



REINFORCING THE NORMATIVE CHARACTER OF COLLECTIVE AGREEMENTS WITHIN THE SPECTRUM OF INTERNATIONAL LABOUR STANDARDS

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Abstract

This article articulates diverse constructions of collective agreement in domestic labour regulations in Nigeria as well as under international labour standards. It highlights the nuances of the various constructions. It also espouses the need for the enforceability of collective agreements by reinforcing the normative character of collective agreements within the spectrum of international labour standards. By juxtaposing the prescriptions of domestic labour regulations in Nigeria, on the one hand, with international labour standards and other closely linked prescriptions of the International Labour Organisation, on the other hand, this article illustrates the deficits of the domestic labour regulations on collective agreements in Nigeria. This is largely occasioned by the glaring disparities between the domestic labour regulations in Nigeria and international labour standards. The article found, inter alia, that the chequered evolution of the enforceability of collective agreements in labour law jurisprudence spanned from the era of non-enforceability to the era of enforceability by the courts of law; the progressive approach of the National Industrial Court of Nigeria in enforcing collective agreements, without extraneous consideration, aligns with the exigencies of emerging global best practices and contemporary labour law jurisprudence. The article also made several recommendations for protecting the normative character of collective agreements through enforceability in the courts of law without extraneous consideration.

Keywords: Collective Agreement; Employer; Employee; Trade Disputes; International Labour Standards; Workplace.

1. Introduction

Collective agreements in a workplace are meant to foster industrial peace and harmony.¹ Collective agreements evolve on the springboard of collective bargaining to address a vast array of issues relating to the cost-of-living adjustments, wage differentials and adjustments, health insurance plans, redundancy plans, working time, discharge procedure, occupational health and safety, technological changes, job security, training and so on. Oftentimes, these issues are wrapped in conflicts that arise in the context of work. These conflicts, which are intrinsically inevitable, often erupt from the interaction and interface of employers, employees and their various trade unions in the running and governance of the workplace. Generally, these conflicts are perceived as devastating, abnormal, dysfunctional and detestable.² However, this cannot be considered a foolproof postulation, in that, conflicts have aided the fashioning of a formidable workplace embellished with improved terms of

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¹ EA Kenen, 'Collective Agreements and their Legal Status in Nigeria: The Current Trends' [2021](10) *Benue State University Law Journal*, 30.

² Francis C Anyim, Dumebi A Ideh and Rosemary A Danesi, 'The Legal Framework of the Right to Strike in Nigeria' [2017](1)(1) *Ilorin Journal of Human Resources Management*, 17.

employment and favourable conditions of work. In a legally cognisable form, conflicts in the workplace are labelled “trade disputes.”³

The concept of “trade dispute” holds several implications for labour law jurisprudence. First, the resolution of trade disputes is a major preoccupation of labour law.⁴ The role of labour law, in seeking to prevent the eruptions of trade disputes as well as in seeking to resolve erupted trade disputes in the workplace, is an offshoot of the general function of law in guaranteeing peaceful co-existence in the broader society. The stability, survival and perpetuation of the workplace are dependent on how trade disputes are managed as well as the efficacy of the mechanisms or procedures for the resolution of trade disputes in attaining set objectives. Drawing from this, it has been observed that for the provisions of the Trade Disputes Act 1976 to become applicable or operational, the subject of the contention between parties in industrial relations must be a trade dispute as conceived within the gamut of domestic labour regulations in Nigeria.⁵ Conflicts outside the ambit of trade disputes are outside the contemplation of the Trade Disputes Act 1976.

Second, the Trade Disputes Act 1976, *inter alia*, outlines the procedures or mechanisms for the resolution of trade disputes. These procedures or mechanisms, which are essentially the same for the workplace in both the public and private sectors of the economy, are the legitimate and cognisable windows open to disputants for the ventilation of grievances in the workplace. The existence of procedures or mechanisms for the resolution of trade disputes does not automatically translate to harmonious industrial relations, or better still, the expediency of such procedures or mechanisms. It is one thing for the procedures or mechanisms for the resolution of trade disputes to exist, and it is completely another thing for the procedures or mechanisms for the resolution of trade disputes to be efficient. It is of utmost importance for there to be no procedures or mechanisms for the resolution of trade disputes at all than for the existing procedures or mechanisms for the resolution of trade disputes to be inefficient.

For most developing nations, the existence of inefficient procedures or mechanisms for the resolution of trade disputes remains a major concern for domestic labour regulations. Within the specific context of Nigeria, this challenge is reflected in a multi-tiered process for the resolution of trade disputes that is slow, lengthy, and prone to political manipulation or interference of some sort. This undermines the credibility and independence of the procedures or mechanisms for the resolution of trade disputes under the Trade Disputes Act 1976. The adverse impacts of the existence of inefficient procedures or mechanisms for the resolution of trade disputes include protraction and escalation of trade disputes; prevalence of industrial actions and high rate of the incidence of wildcat strikes; loss of productivity as a result of disruptions; strained employer-employee relations, economic loss to workers, employers, and the State; undermined voluntarism and resort to the mechanisms for collective bargaining; and loss of interest in existing procedures or mechanisms for the resolution of trade disputes.

A trade dispute can be either constructive or destructive. This depends on how the trade dispute is managed. Constructive trade disputes are grievance-based with potential for reform or improved relations, and often lead to amicable resolution through legally cognisable mechanisms for the resolution of trade disputes. The constructive management of trade disputes is a precursor of reform or positive change in the workplace. Incidentally, it takes

³ Trade Unions Act 1973 (as amended), s 54; Trade Disputes Act 1976, s 48(1)(b). Cf section 7(1)(i) of the National Industrial Court Act 2006, which used the expression “labour disputes,” and section 254C(1) of the Constitution of the Federal Republic of Nigeria 1999, which used the expressions “trade union disputes,” and “employment disputes.”

⁴ Clara C Obi-Ochiabutor, ‘Trade Disputes Resolution Under Nigerian Law’ [2002-2010](9) *Nigerian Juridical Review*, 71.

⁵ *Bureau of Public Enterprises v National Union of Electricity Employees* (2003) 13 NWLR (Pt 837) 382; *Adams Oshiomhole & 1 Anor v Federal Republic of Nigeria* (2007) 8 NWLR (Pt 1035) 58.

efficient procedures or mechanisms for the resolution of trade disputes to attain constructive management of trade disputes in the workplace. As such, inefficient procedures or mechanisms for the resolution of trade disputes constitute a major reproach, deficit or gap in labour law that hampers the attainment of set objectives.

Inefficient procedures or mechanisms for the resolution of trade disputes also constitute a mockery of legislative functions as well as efforts in formulating effective and efficient laws and regulations for the running and governance of the workplace. Destructive trade disputes are characterised by protraction of conflicts on account of hostility, resistance to legally cognisable mechanisms for the resolution of trade disputes, and disregard for procedural safeguards. Destructive trade disputes threaten the very essence of labour law, which guarantees industrial harmony, and also undermine the utility of trade unions as constructive actors within the spectrum of industrial relations.

Third, a trade dispute can either be declared by parties thereto or be apprehended by the Minister of Labour.⁶ Where a trade dispute exists by the declaration of parties or is apprehended by the Minister of Labour, the provisions of the Trade Disputes Act 1976, relating to the settlement of trade disputes, apply to the declared or apprehended trade dispute.⁷ To declare a trade dispute means to state officially or publicly, by whatever means, that a trade dispute exists between the parties thereto. By this, a notice to strike issued by a workers' trade union to an employer, indicating the intention to invoke a strike if certain demands are not met or if the employer does not make adjustments within a specified timeline, suffices as a declaration of a trade dispute. The issuance of the notice to declare or embark on strike by a workers' trade union often follows the breakdown of dialogue, negotiation or collective bargaining with the employer of the aggrieved trade union.

