EXPANDING FRONTIERS OF ADR: NATIONAL INDUSTRIAL COURT OF NIGERIA APPROACH

By Hilary Ekpo

The President of the National Industrial Court of Nigeria, Hon. Justice B.A Adejumo, recently caused to be established the National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre with its accompanying National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre Rules, 2015.

Power To Establish The ADR Centre:

There is no gainsaying the fact that by the provisions of Section 254(3) of the 1999 Constitution of the Federal Republic of Nigeria, (as amended by the Third Alteration Act, 2010), the National Industrial Court of Nigeria has power to establish an Alternative Dispute Resolution Centre within the premises of the Court on matters on which jurisdiction is conferred on the Court.

It is therefore in exercise of this power conferred by the above section of the Constitution that the President of the Court has established the said ADR Centre. The question of the source of power, the authority and legality of such power and authority is therefore not in doubt.

Besides this constitutional provision, section 1 (2) (a) of the National Industrial Court Act, 2006 confers on the President of the Court overall control and supervision of the administration of the Court. Specifically also, section 20 of the same Act empowers the Court to promote reconciliation, encourage and facilitate amicable settlement of disputes among parties thereto. The tone has clearly been statutorily set for alternative approaches for amicable settlement of labour, employment and industrial disputes.

Justification For Reform In The Sector:

It is common knowledge that labour and human resource is the life wire of any organization and a critical factor in the production process in any economy. Conflict is therefore an inevitable reality in any given assemblage of human beings. Consequently, industrial peace is not a luxury but a necessity for the smooth operations, productivity and profitability of an organization, the absence of which results in retardation in development and economic hemorrhage. The need for speedy resolution of industrial and labour related disputes cannot therefore be overemphasized.

The radical reform in the labour and industrial sector of the economy especially in the area of statutory reforms has brought to

bear the Labour Act, the Trade Disputes Act, the establishment of the Industrial Arbitration Panel, the National Industrial Court Act and most recently the Third Alteration Act, 2010 to the 1999 Constitution of the Federal Republic of Nigeria. The latter has greatly enhanced the powers of the National Industrial Court of Nigeria (hereinafter referred to as the Court), and expanded its jurisdiction. It equally made the Court a Superior Court of Record thereby putting an end to the hitherto controversy. The Court has been made both the Court of first instant, Court of Appeal from the decision of the Industrial Arbitration Panel, and a final Court depending on the nature of the matters before it. It is trite that Appeals as of right from the decisions of the Court can only go to the Court of Appeal in matter of fundamental right of fair hearing.

The overall need to extricate labour and industrial related matters from the busy schedules of the regular Courts informed the establishment of this specialized Court for speedy dispensation of justice. The wisdom behind this can hardly be faulted. Thus far, the National Industrial Court of Nigeria has been performing to its expectations and legal mandate. The Court currently has about twenty judicial divisions spread across the country. The ripple effect of this is numerous to be recounted here.

The speed with which decisions and judgments from the Court are given have proved skeptics wrong. The maxim "justice delayed is justice denied" has no place in the Court as there is no room for delayed justice here. The standard of judgments and decisions emanating from these courts are comparable with those

from other jurisdictions, superior courts of record and indeed other countries.

In terms of practice, the jurisprudence of labour law practice in Nigeria has been greatly enhanced. Labour law materials and texts are being published. This include the Nigerian Labour Law Reports, a specialized law report of decisions and judgments on labour, employment and industrial relation and other related matters from the Superior Courts of Record in the country edited by Barrister Enobong Etteh, Law and Practice of the National Industrial Court written by Bamidele Aturu, of blessed memory. The study of labour and employment law either as compulsory or elective course of study has been embraced in our various higher institutions of leaning.

The Imperativeness of Alternative Disputes Mechanism and ADR Centre:

It is in line with the above and more, that the establishment of the National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre and its accompanying Rules is seen as a welcome development and a positive departure from the hitherto regime of dogmatic approach to issues.

Alternative Disputes Resolution mechanisms have long been embraced in most advanced jurisdictions of the world and our country cannot be an exception, though it has long existed especially as a traditional mode of dispute resolution. What is even more unique is the establishment of the Centre within the premises of the Court itself. The merits of ADR in the justice

delivery sector of the country have been noted by several authors which we do not intend to repeat.

THE Hon. President of the Court in setting in motion the establishment of the ADR Centre stated thus: “The Alternative Dispute Resolution technique is arrived at assisting parties in dispute to arrive at mutually acceptable agreement in less costly, speedy and efficient manner thereby preserving and engendering industrial peace and harmony, providing a veritable platform for economic development, and more beneficial interpersonal relationship between parties”.

