of domination by the major ethnic groups, marginalisation and impoverishment of the larger population of the northern part of Nigeria, centralized bargaining seems to a large extent, a potent force to assuage, ameliorate and accommodate the working class in Nigeria, as in Sweden and Germany. In adopting collective bargaining as the hallmark of Nigeria's industrial relations, we vigorously agitate for the expansion of the scope of matters subject to collective bargaining. In practice, collective bargaining is limited to agreements regarding working conditions and terms of employment between workers and employers⁷¹ or agreement for the settlement of disputes relating to terms of employment and physical conditions of work concluded between employers and unions^{76b}

Collective agreements being the offshoot of collective bargaining should go beyond its present stage of being legally unenforceable by the parties. Collective agreement must transcend its hortatory quality as well as the need for its incorporation by reference into individual worker/employee contracts of service or being made subject to the endorsement of the Minister for Labour and Productivity.⁷² As a pragmatic measure the legislation on unenforceability of collective agreements should be amended. The various decisions of courts along this line should cease to be effective authorities⁷³ in Nigeria's industrial relations law jurisprudence. In Nigeria, each industrial group has a procedural agreement with union leaders which specifies how collective bargaining is conducted and procedural agreement recognizes sanctity of collective agreement.⁷⁴

... It is true that some of the collective agreements have re-opener clauses. For as many of that have re-opener clauses, are couched in terms which allow them to have re-opener clauses, the union will be bound by it but those that do not have re-opener clauses cannot be bound

⁶⁸ Ibid.

⁶⁹ *Vanguard*, Thursday November 8 2001 p.28

⁷⁰ *The Punch*, above p.28

⁷¹ a See Section 91, Labour Act Cap.198. Laws of Federation of Nigeria (LFN) 1990.

^{76b} See Section 47, Trade Disputes Act, Cap 432 LFN 1990

⁷² See s.2, Trade Disputes Act and s.20(2) Trade Unions Act.

⁷³ See for e.g., *N.A.B. Ltd. v Shuaibu* [1991] 4 NWLR (Pt. 186) 450; *Union Bank of Nigeria v Edet* [1993] 4 NWLR (Pt. 287) 109 and *African Continental Bank PLC v Nbisike* [1995] 8 NWLR (Pt. 416) P.727

⁷⁴ *Vanguard*, above at p 28

by what government has done because government is not the employer of workers in the private sector...⁷⁵

Continuing in response to the exercise of power by Government, the Director-General of NECA observed that "...whatever agreement the Federal Government could have reached with the Nigerian Labour Congress is only obligatory for Federal Government workers. It has nothing to do with NECA."⁷⁶

Conclusion

The foregoing highlights that co-determination and joint consultation is incapable of impacting positively freedom within the industrial regime due to inherent problem of ebbing the potency of trade union in challenging policies adopted by persons purportedly championing their cause. Apart from this defect, it has been canvassed that the machinery of collective bargaining aptly seems effective in checking tyranny within the industrial regime. Collective bargaining has the potency to articulate a fair representation of workers in matters germane to their cause.

The above virtues notwithstanding, the incidents of collective agreements and enforceability; the exact scope of items to be bargained; national or centralized as against enterprise or plant level bargaining, if properly fine-tuned would definitely precipitate and usher democracy within the industrial regime. We therefore suggest that a proper legal framework be put in place to ensure that collective bargaining yields the desired benefits and distrust between Union or Labour and Employers Consultative Association/Government⁷⁷ on the one hand, and between Government and Employers Consultative Association^{78b} on the other hand is forestalled.

⁷⁵ See details of an interview granted by the Director-General of Nigeria Employers Consultative Association (NECA) to *Vanguard*, Thursday, November 8, 2001 at 28 77 Id, p 28

⁷⁶ Id, p. 28

⁷⁷ a Id, at P.28

^{82b} Id, at P.28