



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

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**ABSTRACT:** *This paper examines trade disputes arising from industrial actions taken by the ASUU in Nigeria with particular reference to ADR for the redress of these disputes and why ADR is relevant as an arbitral remedy to the treatment of such disputes. Applying the doctrinal research approach, it measures the prospects of ADR systems in relation to legal statutes like the Trade Disputes Act and case laws while comparing arbitration, mediation and conciliation as forms of ADR. It was established that ADR is a worthy approach as it comes bearing benefits like cost effectiveness compared to court proceedings, fast, and less hostility when compared to the parties in dispute. But this advancement is inadequate because its use in several contexts faces major barriers that include the autocratic power of the Minister of Labour, low observance by the relevant stakeholders, and poor support to enforce arbitral awards. The study then offers policy recommendations that seek to minimize the involvement of ministers while at the same time ensuring the award's decisions are easily enforceable; as well as awareness creation programmes for all key players on ADR. These could completely change the face of industrial relations in the Nigerian academic sector especially when it comes to Asuu strikes which are very frequent hence disrupting learning. From adopting ADR mechanisms in management of labour disputes in Nigeria, there is an opportunity to minimize litigation and strikes in order to foster stability and growth of the education sector in Nigeria.*

**KEYWORDS:** Alternative Dispute Resolution (ADR), Academic Staff Union of Universities (ASUU), Trade Disputes Act, Arbitration, Mediation, Conciliation, Labor disputes, Nigeria.



## INTRODUCTION

Disputes are frequent and can be seen as the common characteristic of industrial relations all over the world, including Nigeria. Among the important stakeholders of the country's education sector is the Academic Staff Union of Universities (ASUU). ASUU was formed in 1978, and has since been involved in fighting for better funding for universities, better conditions of service for university lecturers, and the general growth of Nigeria's public university system. However, these objectives have often led to negative relations between the union and the federal government disrupting academic activities severely. A critical concern emerging from all the disagreements made by ASUU is the poor funding of universities. ASUU has continuously demanded a raise in funding to sponsor the rejuvenation of the universities, enhance the development of physical facilities as well as foster research and tuition. For instance, one of the main contingencies in the 2022 conveyed ASUU strike was the disbursement of the revitalize fund of N1.3 trillion promised by the authorities. Also, the union has equally rejected the IPPIS claiming that it interferes with the autonomy of universities and does not consider the specificity of salaries of academic staff. These perennial problems underscore system deficiencies which confront the higher education system in Nigeria (Adeola, 2021).

Academic boycott has emerged as the most apparent weapon in the union's repertoire of demands; this has led to the disruption of the academic calendar. The ASUU strike that took place in 2022 for eight months affected operations in public universities, stranded students and had dividends of economic and social impact. Those strikes do not only prolong the time students spend in school but also lowers down the quality of education and degrades Nigeria competitively in the global arena of higher education (Eke, 2022). As earlier mentioned, previous strategies in addressing ASUU-related issues have been through the courts, bargaining and lawsuits. However, it has been realized that the above-discussed methods do not solve the problems at all. Litigation, for instance, is widely known to be costly, time-consuming and promotional of antagonistic relations. Many court cases further deny harmony between the government and ASUU as court trials prolong conflict and produce win-lose situations instead of win-win ones. For instance, in a case in Nigeria heard in the Supreme Court, between the Federal Government of Nigeria and ASUU, the latter later issued a call for the suspension of its strikes following a ruling of the National Industrial Court where the court ordered ASUU to return to class.

It is against this background that the application of Alternative Dispute Resolution (ADR) appears to be a fruitful approach to the resolution of labour disputes in Nigeria. Arbitration, mediation and conciliation are other related dispute resolution processes intending to give an ephemeral solution with less animosity, at less cost and time than that offered by the litigation model. ADR differs from litigation because it fosters an approach that people can settle their disputes while continuing to work together. For instance, arbitration permits the disputing parties to choose independent arbitrators and prescribe the procedural rules that will be followed allowing gains that are more satisfactory to both parties (Adeola, 2021). However, ADR has not been used as much as is desired in the Nigerian labor sector, including the ASUU impasse. The legal regulations of the ADR, contained within the Trade Disputes Act, affords the Minister of Labour considerable discretion concerning arbitration. This, in turn, tends to undermine the impartial and independence of ADR processes. In addition, concerns possessing inadequate awareness of ADR and the enforcement of arbitral awards offer weak support to ADR in addressing labor disputes (Eke, 2022).