An examination of the contextual framework of the ADR Centre will be apt to enable a better appreciation of its establishment. In doing this, the definition of some terms from the Instrument becomes very imperative.
“Alternative Dispute Resolution” includes mediation or conciliation that involves the use of mediator, conciliator or neutral who may facilitate the resolution of a dispute before the centre.

“Conciliation” means bringing two opposing sides together to attempt settling the matter without proceeding to trial. It is also a process of an amicable settlement of disputes in a friendly and win-win situation.

“Mediation” is a dispute resolution technique in which an impartial third party, the mediator, or conciliator, neutral

appointed by the President of the Court in line with this instrument facilitates negotiation or mediation between or amongst the parties in a dispute, and in order to help them to arise at an amicable and acceptable settlement.

“Neutral” means an impartial and unbiased individual appointed by the President of the Court in accordance with the provisions of National Industrial Court of Nigeria, ADR Centre Instrument to mediate or conciliate in a dispute or issue referred to the centre.

These are the three main dispute resolution mechanisms established and recognized by the instrument establishing the ADR Centre by the National Industrial Court of Nigeria. Establishment and Responsibilities of the ADR Centre:

Article 2 of the Instrument establishes the centre with its headquarters at the premises of the Court in the Federal Capital Territory, Abuja. A remarkable step is the establishment of Centres at the six geo-political zones of the country to wit : A) North Central Zone – Abuja ADR Centre. B) North East Zone – Gombe ADR Centre. C) North West Zone – Kano ADR Centre. D) South East Zone – Enugu ADR Centre. E) South South Zone – Warri ADR Centre. F) South West Zone – Ibadan ADR Centre.
The responsibility of the Centre shall include the resolution of disputes by applying mediation and/or conciliation mechanisms of alternative dispute resolution.

Article 3 makes provisions for the personnel of the Centre, conditions of service and organogram . The staff of the Centre are to be drawn from the present staff strength of the Court who shall be deployed to the Centre. The Centre shall be headed by a Director whose responsibilities are equally provided for. The Zonal ADR Centre shall be headed by Assistant Directors who shall report to the Deputy Director. Provision is also made for the appointment of ADR Centre Officers, Centre Mangers, and Registrars of the Centre, amongst others.

Mandates and Functions of the Centre

Article 4 of the Instrument specifically provides that "the mandates and functions of the ADR Centre shall amongst other things be the application of mediation or conciliation technique in the settlement of disputes between or amongst parties, and-1). To enhance and facilitate quick, efficient and equitable resolution of certain employment, labour and industrial relations disputes within the jurisdiction of the Court; 2). To minimize, reduce, mitigate and eliminate stress, cost and delays in justice delivery by providing a standard ADR framework for fair, efficient, fast and amicable settlement of disputes; 3). To assist disputants in the resolution of their disputes without acrimony or bitterness; etc.

Article 4(5) states that the Centre shall only have the power to mediate or conciliate on the subject matters on which the

Court has jurisdiction as provided for in the 1999 Constitution, as amended by the Third Alteration Act, 2010. This is of course obvious as the Centre cannot have jurisdictions and powers over matters which the Court does not have jurisdiction and power.

The Centre shall not have power to entertain any interlocutory application or grant order or interpret any matter before it. Any interlocutory application on any matter shall be entertained by the Court before the referral of such matter to the Centre. Provision is also made for a whole lot of other sundry issues under this article.

Articles 5 and 6 make provisions for the role of Counsel and Parties before the Centre respectively. A detailed examination of these provisions shall be taken care of in our subsequent write-up.

Articles 7 and 8 are about the Fees of Counsel and Finances of the Centre respectively. While the last two articles make provisions for Miscellaneous and Interpretation.

The National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre Rules, 2015.

As earlier on indicated, the President of the Court has also drawn up a set of rules for the Centre, to wit: National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre Rules, 2015. The Court has before now made

the National Industrial Court Rules, 2007, which regulates the operations of the Court in its adjudication capacity. The present rule shall apply to all proceedings referred to the ADR Centre for settlement of disputes including all part - heard causes and matters in respect of steps and proceedings to be further taken in such causes and matters for the attainment of a just, efficient and speedy dispensation of justice.

Outside the administrative issues, Order 4 of the Rules makes provision for the mediation and conciliation procedures, while order 5 provides for the execution of terms of settlement.

The foresight, ingenuity and the bold steps taken by the Hon. President of the Court in setting up the ADR Centre with its accompanying rules is highly commendable. This is another first in his already crowded profile and accomplishments since he became the President of the court. This leadership role and pioneering effort in steering the ship of the Court thus far is worthy of emulation.