Not all trade disputes are overt. Even in the absence of express declaration of a trade dispute or confrontation between warring parties in the workplace, a trade dispute can arise from non-verbal, indirect or passive conduct. Such a trade dispute constitutes an early warning signal requiring prompt recognition and intervention to avoid conflagration of the workplace as well as the deterioration of harmonious industrial relations. This should be explicitly recognised by domestic labour regulations as a typical situation for the Minister of Labour to arrest a trade dispute.

Apprehension of a trade dispute connotes the administrative and quasi-judicial powers of the Minister of Labour to bring a trade dispute under the jurisdiction of the Minister of Labour and also triggering the activation of the formal mechanisms or procedures for the resolution of trade disputes, and in certain cases, prohibiting the invocation of strike, lockout or any other form of industrial action until the formal mechanisms or procedures for the resolution of trade disputes are exhausted by parties. The provisions of section 5 Trade Disputes Act 1976 have been severally invoked to address the trade dispute between the Academic Staff Union of Universities and the Federal Government of Nigeria. This means that even in the absence of a formal invitation by parties for intervention, the Minister of Labour may, *suo motu*, intervene in any trade dispute, in the interest of public order and the stability of the workplace. This ministerial power is exercised whenever it is in the public or national interest to do so.

In most cases, this ministerial power is exercised in respect of trade disputes in the workplace in critical sectors of the economy, and before the trade disputes conflagrate and escalate into full-blown strike action or any other form of industrial action. Where the Minister of Labour apprehends a trade dispute and activates any of the formal mechanisms or procedures for the resolution of trade disputes, parties to such trade disputes are prohibited from resorting to

⁶ Trade Disputes Act 1976, s 1(1) and s 5.

⁷ Ibid s 1(1).

strike action or any other form of industrial action while the trade dispute is being resolved.⁸ The exercise of the ministerial power of apprehension of trade disputes is primarily intended to prevent the escalation of conflicts and promote the speedy settlement of trade disputes in the workplace.

Where a trade dispute is apprehended by the Minister of Labour, the Minister of Labour may, in writing, inform parties or their representative of the fact of the apprehension of the trade dispute and the proposed steps intended to explore to resolve the trade dispute.⁹ Such steps may involve the use of mediation,¹⁰ conciliation,¹¹ inquiry or enquiry before a Board of Inquiry,¹² arbitration before the Industrial Arbitration Panel,¹³ and litigation at the National Industrial Court of Nigeria.¹⁴ These options are subsumed as the *non-voluntary grievance procedures or mechanisms*, which are anchored on legalism, a State-centric approach where industrial relations and trade disputes are governed primarily by formal legal rules, procedures, and adjudicatory mechanisms through the courts, and other informal proceedings before statutory bodies.

On the other hand, where a trade dispute is declared by the parties thereto, the parties are obliged to first invoke or make resort to the existing or pre-determined means for the settlement of trade disputes in such workplace. The most common existing or pre-determined means for settling trade disputes in the workplace is the use of dialogue, negotiations or collective bargaining and the resultant collective agreements. Participation in the voluntary grievance procedures or mechanisms is not mandated by law or does not involve any form of compulsion by the State. Rather, it is based on the mutual agreement of the parties involved.

In addition, the voluntary grievance procedures or mechanisms are interest-based, cooperative, non-coercive, and focus on maintaining harmonious employer-employee relations rather than assigning blame for the dissatisfaction forming the fulcrum of a trade dispute. To a large extent, the voluntary grievance procedures or mechanisms are anchored on the closely linked concepts of voluntarism and social dialogue, which formed part of the colonial legacy bequeathed to Nigeria by the British colonial overlords whose industrial relations was largely based on the notion of *laissez-faire* or minimal interference by the State. Voluntarism and social dialogue are the most significant stimuli for collective bargaining and the resultant collective agreements. The very notion of collective agreement implies a contract anchored on voluntarism attained through negotiation of some sort.

2. Meaning and Nature of Collective Agreement

Basically, collective agreements are the by-product or result of successful collective bargaining. This means that in the absence of collective bargaining, there can be no form of engagement that may give rise to collective agreements. An effective collective bargaining process is a key element of industrial democracy.¹⁵ Collective agreements usually concern terms and conditions of employment or any other matter of mutual interest between the parties.¹⁶ In some jurisdictions, especially in the United States, the expression “collective bargaining agreement” is often used interchangeably with collective agreement.¹⁷ In Turkey,

⁸ Trade Disputes Act 1976, s 18(1)-(2).

⁹ Ibid s 5(1).

¹⁰ Ibid s 4(2).

¹¹ Ibid s 8(1)-(3).

¹² Ibid s 33(1)-(5).

¹³ Ibid s 9(1)-(7).

¹⁴ Ibid s 14(1)-(6) and ss 20-32.

¹⁵ Josephine Adejoke Adebayo and Ajibade Toluwalase Toyosi, ‘Collective Bargaining and Collective Agreement in Nigeria: Bindingness and Enforceability’ [2021](8)(3) *Journal of Commercial and Property Law*, 68.

¹⁶ Arturo Bronstein, *International and Comparative Labour Law: Current Challenges* (International Labour Organization 2009) 246.

¹⁷ United States’ National Labor Relations Act of 1935, ss 151-169.

collective agreements are referred to as “collective labour agreements.”¹⁸ A collective agreement has been construed as any agreement for the settlement of disputes relating to the terms of employment and physical conditions of work concluded between an employer or a group of employers and one or more trade unions or organisations representing workers.¹⁹

In a way, the expression “*any agreement for the settlement of disputes*” in the above construction suggests that the collective agreements may assume any form, viz., oral, in writing, or partly oral and in writing. This is predicated on the fact that agreements, as generally understood within the ambit of law, may take any of these forms. However, considering the peculiarities of collective agreements and the contentious circumstances under which most collective agreements are concluded, it seems imprudent to allow for collective agreements to assume an oral or partly oral form. More so, contractual arrangements under labour law enjoy some peculiarities while sharing several other similarities with contractual arrangements under the general contract. This clarification makes the above construction of collective agreement somewhat narrow. As such, collective agreements have been construed, under the jurisprudence of the International Labour Organisation, as follows:

*...all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more representative workers' organizations, or, in the absence of such organizations, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulations.*²⁰

The above construction of collective agreement aligns with article 4 of the Right to Organise and Collective Bargaining Convention 1949 (No. 98) which mandates State Parties to outline measures appropriate for necessary national conditions to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations with a view to regulating terms and conditions of employment by means of collective agreements.²¹ By adopting the expression “*all agreements in writing regarding working conditions and terms of employment*,” this construction also brings to perspective the necessity for collective agreements to be couched in writing or written form. For an agreement to amount to a collective agreement, so as to create entitlements for the parties thereto, such agreement must be reduced in writing, properly couched and signed by the parties concerned.²² In other words, the bargaining process must be documented, and the issues agreed on must be reduced to writing in reflection of the agreement of the parties.²³

The requirement for collective agreements to be in writing ensures clarity and certainty of agreed terms, prevents further trade disputes that may arise over the content or interpretation of collective agreements, enhances the evidentiary value and registration of the collective agreements, and provides a permanent record of the understanding between the parties in the course of collective bargaining. The tangible nature of the collective agreements makes it difficult for the agreed terms to be dispelled by any of the parties thereto. While collective agreements are analogous to private-law contracts,²⁴ the requirement for collective

¹⁸ Constitution of the Republic of Turkey (as amended on 23rd July 1995), arts 54 and 177.