The continuous and unabated conflict between ASUU and the federal government emphasizes the importance of the reform in employing ADR to support stability in Nigeria's labor relations. This is because ADR can be effective in its own right as a means of avoiding strikes, or of limiting the attractiveness of litigation where strikes are already a threat; through disengaging ministers from direct involvement in negotiations, increasing the level of knowledge about the advantages of ADR, and improving the possibility of enforcing the award given by an arbitration tribunal. These measures would not only enhance relations between academics and technical workers but would also enhance the coefficient of stability and growth of the country's higher education.

### **Research Objectives**

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

### **Research Questions**

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

### **Significance of the Study**

It is necessary to create a healthy working environment in every industrial relation. The relevance of arbitration as a form of dispute resolution vis-à-vis the current practice of litigation in Nigeria cannot be over-emphasized. The relationship between the employees' union and the employer, most especially the government being the employer of civil servants, is continuously taking a hostile dimension if not effectively handled, and is capable of crippling the entire labour sector of the Nigerian economy. While acknowledging the fact that disputes in this labour space is unavoidable, this study however, provides an avenue to expand the settlement options to one which is more adaptable to modern trends.

### **Scope and Limitations**

A trade union represents the interest of her members at every time. It is a right recognized under the Nigeria law. However, this research work focused critically on the performance of academic staff of universities as a trade union and how trade disputes can be resolved internally and externally without forming a parallel association and without resolving to strike which will



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

### **Theoretical Underpinning**

The theory that supports ADR is Conflict Resolution and Interest-Based Negotiation theory. These theories also suggest that it is not efficient to approach a conflict with a litigious manner as this would only escalate the conflict.

**Conflict Resolution Theory**, the model established by Johan Galtung and other conflict scholars, finds that while conflicts are undeniably a natural part in intergroup interactions, a variety of resolutions can be employed safely for aiming to harm the counterpart. ADR is in agreement with this theory because it provides for random, that is, non-connections such as mediation or conciliation that aims for the common cause, particularly in labour relations where parties need to deal with each other. ADR is intrinsically integrated with Conflict Resolution Theory because the principal goal of ADR is to shift the disputants from an adversarial orientation to a cooperative one. For example, mediation and conciliation centre on the parties' interests and needs while minimising the aspects that make the two parties different. Where conflict arises, Conflict Resolution Theory supports the view that a settlement as a win-win rather than a win-lose scenario, which is expected when the legal approach is taken to settle the conflict in the dispute between ASUU and the federal government. Mediation for instance can be used to solve some of the root problems such as funding, staff welfare, and academic freedom as the parties work to maintain the continuity of the ASUU and government relationship.

The Interest-Based Negotiation method by Fisher and Ury in the book *Getting to Yes* published in 1981 affirms the idea of focusing on or building interests to be met rather than positions to be taken. Within the framework of the trade dispute, this is possible; ASUU and the government can concentrate on such academic objectives as the overall improvement of the quality of education instead of adversative requirements like the hike in salaries for teachers or the change of certain policies. This is especially so in Mediation and Negotiation where the key facilitators help parties to move away from their fixed standpoints. For instance, ASUU may be advocating for better funding, and likely better pay while the government responds to the issue of budgets. Because decision makers in an ADR process work to find common ground, such as enhancing the quality of the Nigerian system of higher learning, this work can reveal ways of having the interests of both parties met. Based on the Interest-Based Negotiation Theory, this paper has considered an account of how disputes in labor relations can be solved when the identification of common interests is important. It is especially helpful to be applied in Nigeria where animosity between the organized labor and government is well-known to deepen strike actions.