The gradual institutional acceptance and recognition of ADR in our dispute resolution effort is a welcome development in view of the benefits to the society at large. Labour, employment and industrial relation crisis and disputes disagreements owing to their sensitive nature need the fastest means of resolution for industrial harmony. It is

in the light of the foregoing that we see and appreciate the bold steps taken by the National Industrial Court of Nigeria in establishing the ADR Centre.
Observations and Comments:

Like every endeavour embarked by human being with all its imperfections, the steps taken by the Court in the establishment of the Centre is not without its short comings. In the first place, the provisions of section 254 C(3) of the 1999 Constitution of the Federal Republic of Nigeria, (as amended by the Third Alternation Act , 2010) empowers the Court to set up and establish an Alternative Dispute Resolution Centre. In our opinion, the term Alternative Dispute Resolution (ADR in short) is generally used to describe the methods and procedures used to resolve disputes either as alternative to the traditional dispute resolution mechanism of the Courts or in some cases as supplementary to such mechanism. ADR covers the wide range of alternatives to litigation that involve third party intervention to assist in the resolution of the dispute. The point is that, there are many forms of ADR but unfortunately the Court, in its own wisdom, appears to recognize only three types or methods of ADR, to wit: Mediation, Conciliation, and Neutral.

Arbitration is a form of ADR as it is an alternative to litigation and it is one of the foremost means recognized and practiced in this jurisdiction. The question whether

Arbitration is an ADR process is still the subject of scholarly discussions, but in our context we prefer to classify it as ADR, in so far as it operates outside the traditional court system. It may have its short comings just like any other means including its closeness to litigation but why it is totally left out from a means of dispute resolution from the ADR Centre is what we cannot readily understand. It is our submission that labour, employment and industrial relation matters and causes can obviously be best handled by means of Arbitration.

While we commend the pioneering effort of the Court in setting up the ADR Centre, we invite the Hon. President to reconsider his stand and make provisions for Arbitration in his first amendment of the Instrument in Article 9 (7)(a) which states that: “Notwithstanding anything to the contrary contained in this Instrument or the ADR Centre Rules, 2015 (as may be amended) the President of the Court shall have the power to amend this Instrument from time to time as the need arises”.

The fact that only three ADR methods are recognized by the Court appears to limit the options that may be available to parties to explore. The need to utilize this power to incorporate other means of effective disputes resolution cannot be overemphasized.

The key features or cornerstones of mediation can be identified as neutrality, confidentiality, flexibility, voluntariness, party control and facilitation. The Instrument setting up the ADR Centre empowers the President to appoint the Mediator thereby denying the parties the opportunity to appoint a mediator of their choice. The ADR Centre Rules also appear to be strict and thereby denying the parties opportunities to have control over the process. In mediation for example, the role of the third party is limited while the parties themselves are the decision makers and solution finders.

One of the beauties of ADR mechanism lies in its flexible nature. We sincerely hope that we will not become masters of the Rules at the expense of the underlying intention of the techniques themselves.

There appears to be no time frame set for the disposal of causes or resolution of matters referred to the ADR Centre. In as much as the ADR methods encourage flexibility in approach, it is suggested that a time frame ought to be established for the resolution of any dispute at the Centre or by the Court. The abolition of interlocutory applications though appreciated may not solve this problem. The officials and stakeholders need to be properly indoctrinated.

Staff and officials of the Court appear to be playing very active role in the entire processes. This is not limited to

administrative duties but actual dispute resolution roles. The fear is the usual bureaucratic nature associated with the public service with all it attendant consequences. We pray that this will not defeat the entire intention of setting up the Centre in the first place instance.

Six ADR Centres have been established or are to be established under Article 1(3)(a) of the Instrument to cover the six geo-political zones of the country. The question is why don't we have ADR Centres in all the divisions where the Court has thus far been established? We know that this will require logistics, finances, manpower, etc. But what is worth doing at all is worth doing well. It is hoped that more Centres will be established in future to meet the challenges of the time.

Additionally, the ADR Centre for the South-South Zone is to be located at Warri and South –West Zone in Ibadan. Why Port Harcourt and Lagos were not considered as proper locations and Centres in view of their cosmopolitan natures is what we cannot readily provide answers.
This however appeared to be remedied by the provisions of Article 1(3)(a) where it states thus: "Provided that the Director of the centre in consultation with the President of the Court may direct that session(s) for mediation or conciliation be held at any of the States within any of the component States that made up the zone"

Similarly, Article 1(3)(b) provides that: “The President of the Court shall have power to relocate any of the Centres to any of the States comprising the zone, in the interest of peace, security or any unforeseen contingency which may make the operation of the Court impossible or unsafe”

As elaborate and explanatory as the above may be and with respect to whatever consideration, the President would have adopted, our respected and honest view is that a place like Lagos shouldn’t have been denied an ADR Centre. The merits for this are too numerous to mention here. As indicated already, an early amendment would be appreciated. With respect, the same argument goes for Port Harcourt. Warri is not even a central position or State capital in the South-South zone. It may have everything to merit or deserve an ADR Centre but other considerations favour Port Harcourt for now, in our humble opinion.