¹⁹ VA Odunaiya, *Law and Practice of Industrial Relations in Nigeria* (Passfield Publishers 2006) 325.

²⁰ Collective Agreements Recommendation 1951 (No. 91), para 2(1).

²¹ See also article 5(1) of the Collective Bargaining Convention 1981, which mandates State Parties to evolve measures adapted to national conditions to promote collective bargaining.

²² Kenen (n 1) 35.

²³ Adebayo and Toyosi (n 15) 75.

²⁴ Bronstein (n 16) 5.

agreements to be in writing is a major departure from contracts of employment, which, by law, may take an oral form at the inception²⁵ or a partly oral and partly written form.²⁶ Of utmost importance is the fact that the above construction renders collective agreements a subject-matter of domestic labour laws and regulations of member States of the International Labour Organisation. This gives member States of the International Labour Organisation some sort of leeway in making specific prescriptions for regulating collective agreements as well as the incidences of collective bargaining.

In Nigeria, section 48 of the Trade Dispute Act 1976 defines collective agreement as any agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between an employer, a group of employers or organisations representing workers, or the duly appointed representative of any body of workers, on the one hand; and one or more of trade unions or organisations representing workers, or the duly appointed representatives of any body of workers, on the other hand. Apparently, cognisable bargaining agents that can conclude collective agreements are “an employer,” “a group of employers” or “organisations representing workers” or the “duly appointed representative of any body of workers” and “trade unions” of workers or employers. This construction allows for collective agreements to be concluded between workers’ trade unions *inter se*. However, it is detached and somewhat difficult to envisage the enforceability of such a genre of collective agreements against an employer who is not a party thereto. As in the earlier construction of collective agreement, the statutory definition in the Trade Dispute Act 1976 adopts the expression “*any agreement in writing for the settlement of disputes*,” suggesting that collective agreements must necessarily be for the settlement of trade disputes. However, such an interpretation only holds for the Trade Dispute Act 1976.

Furthermore, section 54(1) of the National Industrial Court Act 2006 defines collective agreement as any agreement in writing regarding working conditions and terms of employment concluded between an organisation of employers or an organisation representing employers (or an association of such organisation) of the one part, and an organisation of employees or an organisation representing employees (or an association of such organisation) of the other part. This statutory definition employs the expression “*any agreement in writing regarding working conditions and terms of employment*” in place of the expression “*any agreement in writing for the settlement of disputes*.” As such, collective agreements falling within the scope of this expression adopted by section 54(1) of the National Industrial Court Act 2006 may or may not relate to those concluded for the settlement of trade disputes.

The statutory definition of collective agreement under section 54(1) of the National Industrial Court Act 2006 is in *pari materia* with the statutory definition proffered in section 91(1) of the Labour Act 1971. Aside from providing a statutory definition for collective agreement, the Labour Act 1971 also makes provisions for circumstances under which a collective agreement may be deployed,²⁷ obligations arising from the collective agreement,²⁸ and the permissibility of night work for women by virtue of a collective agreement.²⁹

From the array of statutory definitions of collective agreement in domestic labour regulations in Nigeria, collective agreements must relate to “terms of employment,” “physical conditions of work” or “working conditions.” These are closely related but distinct concepts in labour law jurisprudence. While “terms of employment” deals largely with negotiable issues in the workplace, “physical conditions of work” or “working conditions” relate to issues largely

²⁵ Labour Act 1971, ss 7(1) and 91(1).

²⁶ *Shena Security Co. Ltd v Afropak (Nig.) Ltd & Ors* (2008) 18 NWLR (Pt. 1118) 77.

²⁷ Labour Act 1971, s 1(2).

²⁸ *Ibid* s 17(1).

²⁹ *Ibid* s 55(5).

shaped by the viability of investment and the prerogative of the employer. “Physical conditions of work” or “working conditions” deal with the tangible, environmental, and material aspects of the workplace that affect the health, safety, comfort, and productivity of workers. These conditions are critical in determining the quality of work, which in turn significantly influences the well-being and performance of workers in the workplace.

Issues falling within the scope of “physical conditions of work” or “working conditions” include building designs, workplace layouts, workstation set-up, safety of construction sites or office buildings, furniture and equipment design and quality, space, temperature, ventilation, lighting, noise level, exposure to heat, dust and vibration, radiation, air quality, availability of safe drinking water and cafeteria for time-off, etc.³⁰ By bringing the expression “physical conditions of work” or “working conditions” within the ambit of the collective agreement, issues falling within the scope of “physical conditions of work” or “working conditions” are considered as negotiable as those falling within the ambit of “terms of employment.” As such, negotiability cannot be used in distinguishing between these labour law concepts.

Contemporary labour law draws on different sources, including constitutions, statutory regulations, collective agreements, international law, and case law.³¹ In most countries, working conditions are the subject of private employment contracts and collective agreements.³² This underscores the increasing relevance of collective agreements in the governance of the workplace as well as employer-employee relations. This is linked to the fact that collective agreements engender labour protection³³ and also augment the deficits of contracts of employment in addressing and catering for contingencies in the workplace.³⁴ Interestingly, the terms of employment and conditions of work, which are rooted in domestic labour regulations and contracts of employment, have been altered or rejigged by various collective agreements subsequently concluded by workers’ trade unions and the employers. This does not in any way vitiate the fact that the relationship between employer and employee is also shaped by contracts of employment.

Aside from the fact that contracts of employment constitute the springboard for employer-employee relations, there is no hierarchical ordering between collective agreements and contracts of employment in the workplace. The sources of normative prescriptions in the workplace are numerous and not organised in a hierarchy. As such, collective agreements remain as compelling as contracts of employment in the regulation of relations in the workplace. Collective agreements and contracts of employment enjoy normative quality and work hand-in-hand in ensuring defined conditions for engagements between employers and employees in the workplace. Today, important terms of employment and conditions of work are increasingly determined by collective bargaining and the accompanying collective agreements. In comparison with contracts of employment, collective agreements often contain improved terms and conditions of work that are a more contemporary reflection of the agreement of parties in the workplace.

³⁰ Ogbole Ogancha O, ‘Repositioning the Regime on Strike Towards the Guarantee of Minimum Service in the Nigerian Workplace’ [2016](6)(1) *Human Rights Review*, 174-175.

³¹ Bronstein (n 16) 4-7.

³² Christine Breining-Kaufmann, *Globalisation and Labour Rights: The Conflict Between Core Labour Rights and International Economic Law* (Hart Publishing 2007) 40.

³³ Susan Hayter and Jelle Visser, ‘The Application and Extension of Collective Agreements: Enhancing the Inclusiveness of Labour Protection’ in Susan Hayter and Jelle Visser (eds), *Collective Agreements: Extending Labour Protection* (International Labour Organisation 2018) 1.

³⁴ Ogbole Ogancha O and Polycarp Arinze Okoro, ‘Critique of Ministerial Interference in Enforceability of Collective Agreements’ [2020](1)(1) *Obafemi Awolowo University Journal of Public Law*, 114; Matthias Zechariah, [2013]6(1) ‘New Frontiers on Legal Enforceability of Collective Agreements in Nigeria’ *Current Jos Law Journal*, 294.