### **EMPIRICAL REVIEW**

A review of relevant literature gives an indication of the use and success of ADR in labour relations. This section presents a synthesis of prior empirical research and case investigations, with focus on ADR as a tool in the settlement of trade disputes, particularly in the ASUU and Nigerian government trade dispute.



Adeola and Olatunji (2020) adopted a cross-sectional survey of 120 participants, of which 40 are union representatives and the other 40 are legal practitioners, to emulate the duration and cost differences of both ADR and litigation in labor disputes. Accordingly, the study showed that arbitration finalized the disputes in an average time of six months, while a court case took on an average of two years. And mediation was even faster – on average, it took three months. Likewise, costs relevant to ADR were 40% lesser than costs of litigation and therefore can be considered as a suitable practice to use in the resolution of trade disputes. Long-term industrial relations were the focus of an empirical investigation by Eke (2022) on ADR. Based on interviews with 50 labour union members and government officials the study established that ADR processes with the focus on mediation had helped bring about improved relations between disputants. Clearly ADR was more appropriate in the context of labor relations than litigation as the latter provided for more hostility and animosity between the parties, something that is not helpful where dynamics of relation are critical as in the case of labor relations.

A work by Fashina (2021) on the case of the 2012 ASUU strike also looked at the possible application of ADR to solve labour issues. The study used documents to review the negotiations and conducted other interviews to the ASUU officials and government officials. As identified from research studies, adjudication attempts made at the onset of the strike did not succeed as people did not trust the middle person and did not find him/she neutral; however, the conflict could have been avoided if structured arbitration was defined with clear processes leading to structured patterns and necessary procedures like the strike. This brings into limelight the need to encourage more institutions to adopt the appropriate regulatory instruments for ADR programs in labor related disputes.

One is the NICN's ADR center as a significant form. About 200 labour disputes were taken to NICN ADR center for mediation and conciliation between 2015 and 2020. The NICN (2021) report showed that 65% of these cases were settled before six months, out of court. However, case reports could not include disputes where ASUU was involved, seemingly a low level of utilization of ADR procedures in industrial relations issues within the educational sector. Ogunleye (2020) conducted a cross-sectional examination of the deployment of ADR in Nigeria and South Africa. Of the labour relations dispute cases that were taken to the South African Commission for Conciliation, Mediation and Arbitration (CCMA) between the period of 2017 to 2020, 78% were resolved. The study predicted this success to the strong institutional support, biased mediators and set-down ADR processes touching on labor issues. However, Nigeria ADR system does not receive the same level of utilization because it has little statutory support and is unevenly applied.

An analysis of existing empirical data shows that stakeholders have insufficient knowledge and awareness of ADR processes. Adeola and Olatunji (2020) also revealed that 72% of the union representatives and 68% of the government officials had insufficient knowledge of ADR processes. This lack of awareness just hinders the inclination of parties to attempt to look for other forms of ADR. Through survey interviews with leaders of labour unions, Fashina (2021) noted that the participation of ministers compromises the trust that the ADR process deserves. Some respondents pointed out that arbitration panels appointed by the Minister of Labour were not neutral, which questioned the legitimacy of ADR decisions.

Using case analysis, Eke (2022) reviewed 30 awards made by the IAP between 2015 and 2020. Out of these awards, only half of them work as the IAP does not have the structure to force people to follow through. This weak enforcement programme reduces the expectation of parties





to ADR as a reliable resolution technique. Although the use of law helped address the immediate concern, camaraderie between ASUU and the government became even further strained. Mediation and conciliation are two of the most common techniques known by scholars including Fashina as better ADR mechanisms that could have yielded a more desirable solution. If implemented with the culture of dialogue and an understanding of the adversarial position held by the other party, the ADR processes could have brought the strike to a close earlier without the direct and indirect consequences on students, lecturers, and the education sector.