There is no doubt that the instruments creating and establishing the ADR Centre and the Rules are works in progress. They are both pioneering efforts which are most appreciated. We are glad that the Court has come to the realization that today the case for Alternative Dispute Resolution is stronger than ever. The support it commands in the industrial and commercial world is greater than ever.
Recommendations:

This general overview of the effort of the National Industrial Court of Nigeria in expanding the frontiers of ADR by the establishment of the ADR Centres and setting out its Rules wouldn't be complete without a thought of some recommendation on how the Centre can effectively work.

Today, we have many professional bodies in the ADR sector with list of its members who are efficient in their practice. The ADR Centre can demand for the list from these bodies to select members who can effectively work with the Court and the Centre.

The need for training and retraining cannot be overemphasized. Since the bulk of its staff are drawn from the Court, there is the need for adequate training of these staff both within and outside the country on the rudiments of these mode of disputes resolution mechanisms. Additionally, once in a while experts can be called upon to offer training in these fields. Nigeria is blessed with so many professionals in this aspect of life that training facilities and resources wouldn't be so much an issue. Visitations can be carried out to institutions such as the Lagos State Multi Door Court House to understudy and learn from their success stories.

Disputes must be resolved both economically and fast. We have earlier on identified the need to set time limit for the resolution of each case. Disputes must be resolvable without

prohibitive cost or inordinate delay. The abolition of interlocutory applications is a step in the right direction. Making the system to be flexible, user friendly and with minimal cost will surely touch the lives of it users. It should be noted that most of the users of the system are likely to be those who have been disposed of their jobs and source of livelihood and it would be most unwise to impose more hardship on them in the name of seeking justice.

We will also advocate a kind of quarterly orientation meetings with Counsel and Legal Practitioners who are stakeholders in this effort on their role in the entire process. The system does not give room for technicalities and much legal verbosities. In addition to this, a public enlightenment programme should be put in place to educate the populace on the existence, usage and merits of this unique resource as a means of dispute resolution within the premises of the Court.

The need to expand the mechanisms for the ADR Centres cannot be overemphasized rather than limiting it to mediation, conciliation and neutrals. Arbitration as a means of ADR cannot be ignored being a foremost ADR mechanism. We have already suggested the establishment of the ADR Centres in all the jurisdictions of the Court, Lagos and Port Harcourt.

In our follow up article, we shall endeavour to examine the specific provisions of the various articles in the Instrument establishing the ADR Centre, the provisions of the Rules and practicability of the entire process.

Conclusion:

It seems to us that alternative dispute resolution is increasingly playing an important role in upholding the key features of the rule of law both nationally and internationally. A number of factors are working together to elevate the status of ADR in our dispensation. The practitioners have a duty to act judicially, a duty they owe not merely to the parties but to the public. To a large extent, the success or otherwise of this novel idea in the Court system will depend on them. They need to uphold the vital standards of independence and competence and give effects to contractual rights in accordance with substantive and procedural legal principle, thereby helping to ensure the rule of law. Provided that the stakeholders perform, and are seen to perform their role honestly, completely, expeditiously and above all independently and in accordance with the law, confidence in the system will be developed, established and maintained. This will reflect the fundamental importance of ADR as an alternative form of dispute resolution outside litigation and it will continue to move from strength to strength, and in so doing, promotes and upholds the rule of law nationally and globally. ADR has come to stay. Let us all encourage it. It is not new in our

society as such as its existence predates the court system in our society.

We look forward to interesting developments and the applicability of the new regime and its contributions to providing an efficient and effective dispute resolution; the interplay of interests and intrigues between the parties; the display of skills and knowledge of the subject by all the stakeholders; the role of the Court in referring cases to the Centre, its interpretative role and enforcement of the decisions and awards from the Centre; etc.

In the words of the President of the Court while commissioning the Bauchi State division of the Court: **"Once the Centre becomes operational it would add impetus to the efforts towards ensuring that employment, labour, industrial relations and** workplace related **disputes are resolved quickly and without hurting existing working relationships. Our efforts in this respect align with the vision of the Chief Justice of Nigeria, who has commendably identified that ADR processes, as panacea to the problem of over-filled dockets and unnecessary delay in the administration of justice cannot be overemphasized."**
And so be it!

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