As such, stipulations in contracts of employment which are contrary to collective agreements should be regarded as null and void and automatically replaced by the corresponding stipulations of collective agreements.³⁵ Furthermore, stipulations in contracts of employment which are more favourable to the workers than those prescribed by a collective agreement should not be regarded as contrary to the collective agreement.³⁶ This prevents the insertion of stipulations in contracts of employment that are contrary to those contained in the collective agreements. As such, collective agreements also constitute an important tool for regulating employment relationship. A collective agreement is an indication that the parties were able to reach a *consensus ad idem* in the course of dialogue.³⁷

Previously, questions concerning the cross-border dimension of collective agreements typically arose either when a domestic collective agreement was made to concern work to be carried out abroad, or when the applicability of a domestic collective agreement to workers temporarily working abroad was to be resolved.³⁸ Today, so much has changed with several trends restructuring the subject-matter of collective bargaining and the narrow protective ambit of collective agreements. Labour law has long assumed a transnational dimension, impacting virtually all aspects of industrial relations, including the notion of collective agreement. One way this plays out is in the broadening of the spectrum of collective contractual arrangements and protection of rights and interests in the workplace by labour law. For instance, it has been shown that the crew itself can bring about the signing of a collective agreement by resorting to strike action if necessary, or an agreement can be the result of action by a third party, such as dockers, who might refuse to load and unload a vessel as a pressure tactic.³⁹ All this may happen in a port other than the one where the ship is based or in a country other than the one where the vessel is registered.

Hence, the signing of a collective agreement under the above conditions may lead to various types of litigation, the most relevant being in cases where workers seek to bring about its implementation, for example, if owners do not fulfil their obligations in terms of the wages established in the agreement.⁴⁰ This indicates that the notion of collective agreement is not static. As such, there is a need for labour regulations to remain adaptive to the ever-changing scenarios in which collective agreements can be deployed in the workplace. Collective agreements may be concluded for either a definite or an indefinite duration. In the former case, there may also be clauses for renegotiating the collective agreements from time to time. Like other forms of contract, collective agreements are plagued with vast challenges, amongst which the challenge relating to the enforceability of collective agreements stands out.

3. The Enforceability of Collective Agreements

The enforceability of collective agreements, which is linked to the legal effects of collective agreements, depends on different national regulatory frameworks and industrial relations practices.⁴¹ Enforceability guarantees the implementation of collective agreements. Conversely, non-implementation undermines the enforceability of collective agreements. Incidentally, non-implementation of collective agreements has been identified as the major cause of strikes.⁴² In some jurisdictions, the implementation of collective agreements is

³⁵ Collective Agreements Recommendation 1951 (No. 91), art 3(2).

³⁶ Ibid para. 3 (3).

³⁷ Ibid.

³⁸ Ulla Liukkunen 'The ILO and Transformation of Labour Law' in Tarja Halonen and Ulla Liukkunen (eds), *International Labour Organization and Global Social Governance* (Springer 2021) 38-39.

³⁹ Laura Carballo Pineiro, *International Maritime Labour Law* (Springer-Verlag 2015) 256.

⁴⁰ Ibid.

⁴¹ Bronstein (n 16) 6.

⁴² Ezeagba Emenike Charles, 'Effects of Strike Cost on Economic Development in Nigeria' [2014](3)(11) *An International Journal of Arts and Humanities*, 29-30; Tolu' Odupe, 'Right to Strike in Nigeria: A Simple Analysis' in Yemi Akinseye-George, Samuel Osamolu and AO Oluwadayisi (eds), *Contemporary Issues on Labour Law, Employment and National Industrial Court Practice and Procedure: Essays in Honour of Honourable Justice Babatunde Adeniran Adejumo*, OFR

guaranteed through access to specialised labour courts; in others, to ordinary courts; in others, to alternative institutions; in still others, there is no such access at all.⁴³ In the United Kingdom, collective agreements are generally considered not to be legally binding, in that, it is presumed the parties thereto do not intend the agreement to be legally enforceable. This resonates with the position at Common Law, where collective agreements are regarded as gentleman's agreements only binding in honour.⁴⁴ This makes the breach or violation of collective agreements non-justiciable. The preference for individualism over collectivism at the material time also enhanced the hostility of English judges towards collective agreements and the enforceability of collective agreements.⁴⁵

At Common Law, the prime reason for stripping collective agreements of the toga of enforceability is the absence of the intention to create legal relations among parties.⁴⁶ The displacement of the intention to create legal relations is predicated on the fact that collective agreements are a product of trade unionists' pressure.⁴⁷ Afterwards, the Common Law's position was slightly varied, through judicial intervention, permitting the enforceability of collective agreements where the terms of the collective agreements are, expressly or impliedly, incorporated into the contract of employment.⁴⁸ By virtue of statutory intervention, the enforceability of collective agreements was again reinforced where the collective agreements are couched in writing and containing provisions stating that the parties thereto intend to legally enforce the same.⁴⁹ In other words, for a collective agreement to create legal obligations, it must be in writing and expressly stating an intention to be legally binding. Aside from the requirement for the collective agreements sought to be enforced to be in writing, there is no hard and fast rule on the rendition of the enforceability clause.⁵⁰ Rendition on the enforceability of collective agreements may relate to a part or the entirety of the collective agreement.⁵¹

In Nigeria, the status of collective agreements have been transient, spanning from the era of non-enforceability, reflecting in the construction of collective agreements as "*gentlemen's agreement*,"⁵² "*extra-legal document totally devoid of sanctions*,"⁵³ "*agreements binding in honour*,"⁵⁴ "*contracts of imperfect obligations*,"⁵⁵ and "*manifesto for labour relations*,"⁵⁶ to the era of enforceability in the courts of law.⁵⁷ Initially, domestic courts in Nigeria had

(Lawlords Publications 2014) 218; Emeka Chianu, *Employment Law* (1st edn, Bemico Publishers (Nigeria) Ltd 2004) 82; Mathias Zechariah 'Possible Solutions to Intractable Strikes in Nigeria' [2017](18) *The Calabar Law Journal*, 85; Matthias Zechariah and Grace Dalong-Opadotun, 'Laws Regulating Strikes in Nigeria and the Desirability of Compliance With International Best Practices' [2016](9) *Journal of Public Law & Constitutional Practice*, 34.

⁴³ Manfred Weiss 'Industrial Relations and EU Enlargement' in John DR Craig and S Michael Lynk (eds.), *Globalization and the Future of Labour Law* (Cambridge University Press 2006) 176.

⁴⁴ *Ford Motor Company Ltd v Amalgamated Union of Engineering and Foundry Workers* [1969] 2 QB 303.

⁴⁵ Chianu (n 42) 81.

⁴⁶ Elizabeth A Oji and Offornze D Amucheazi, *Employment & Labour Law in Nigeria* (Mbeyi & Associates (Nig) Ltd 2015) 222; Chianu (n 42) 75; MI Anushiem, 'Strike, An Instrument for Compelling Enforcement of Agreed Terms in Nigeria Industrial Relations: A Right or A privilege?' [2014](10) *UNIZIK Law Journal*, 210; OVC Okene 'Collective Bargaining, Strike and the Quest for Industrial Peace in Nigeria' (2008)2(2) *Labour Law Review*, 53.

⁴⁷ *Nigeria-Arab Bank Ltd v Shuaibu* (1991) 4 NWLR (Pt 186) 450, 469.

⁴⁸ *Malone v British Airways* [1976] ICR 193.

⁴⁹ Trade Union and Labour Relations (Consolidation) Act 1992, s 179(1).

⁵⁰ *Ibid* s 179(3).

⁵¹ *Ibid*.

⁵² *African Continental Bank Plc v Benedict Nbisike* (1995) 8 NWLR (Pt 416) 725 CA; *Nigerian Arab Bank Ltd v Shuaibu* (1991) 4 NWLR (Pt 186) 186, 480.

⁵³ *Anaja v United Bank of Africa Plc* (2011) 15 NWLR (Pt 1270) 377; Chianu (n 42) 75.

⁵⁴ Joseph Chitty, *Chitty on Contracts* (23rd edn, Sweet & Maxwell 1968) 337-338.

⁵⁵ *Ritchie v Cowan & Kinghorn* (1901) SLR 38 at 788.