### **Critical Perspective of the Literature**

The reviewed literature supports the fact that ADR operates in the labour dispute but also captures structural impediments to its deployment in Nigeria. The Trade Disputes Act provides the Minister of Labour to oversee certain categories of ADR approaches which is not suitable, as it defeats the objective of neutrality/independence of procedures. Most of the authors studying the ADR concept have stated that non-interference by ministerial officials is critical for ADR. Lack of awareness regarding the functioning of ADR instruments such as union and government officials prevents ADR's implementation. Ogunleye (2020) opined that increased awareness campaigns towards certain populace might help fill the gap. Lack and unwillingness of enforcing arbitral awards detracts parties into accessing ADR solutions. Decreasing the likelihood of the non-enforcement of awards is a critical requirement for ADR's success: improvements to the legal underpinnings of the system are called for.

Of course, previous literature offers important information on the best and worst practices in ADR, but there are some limitations. A critical lack of empirical evaluation on the effectiveness of ADR in disputes of Nigerian labor has been established. The study's limitation is that it included only a survey and should be supplemented with case studies and interviews with stakeholders in the future. Where the Nigerian ADR framework looks ostensibly unfavourable and unsustainable, few similarities are made with other jurisdictions that host efficient ADR systems. Perhaps, it would be possible to learn from such best practices in an effort to make changes in policy reforms across the country. The idea of a sort of an ADR process that has some features of a classical legal trial does not seem to have been investigated adequately.

### **METHODOLOGY**

The research method used in this work is doctrinal legal research that undertakes analysis of statutes, case laws and literature to determine the legal regime governing ADR in trade disputes. The doctrinal approach is helpful for providing criticism of the existing laws, pointing to the existing legal gaps, and offering changes. As the study is basically descriptive, there were no participants to be harmed in the process. Nonetheless, the study only adopts secondary legal data in the form of case law, statutes, and commentaries by scholars and jurists. In the data gathering process the authors did a legal analysis of the primary data which comprised the Trade Disputes Act and the case laws which included *National Union of Electricity Employees v. Bureau of Public Enterprises*. Peer-reviewed articles and trade journals were included and only articles which were published in the duration of five years prior to the current year were considered. Due to the nature of the study, which aims to find out the trends, challenges, and prospects of ADR in international trade disputes, only articles that fit this criteria were



scrutinized. The legal infrastructure and institutional arrangement for ADR were assessed using content analysis.

## **RESULTS**

The study's analysis highlights the following key findings regarding the application of Alternative Dispute Resolution (ADR) in resolving trade disputes involving the Academic Staff Union of Universities (ASUU):

### **Advantages of ADR in Trade Differences**

Arbitration and mediation are less expensive than litigation and therefore should be considered suitable to resolving these disputes in a country such as Nigeria. ADR processes are quicker than the novitiation of legal proceedings hence eliminate lengthy delays similar to the strikes. ADR thus provides the opportunity for the parties in dispute to flush out specific processes that may emphasize cooperation as a key manner in which disputes should be addressed.

### **Difficulties that Arise When They Are Implementing ADR**

What is more, the Trade Disputes Act gives a great deal of discretionary power to the Minister of Labour, and that may not be a positive thing for the neutrality of ADR. Lack of awareness regarding mechanisms of ADR by the stake holder, as well as government officers and union members put a restriction towards its use. This paper will argue that the weakness in the enforcement mechanisms for arbitral awards reduces their finality in the resolution of disputes.

### **Case Analysis**

The crisis that led to the shutdown of universities by ASUU in 2022, was addressed through litigation at the National Industrial Court of Nigeria and as this has shown the inefficiency of the legal process. Although the court compelled ASUU to return to classrooms, the process only escalated enmity between the union and the government, and this was in fact good to draw a contrast of peaceful methods such as ADRs.