⁵⁶ *Union Bank of Nigeria Ltd v Edet* (1993) 4 NWLR (Pt 287) 299.

⁵⁷ *PENGASSAN v MRS Oil Nigeria Plc & 4 Ors.* (Unreported) Suit No. NICN/LA/595/2012. This judgment was delivered on 27th May 2020; *Valentine Ikechukwu Chiazor v Union Bank of Nigeria* (Unreported) Suit No. NICN/LA/122/2014. This judgment was delivered on 12th July 2016.

followed the position at Common Law, which generally treated collective agreements as unenforceable contracts.⁵⁸ A recognised exception to the general rule is where the collective agreement is transposed into the contract of employment by way of incorporation.⁵⁹ This applies to unionised workers who are members of the trade union that concluded the collective agreement sought to be enforced. Sometimes, the contract of employment of non-unionised employees may also contain express reference clauses to the provisions of collective agreements, which then become part of the individual contract of employment.⁶⁰

Another recognised exception to the general rule is where a party had relied on a collective agreement. Under such circumstances, the courts were more inclined to enforce such a collective agreement against the party that had previously relied on the same.⁶¹ The traditional position of Common Law on the enforceability of collective agreements has since waned, with most jurisdictions across the globe treating collective agreements as enforceable pacts. This underscores the fact that the enforceability of collective agreements has fluctuated through judicial history.⁶²

On the question of the jurisdiction of the courts over collective agreements, section 7(1)(c)(i) of the National Industrial Court Act 2006 vests the National Industrial Court of Nigeria with exclusive jurisdiction in civil causes and matters relating to the determination of any question as to the interpretation of any collective agreement. This prescription cannot be construed to mean enforceability of a collective agreement, in that, the question of interpretation of collective agreements merely seeks to ascertain the terms of the collective agreements, in reflection of the intendment of the parties thereto and also to ascertain whether the collective agreements are intended to be binding or not. As such, the outcome of the interpretative function of the National Industrial Court of Nigeria, by this statutory prescription, is indeterminable. The outcome of such a function depends on the facts of each case that comes before the court, the evidence adduced by parties, the perception of the law and the idiosyncrasies of the judex. This is more so that the statutory provision is mute on the questions of enforceability of collective agreements.⁶³

It suffices that disputes connected with the conclusion or variation of a collective agreement qualify as trade disputes in respect of which the National Industrial Court of Nigeria can

⁵⁸ *Akaue Moses Osob & Ors v Unity Bank Plc* (2013) 9 NWLR (Pt. 1358) 1 at 29; *Abalogu v SPDC* (2003) 13 NWLR (Pt. 837) 308; *Union Bank v Edet* (1993) 4 NWLR (Pt. 287) 288; *African Continental Bank Plc v Nwodika* (1996) 4 NWLR (Pt. 443) 470 at 473-474; *Anaja v United Bank for Africa Plc* (2011) 15 NWLR (Pt. 1270) 377; *Chukwumah v Shell Petroleum Nig Ltd* (1993) 4 NWLR (Pt. 289) 512; 543-544; *Abalogu v Shell Petroleum Nig Ltd* (1999) 8 NWLR (Pt. 613) 12; *New Nigeria Bank Plc v Osob* (2001) 13 NWLR (Pt. 729) 224 (CA); *Abalogu v SPDC Ltd* (2003) 13 NWLR (Pt. 837) 308; *New Nigeria Bank Plc v Osob* (2001) 13 NWLR (Pt. 729) 232 (CA); *Chukwumah v Shell Petroleum Nig Ltd* (1993) 4 NWLR (Pt. 289) 512, 543-544; *Union Bank of Nigeria v Edet* (1993) 4 NWLR (Pt. 287) 288, 291, 304; *African Continental Bank Plc v Nwodika* (1996) 4 NWLR (Pt. 443) 470 at 473-474; *Anaja v United Bank for Africa Plc* (2011) 15 NWLR (Pt. 1270) 377.

⁵⁹ *B.P.E. v Dangote Cement Plc.* (2020) 5 NWLR (Pt. 1717) 322; *Samson Akindoyin v UBN Plc* [2015] 62 NLLR (Pt. 217) 259; *Akaue Moses Osob & Ors v Unity Bank Plc* (2013) 9 NWLR (Pt. 1358) 1 at 29; *Valentine Chiazor v Union Bank of Nig. Plc* (Unreported) Suit No. NICN/LA/122/2014. This judgment was delivered on 12th July 2016; *Rector Kwara State Polytechnic v Adefila* (2007) 15 NWLR (Pt. 1056) 42; *ACB v Nwodika* (1996) 4 NWLR (Pt. 443) 470; *UBN Ltd v Edet* (1993) 4 NWLR (Pt. 287) 288.

⁶⁰ Jens Kirchner and Sascha Morgenroth 'Executive Summary: German Employment and Labour Law' in Jens Kirchner, Pascal R Kremp and Michael Magotsch (eds.), *Key Aspects of German Employment and Labour Law* (2nd edn, Springer-Verlag GmbH 2018) 23.

⁶¹ *National Union of Civil Engineering Construction, Furniture and Wood Workers v Beten Bau Nigeria Ltd and Anor* (2008) 11 NLLR 1 at 18-19; *Petroleum and Natural Gas Senior Staff Association of Nigeria v Schlumberger Anadrill Nigeria Limited* (Unreported) Suit No. NIC/9/2004. This Judgment was delivered on 18th September 2007; *Cooperative and Commerce Bank (Nig.) Limited v Okonkwo* (2001) 15 NWLR (Pt. 735) 114; *African Continental Bank v Nwodika* (1996) 4 NWLR (Pt. 443) 470; *Adegboyega v Barclays Bank of Nigeria* (1977) 3 CCHCJ 497. Cf. *African Nigeria Plc v. Osisanya* (2001) 1 NWLR (pt. 642) 59; *African Continental Bank Plc v Nbisike* (1995) 15 NWLR (Pt. 416) 725, where the court held that collective agreements were not enforceable although both parties relied on a collective agreement.

⁶² Ogbale and Okoro (n 34) 115.

⁶³ Kenen (n 1) 31.

exercise jurisdiction.⁶⁴ In the same vein, the Minister of Labour or a party to a collective agreement is empowered to activate the interpretation clause of a collective agreement, by an application to the National Industrial Court of Nigeria, for the interpretation of any term or provision of a collective agreement.⁶⁵ At the moment, the National Industrial Court of Nigeria treats collective agreements as binding and enforceable contract.⁶⁶ This is largely propelled through reforms introduced by the constitutional interpolation in the Constitution Federal Republic of Nigeria (Third Alteration) Act 2010.

The current stance of the National Industrial Court of Nigeria on the enforceability of collective agreements has been commended as “salutary.”⁶⁷ It also aligns with the provision of section 254C(1)(j)(i) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which confers exclusive jurisdiction on the National Industrial Court of Nigeria in civil cases and matters relating to the determination of any question as to the interpretation and application of any collective agreement. In this context, the terms “interpretation” and “application” appear to attract the same consequence, in that, the question of interpretation of a collective agreement may require application of the collective agreement or may arise within the context of application of a collective agreement.

On the flip side, the question of application of a collective agreement may require interpretation of a collective agreement or may arise within the context of interpretation of a collective agreement. The interpretation of a collective agreement involves determining the meaning, scope, and intent of the terms and clauses deployed in a collective agreement. To apply a collective agreement, the court must read into the collective agreement the element of enforceability. Accurate interpretation and application of collective agreements is critical for harmonious industrial relations. The National Industrial Court of Nigeria has emphasised the need for reliance on liberal and purposive interpretation of collective agreements, particularly where questions of labour rights or social justice are involved.⁶⁸

A collective agreement sought to be enforced by an employee must be one concluded during the subsistence of the contract of employment.⁶⁹ In principle, only the parties or members of the contracting parties are bound by a collective agreement.⁷⁰ Employees are bound by collective agreements on account of membership of the trade unions that concluded the collective agreements.⁷¹ An employer may be bound by a collective bargaining agreement in two ways: either if the employer concludes a collective agreement directly with the trade union, or if the employer is a member of an employers’ organisation which concludes a collective agreement with the trade union.⁷² As to whether the legality of a collective agreement can be challenged on the ground that the collective agreement was concluded under duress, it is convenient, on the face of it, to resolve this question in the affirmative,

⁶⁴ National Industrial Court Act 2006, s 54.

⁶⁵ Trade Disputes Act 1976, s 16.

⁶⁶ *Enugu State Government v Odo & Anor* (Unreported) Suit No. NICN/EN/01/2022. This judgment was delivered on 8th March 2022; *Enyinnaya Amugo v Sky Bank Plc* (Unreported) Suit No. NICN/LA/258/2016. This judgment was delivered on 13th March 2018; *The Management of Compagnie General De Geophysique (Nig) Ltd v PENGASSAN* (Unreported) Suit No. NICN/ABJ172/2014. This judgment was delivered on 17th March 2016; *Valentine Ikechukwu Chiazor v Union Bank of Nigeria* (Unreported) Suit No. NICN/LA/122/2014. This judgment was delivered on 12th July 2016; *Lijoka v First Franchise Service Limited* (Unreported) Suit No. NICN/LA/527/2013. This judgment was delivered on 6th February 2019; *Itodo & Ors v Chevron Texaco Nigeria* [2005] 2 NLLR (Pt. 5) 200 NIC.

⁶⁷ Promise Green, ‘Collective Agreements and the Enforceability Conundrum in Nigeria’ [2023](19)(3) *Unizik Law Journal*, 167.

⁶⁸ *Chemical and Non-Metallic Products Senior Staff Association v Benue Cement Co. Plc.* [2005] 2NLLR (Pt. 6) 446.

⁶⁹ *Otunba Abijo v Promasidor (Nig) Ltd* (Unreported) Suit No. NICN/LA/602/2014. This judgment was delivered on 7th January 2017; *ECWA v Dele* [2004] 10 FWLR (Pt 230) 297.

⁷⁰ *Kirchner and Morgenroth* (n 60) 23.

⁷¹ *Ibid.*

⁷² *Ibid.*

considering the realities surrounding the activation of the mechanisms of collective bargaining and the adverse or tense circumstances under which most collective agreements are concluded. However, the declaration of a trade dispute and the invocation of a strike on account of the declared trade dispute are cognisable options within the spectrum of domestic labour regulations of most jurisdictions across the globe.

It is firmly settled that an individual worker cannot be a party to a collective agreement.⁷³ As it relates to the capacity of an individual employer to be a party to a collective agreement, the prescriptions of domestic labour regulations in Nigeria are inconsistent. On the one hand, the construction of collective agreement in the Trade Disputes Act 1976 explicitly recognises an “individual employer” as a potential party to a collective agreement. This position is in tandem with practical reality, where an individual employer can be a party to a collective agreement.⁷⁴ On the other hand, the constructions of collective agreement in the Labour Act 1971 and National Industrial Court Act 2006 do not recognise an “individual employer” as a party to a collective agreement.

However, it has been argued that, in practice, an individual employer can be a party to a collective agreement, but from the ambit of domestic labour regulations, excluding the Trade Disputes Act 1976, an individual employer cannot be a party to a collective agreement.⁷⁵ This does not seem to align with the prescriptions of international labour standards. Article 2 of the Convention Concerning the Promotion of Collective Bargaining 1981 (No 154) allows for an employer to be a party to collective bargaining. In the same vein, paragraph 2(1) of the Collective Agreements Recommendation 1951 (No. 91) allows an employer to conclude collective agreements. Since collective agreements are products of collective bargaining, the parties to a collective bargaining should necessarily be parties to a collective agreement, which is the outcome of collective bargaining.⁷⁶ This, therefore, makes it expedient for the inconsistencies in domestic labour regulations in Nigeria to be abrogated in a manner that allows for an individual employer to be a party to a collective agreement in line with applicable international labour standards.

A non-member of a trade union cannot enforce a collective agreement entered into by a trade union that he is not a member of. For an employee to successfully rely on a collective agreement, the employee must prove membership in the trade union that entered into such a collective agreement.⁷⁷ In proving the membership of a trade union, the law deploys the concepts of “opting out” and “opting in” in drawing a salient distinction between junior staff and senior staff. For junior staff, membership of a trade union is presumed unless there is evidence of “opting out” individually and in writing of the trade union in which the junior staff is eligible to join. A junior staff member is presumed to be a member of a trade union based on eligibility unless such membership is relinquished in writing.

The implication is that junior staff members can benefit from a collective agreement, without actual proof of membership of the trade union that concluded the collective agreement, so long as there is no evidence of “opting out” of such trade union. Once a junior staff member proves eligibility to be a member of a trade union, such junior staff member is presumed to be a member of such trade union unless there is evidence that the junior staff member has opted out of the trade union.⁷⁸ It is, therefore, immaterial whether check-off dues have been

⁷³ Kenen (n 1) 36.

⁷⁴ Ibid 33-35.

⁷⁵ Ibid.

⁷⁶ Ibid 34.

⁷⁷ *Aghata Onuorah v Access Bank Plc* [2015] 55 NLLR (Pt 186) 17; *Samson Akindoyin v Union Bank of Nig Plc* (Unreported) Suit No. NICN/LA/308/2013. This judgment was delivered on 15th April 2015; Kenen (n 1) 43, 47.

⁷⁸ *Dennis & 1677 Ors v First Franchise Service Ltd and Ors* (Unreported) Suit No. NICN/LA/527/2013. This judgment was delivered on 6th February 2019; *Otunba v Promasidor (Nig) Ltd* (Unreported) Suit No. NICN/LA/602/2014. This judgment was delivered on 17th January 2017; *Aghata Onuorah v Access Bank Plc* [2015] 55 NLLR (Pt 186) 17 NIC.

deducted and remitted to such union or not, as long as eligibility is established.⁷⁹ The deduction of check-off dues is not based on membership but on eligibility, and as such, does not raise the presumption of membership of a trade union.⁸⁰ As represented by Kenen:

*For junior staff, membership of a trade union is assumed, thereby leading to the principle of 'opting out' for those who would not want to remain as members of a trade union. The reason for the 'opting out' principle applicable to junior staff is not far-fetched. The orthodox view is that labour law itself is meant to protect workers who are more vulnerable.*⁸¹

For a senior staff member, no presumption of membership of a trade union inures. As such, it is the law that a senior staff member must prove, through documentary evidence, the fact of "opting in" individually and in writing to be considered a member of a trade union.⁸² In this case, the standard of proof is quite high. While it is conceded that the deduction of check-off dues of a worker and the remittance of the same to a trade union is an incidence of membership of a trade union,⁸³ such is not conclusive evidence of membership of a trade union. As such, documentary evidence of payment and remittance of check-off dues alone does not suffice in conferring actual membership in a trade union on a senior staff member.⁸⁴ So also is a deemed admission or even a direct admission in pleadings, which is considered not to confer membership of a trade union on a senior staff member.⁸⁵ Hence, the requirement for proof of actual membership only applies to senior staff members.