## **DISCUSSION**

The findings of this study explain some important facets that explain the nature of ADR in addressing the labour relation disputes involving ASUU in Nigeria while highlighting its advantages and disadvantages. This interpretation centres on the consequent of ADR mechanisms, its hassles and the overall effects on industrial relations in the Nigerian academic sector. Of all the studies' findings, the possibility of saving cost through ADR as opposed to lawsuit is one of the most important observations. As it is observed in practically all Nigerian labour disputes, litigation entails great delay, numerous processes, and high legal costs which many a time exert pressure on the resources of labour organisations and most employers. Arbitration and mediation being two primary types of ADR mechanisms are faster and less expensive than reaching justice through the courts. This is because, through ADR the parties are able to sit and agree on the best solution to the problem, thus reducing on costs that are incurred in court.



For instance, disagreement between ASUU and the federal government on welfare and financing could be settled by reaching a mediation agreement that would save both parties a great deal of money. Also, the common-sense partnership of the arrangement is that it saves the union a lot of lost funds, which could go toward developmental activities instead of being spent on protracted lawsuits. The study also points to one of the most obvious strengths of ADR, and that is the short time taken to sort out the conflict when compared to the legal approach. In the case of ASUU strikes, long strikes will always have a negative impact on the flow of the Academic calendar, hence a break -neck to students and institutions. For instance, the 2022 ASUU strike which spanned from February to October caused lots of disruption to students' promotion and the growth of the education sector in Nigeria.

Alternative dispute resolution mechanisms also include arbitration and conciliation and include procedures that take less time to resolve the issues than it would take to involve industrial actions. Unlike litigation where the process is controlled by certain standard procedures, ADR is free and enables parties to adopt a number of processes depending on circumstances prevailing. This flexibility ensures that different opinions of students, or any other stakeholders are considered in the development of the corporate agenda. The third main discovery is that ADR enhances the relationship of force between the disputing parties. In my view, while litigation is plainly and irretrievably adversarial; on the other hand, ADR methods are cooperative and understanding. This aspect is peculiarly vital in labour relations analysis since unions and employers are in a constant interaction in order to sustain industrial stability. For instance, in the case of ASUU, positive and friendly working relations with the government should be maintained in order to solve some fundamental problems like funding, salaries and working conditions often and again. Mediation and arbitration involve one assisting the two parties in coming to a centred decision to reduce hostility between the two parties. It also prevents future discord and is a more beneficial environment in terms of academic concerns.

However, the study confirms some weaknesses that hinder the efficient deployment of ADR in ASUU related disputes. The Trade Disputes Act also provides substantial measures of power to the Minister of Labour; the Minister is empowered to refer trade disputes to arbitration panels and to review arbitral awards. This provision is intended to ensure that the resolution process is simplified with reference to ADR mechanisms; the intention is, however, defeated in most cases due to lack of neutrality and independence. Some parties may feel that decisions which were influenced by the action of the minister will be biased, hence affecting the confidence that they have on ADR. The enforcement of arbitral awards remains a critical challenge in international investment arbitrations. That is why, introducing the healthy 'monster', the treaty presupposes that without strong-enforcement provisions, parties will simply ignore the awards, and unions or employers will need to apply to court to exert pressure on the recalcitrant party. This not only negates the economies of time and costs inherent in the ADR processes. Lack of information about ADR by the labor-unions and government officials reduces its use in solving labor disputes. Lack of well qualified mediators as well as arbitrators also pose a major challenge towards efficient conflict solving.

In this regard, the outcome of this study has brought to the fore the imperatives of addressing the non-automated ADR in Nigeria's academic environment. Most often, any conflict with ASUU will have a wide-ranging effect on students, parents, the public at large among other people. Through ADR as the major mode of conflict resolution, the federal government and ASUU can avoid the losses, which arise from protracted strikes and legal cases. For instance, mediation could solve funding disputes early enough so that universities operate without





interference. Likewise, it shall be applied to such areas of disagreement as salaries and working conditions so that fair and final decision could be reached without a strike. These findings demonstrate the capacity of ADR in changing the existing industrial relation system of Nigeria. ADR can enhance the quality of labor relations through other more friendly, and cooperative approaches to conflict resolution. This is especially the case given the persistence of industrial actions in Nigeria's turbulent labor market. If properly administered, ADR could probably be used as a reference framework to solve other forms of disputes including those in health, transport, and power. Due to the factual and attractive features of ADR such as flexibility, cost, and concern over the relationship, the Nigerian work force stability and productivity could be enhanced through the use of ADR.

### Comparison with Previous Research

The conclusions are consistent with those of Adeola (2021) and Ajayi (2019) who pointed out that ADR is more effective than going to court in labor disputes because it is quicker and takes less time. Nevertheless, this investigation contributes to this research domain to some extent because it critically assesses the institutional factors that militate against ADR outcomes in Nigeria. In contrast with prior work, it includes actual prospective policies with regard to the aforementioned problems, for example, constraining the authority of ministers and enhancing effectiveness of sanctions. A more general meaning of these observations is to indicate how ADR may reshape industrial relations in Nigeria.

The incorporation of ADR in labor union structures can refer to grievances, which are effectively resolved in order to spare society from extensive strikes like the ASUU 2022 strikes. It is important in strengthening industrial relations between unions and employers, increasing efficiency and implementing national growth.

### Obstacles to ADR implementation in Nigeria

While ADR has significant potential, several barriers hinder its widespread adoption in the Nigerian context:

- **Cultural Resistance:** Most of the stakeholders approach problem solving with litigation and strikes as agreed means of addressing the disagreement. It is thus a deeply embedded culture and will only change through advocacy for the right type of culture.
- **Resource Constraints:** Training professional arbitrators and setting up efficient ADR centres entails huge capital investment that can be difficult to come by especially in the present general paradigm of stretching resources.
- **Corruption and Bias:** Corruption has a strong negative attitude towards ADR outcomes mainly in cases concerning influential employees in the labour and judicial sectors.



## CONCLUSION

This research work critically analysed the effectiveness of Alternative Dispute Resolution (ADR) in the settlement of labour disputes with special reference to the Academic Staff Union of Universities (ASUU) in Nigeria. It pointed out that ADR structures of attending to disputes through arbitration, mediation and conciliation are more advantageous than the conventional lawsuit approach, bearing in mind the cost, time and friendship factor. All these attributes are very useful in areas like education where strikes by TEI's and other players take long and adversarial legal processes harm students' calendars.

Nevertheless, many challenges are inherent in using ADR in Nigeria. Notable among these are: Excessive discretionary power of the Minister of Labour vested under the Trade Disputes Act results in ADR processes being highly sympathetic leading to bias. However, what makes and perpetuates ADR ineffective is the lack of strong enforcement regime to support the arbitral awards. In addition, relative ignorance and receptiveness of ADR in labor unions, government agencies, and other interested parties perpetuate its restricted utilization.

## IMPLICATIONS FOR PRACTICE, POLICY, AND FUTURE RESEARCH

1. **Practical Implications:** The findings emphasize the need for labor unions and government institutions to prioritize ADR as a first-line strategy for resolving disputes. By integrating ADR into the statutory dispute resolution process, parties can avoid prolonged strikes and the hostility often associated with litigation. This practice will not only stabilize the academic environment but also foster better labor relations.
2. **Policy Implications:** Policy reforms are critical to addressing the systemic challenges identified in this study. Limiting the Minister of Labour's discretionary powers and ensuring that ADR awards are enforceable without ministerial approval will enhance the neutrality and reliability of ADR mechanisms. Additionally, establishing independent ADR bodies with statutory backing can ensure impartiality and reduce political interference in labor disputes.
3. **Future Research Directions:** This study provides a doctrinal analysis of ADR in labor disputes, highlighting key gaps in Nigeria's legal framework. However, empirical research is needed to assess the practical outcomes of ADR in resolving ASUU disputes and other labor conflicts. Future studies could focus on evaluating the effectiveness of ADR processes through interviews and case studies involving stakeholders, including union leaders, government officials, and arbitrators. Comparative studies with other jurisdictions that successfully implement ADR in labor relations could also provide valuable insights for policy development.



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