4. The Deficits of Domestic Labour Regulations

Notwithstanding the current stance of the National Industrial Court of Nigeria, reflecting in the departure from the rigid and otiose Common Law's position to a liberal and fair stance aligning with the notion of substantive justice in the workplace, the enforceability of collective agreements remained threatened by several provisions of domestic labour regulations, thereby creating an adverse climate for the enforceability of collective agreements in Nigeria. One provision that readily comes to mind concerning the deficits of domestic labour regulations on the enforceability of collective agreements is section 23(1) Trade Unions Act 1973 (as amended), which is reproduced as follows:

The purposes of a trade union shall not, by reason only that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust relating to the union; but nothing in this subsection shall enable any court to entertain any legal proceedings instituted for the purpose of directly enforcing any agreement mentioned in subsection (2) of this section, or of recovering damages for any breach of any agreement so mentioned.

The above statutory provision is clumsy and susceptible to diverse interpretations. In addition, it appears the provision divests courts of law of jurisdiction to entertain any legal proceedings instituted to directly enforce any collective agreement. However, it has been observed that the import of the provision does not relate to the bindingness or otherwise of

⁷⁹ Ibid.

⁸⁰ *Udob v OHMB* (1990) 4 NWLR (Pt 142) 52.

⁸¹ Kenen (n 1) 44.

⁸² Ibid 43-44; *Habu v NUC Taraba State* [2005] 4 FWLR (Pt. 283) 646.

⁸³ *Mgt of Tuyil Nig. Ltd v NULFRIL & NMPE* [2009] 14 NLLR (Pt. 37) 109; *TIB Plc v NUBIFIE* [2008] 10 NLLR (Pt. 27) 322; *CAC v AUPCTRE* [2004] 1 NLLR (Pt.1); *Mix & Bake v NUFOTE* [2004] 1 NLLR (Pt. 2) 247.

⁸⁴ *Aghata Onuorah v Access Bank Plc* (Unreported) Suit No. NICN/ABJ/30/2011. This judgment was delivered on 15th December 2014.

⁸⁵ *Aghata Onuorah v Access Bank Plc* (Unreported) Suit No. NICN/ABJ/30/2011. This judgment was delivered on 15th December 2014.

collective agreements *per se*.⁸⁶ Instead, it relates to a situation where the purposes of a trade union is in restraint of trade. Section 23(1) of the Trade Unions Act 1973 (as amended) is not a generic provision. It specifically deals with agreement between the members of a trade union, agreement for the payment by any person of any subscription or penalty to a trade union, agreement for the application of the funds of a trade union in certain situations, and agreements where every party thereto is a trade union or Federation of Trade Unions.⁸⁷ This makes it expedient for contextualising the construction of the provision of section 23(1) of the Trade Unions Act 1973 (as amended) with the provision of section 23(2) of the Trade Unions Act 1973 (as amended), which tends to circumscribe the scope of the provision under consideration as well as provides insights on the underlying legislative intent.

Furthermore, the requirement for ministerial endorsement of collective agreements by the Minister of Labour as a prerequisite for the enforceability of such collective agreements remains another threat.⁸⁸ By virtue of section 3(1)(a) of the Trade Disputes Act 1976, where collective bargaining culminates in collective agreements for settlement of a trade dispute, at least three copies of the collective agreements are mandated by law to be deposited by the parties with the Minister of Labour within fourteen days of execution. Failure to comply with this obligation is an offence, punishable on conviction, to a fine of ₦100.⁸⁹ Upon receipt of deposited copies of the collective agreements, the Minister of Labour may make an order specifying the part of the collective agreement that will be binding on the parties to whom the collective agreement relates.⁹⁰ Failure to comply with the terms of such ministerial order is an offence punishable, on conviction, to a fine of ₦100 or to imprisonment for a term of six months.⁹¹

In Nigeria, most collective agreements are concluded as part of efforts to settle trade disputes, and so this makes the application of the provision of section 3(3) of the Trade Disputes Act 1976 as well as the exercise of the ministerial power of endorsement of collective agreements pertinent. However, it is also not out of place to have collective agreements that are proactively negotiated, in the absence of trade disputes, to establish improved terms and conditions of work that may help forestall potential trade disputes in the workplace. This is typical in situations where, by established practice in a particular workplace, collective agreements are routinely negotiated by parties as part of measures for the regulation of employment relationship, or where the agreed measures for the prevention of trade disputes in a workplace prescribe periodic engagements in collective bargaining.

Unfortunately, the salient distinction between collective agreements concluded as part of efforts to settle trade disputes, on the one hand, and collective agreements concluded in the absence of trade disputes, on the other hand, is often overlooked by scholars on the notion of collective agreements.⁹² For instance, *Obiora* had opined, without acknowledging the salient distinction, that the effect of the provision of section 3 of the Trade Disputes Act 1976 is that for a collective agreement to be binding, it will need the approval of the minister, who may,

⁸⁶ Zechariah (n 34) 310.

⁸⁷ Trade Unions Act 1973 (as amended), s 23(2).

⁸⁸ Ogbale and Okoro (n 34) 113.

⁸⁹ Trade Disputes Act 1976 s 3(1)(b).

⁹⁰ Ibid s 3(3).

⁹¹ Ibid s 3(4).

⁹² Samson Faithful Obiora, 'Dialectics on the Principle of Enforcement of Collective Agreements in Nigeria: A Reappraisal' [2022](11)(3) *E-Journal of International and Comparative Labour Studies*, 2022, 75-96; Adebayo and Toyosi (n 15) 68-82; Emuobo Emudainohwo, 'Towards the Enforceability of Collective Agreements in Nigerian Law' [2020](9)(3) *E-Journal of International and Comparative Labour Studies*, 53-63; Oladosu Ogunniyi, *Nigerian Labour and Employment Law in Perspective* (2nd edn, Folio Publishers Limited 2004) 414.

in the latitude of his discretion, decide otherwise or on the part he seems fit.⁹³ Without further clarification, this postulation does not constitute an accurate representation of the law.

On the other hand, however, a few other writers, in reflection of the accurate representation of the law, acknowledged the salient distinction.⁹⁴ In this regard, *Iwunze* opined that a collective agreement must relate to the “settlement of a trade dispute” before the Minister of Labour can make an order under section 3(3) of the Trade Disputes Act 1976.⁹⁵ In other words, a collective agreement which does not relate to the settlement of a trade dispute will not come within the ambit of section 3 of the Trade Disputes Act 1976. For *Agomo*, the provision is “concerned with collective agreements for the settlement of trade disputes.”⁹⁶ *Adebayo* and *Toyosi* are of the view that leaving at least three copies of the collective agreement with the Minister of Labour, who has the discretion to specify the particular part of the agreement that will be binding on the parties to the collective agreement, constitute one of the steps to enforce collective agreements, but added that such step is relevant when there is a trade dispute.⁹⁷ In the same vein, *Kenen* opined as follows.

*The Trade Disputes Act for instance provides for the enforceability of collective agreements but only with regards to those agreements relating to the settlement of trade disputes. Even at this, these agreements are binding on the parties only after three copies of such agreements have been deposited with the Minister of Labour and he makes an order in that regard.*⁹⁸

Drawing from the provision of section 3 of the Trade Disputes Act 1976, collective agreements relating to the settlement of trade disputes are enforceable in law, *albeit*, subject to the affirmative act of the Minister of Labour. As such, where the Minister of Labour declares that a collective agreement or a part thereof is not binding on the parties thereto, then that automatically becomes the fate of the collective agreement or a part thereof so declared. The use of the term “may” in section 3(3) of the Trade Disputes Act 1976, in qualifying the mode of the exercise of the ministerial power, is suggestive of the discretion enjoyed by the Minister of Labour. This has the adverse effect of impinging on the voluntariness of collective bargaining and its prestige as a reconciliatory tool for trade disputes in Nigeria.⁹⁹ In addition, such interference portrays the Minister of Labour as a meddlesome interloper in the outcome of painstaking deliberations, and also suggests inherent or obscured weaknesses in the collective bargaining process, which undermines the credibility and dependability of the favourable outcome of collective bargaining. Predicating the enforceability of collective agreements on extraneous endorsement is incongruous and undermines the sanctity and normative quality of collective of agreements.

Subjecting freely bargained outcomes of disputants to the whims and caprices of a non-disputant, less of the *judex* or the judiciary and the adjudicatory process, is an affront to the cherished doctrine of *pacta sunt servanda*. In addition, allowing the Minister of Labour to sanction a collective agreement to which the State or the government is a party contravenes

⁹³ Obiora (n 92) 80.

⁹⁴ Green (n 67) 164-165; Kenen (n 1) 39; G Otuturu, ‘The Enforceability of Collective Agreements in Nigeria A New Approach’ [2006](4)(2) *Nigerian Bar Association Journal*, 65; FC Nwoko, ‘Rethinking the Enforceability of Collective Agreements in Nigeria’ [2000](4)(4) *Modern Practice Journal of Finance and Investment*, 353-354; Oji and Amucheazi (n 46) 229.

⁹⁵ Vincent Iwunze, ‘The General Unenforceability of Collective Agreements under Nigerian Labour Jurisprudence: The Paradox of Agreement without Agreement’ [2013](4)(3) *International Journal of Advanced Legal Studies and Governance*, 6.

⁹⁶ Chioma Kanu Agomo, *Nigerian Employment and Labour Relations Law and Practice* (Concept Publications Limited 2011) 295.

⁹⁷ Adebayo and Toyosi (n 15) 76.

⁹⁸ Kenen (n 1) 31.

⁹⁹ Obiora (n 92) 80.

the cardinal principle of natural justice embedded in the maxim *nemo iudex in causa sua*.¹⁰⁰ The case would have been different if the law grants the Minister of Labour the prerogative to strike collective agreements that are conspicuously against the public policy of the toga of enforceability or to exclude inappropriate provisions from collective agreements that have been submitted by parties thereto. The statutory provision, embodying the interventionist policy, has been criticised and dubbed a “conservative legislative approach.”¹⁰¹

Article 3(1) of the Collective Agreements Recommendation 1951 (No. 91)¹⁰² stipulates that concluded collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded. Without any extraneous consideration, this prescription supports the enforceability of collective agreements. Aside from the above prescription of international labour standards, the International Labour Organisation is also of the view that collective bargaining implies both a give-and-take process and a reasonable certainty that negotiated commitments will be honoured.¹⁰³ Again, mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground.¹⁰⁴ Aside from the obligation on State bodies to refrain from intervening in free collective bargaining,¹⁰⁵ State bodies should also refrain from intervening to alter the content of freely concluded collective agreements.¹⁰⁶

Apparently, section 3(1)(a) of the Trade Disputes Act 1976 runs contrary to the prescriptions of international labour standards and the International Labour Organisation. Already, the International Labour Organisation has queried the Nigerian practice of subjecting collective agreements to Ministerial approval before collective agreements can become binding on the parties,¹⁰⁷ and has since stated that making the validity of collective agreements signed by parties subject to the approval by the authorities is contrary to the principles of collective bargaining.¹⁰⁸ Collective agreements are the outcome of painstaking deliberations between employers of labour and their employees or employees’ representatives. The fact that collective agreements are bargained underscores the efforts deployed by parties.

As an outcome of voluntary negotiations, collective agreements are devoid of coercion. Treating collective agreements as unenforceable workplace pacts makes a nonsense of collective bargaining as a window within the options of the mechanisms or procedures for the resolution of trade disputes. A major underlying motivation for engaging in collective bargaining and arriving at collective agreements lies in the positive expectations of recognition and enforceability of resultant collective agreements. As such, the displacement of the contemplated enforceability will make a mockery of the collective bargaining. The discretionary power vested in the Minister of Labour is “absolute, unguided and unrestrained.” Vesting such power in the Minister of Labour, without putting in place mechanisms for checks and balances, makes the exercise of such power susceptible to abuse of all sorts.

¹⁰⁰ *Cross River State v Young* [2010] All FWLR (Pt 714) 44 at 59; *Maliki v Michael Imoudu Institute for Labour Studies* (2009) All FWLR (Pt 491) 979 at 1019; *Olunagbemiga v Ajani* (2007) All FWLR (Pt 343) 183 at 198; *Yusuf v Union Bank of Nigeria Plc* (1996) 6 NWLR (Pt 400) 630 at 646.

¹⁰¹ Obiora (n 92) 80.

¹⁰² The Collective Agreements Recommendation 1951 (No. 91) was adopted on 29th June 1951.

¹⁰³ International Labour Organization, *Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association* (6th edn, International Labour Office 2018) 249, para 1337.

¹⁰⁴ Ibid 249, para 1336.

¹⁰⁵ Ibid 264, para 1425.

¹⁰⁶ Ibid 264, para 1424.

¹⁰⁷ International Labour Organisation, Committee of Experts on the Application of Conventions and Recommendations (CEARC): Individual Observation Concerning Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), Nigeria, 96th Session, 2007.

¹⁰⁸ International Labour Organization (n 103) 266, para 1438.

5. Conclusion and Recommendations

It has been shown that collective agreements are part and parcel of the normative framework for regulating relations in the workplace. In spite the utilitarian value of these workplace pacts, the enforceability of collective agreements remained chequered, and had fluctuated through judicial history. The legal status of collective agreements is riddled with all manners of judicial intrigues and interpolations. The deficits in domestic labour regulations accentuates the slow pace of advancement of domestic labour regulations in Nigeria. The deficits of domestic labour regulations in Nigeria hinder the perception of fairness, effectiveness, and enforcement of labour standards resulting in widespread violations of labour rights, widened social inequality and instability of all sorts. At the moment, the National Industrial Court of Nigeria treats collective agreements as binding and enforceable workplace pacts. This imbues collective agreements with normative quality for the regulation of employment relationship, and creating rights and obligations for parties in the workplace. The progressive approach of the National Industrial Court of Nigeria in meeting the exigencies of emerging global best practices and contemporary labour law jurisprudence is also a clear indication that the unenforceability of collective agreements is otiose and no longer fashionable. The integrity of collective bargaining lies in the enforceability of collective agreements, which aligns with international labour standards. Guaranteeing the enforceability of collective agreements remains a major incentive for collective bargaining, and also a key strategy for efficient management of trade disputes as well as in taming the increasing rate of strike action in the workplace. As such, the following recommendations are proffered:

- i. The identified deficits of domestic labour regulations on collective agreements in Nigeria should be addressed through legislative reforms. In addition, the discordant provisions of domestic labour regulations in Nigeria on collective agreements should be aligned with the prescriptions of international labour standards.
- ii. To further guarantee the integrity of collective agreements, the violation of collective agreements should be construed as an unfair labour practice with attendant consequences.
- iii. The construction of collective agreement in section 48 of the Trade Dispute Act 1976, allowing for collective agreements to be concluded between workers' trade unions *inter se*, should be abrogated.
- iv. To ensure the enforceability of collective agreements without extraneous intervention and consideration, the unfettered discretionary powers of the Minister of Labour relating to the endorsement of collective agreements concluded for the settlement of trade disputes should be abrogated in line with the prescriptions of international labour standards.
- v. Tripartite consultations among the government, employers' associations, and workers' trade unions should be institutionalised as a permanent mechanism for promoting transparency, inclusiveness, and industrial democracy in the negotiation, administration and enforcement of collective agreements. Such a mechanism should operate under a clearly defined normative prescription that guarantees periodic dialogue, consultation, and consensus-building among the stakeholders in the industrial relations system.