Labour Reform and Industrial Conflicts Mismanagement in Nigeria

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Abstract

This paper examined labour reform and industrial conflicts mismanagement in Nigeria using documentary analysis. Industrial conflicts have not been fully managed in Nigeria due to anomalies in the country’s conflict management mechanisms. The state power has been used arbitrarily whereas the Nigerian Labour Congress has remained adamant in its struggle for workplace justice. This development derived from decades of antagonism between the Nigerian government and organised labour. The organised labour’s strikes in resistance against the state have become a popular industrial culture in Nigeria. Thus, efforts made towards ensuring industrial peace remain inadequate as industrial conflicts have been mismanaged. Following the consolidation of state coercive apparatus and amendment of the Nigerian labour law, the organised labour spread its tentacles towards civil society organisations for mass mobilisation and political participation. Reforms and amendments of the labour law coupled with the evolution of labour party marked a new phase in the Nigerian industrial relations. However, the new phase has thrown up challenges and hindrances to effective management of industrial conflicts. The fundamental problem is however not the dearth of structures that could promote industrial peace but lack of transparency and institutional capacity needed for reconciling dissenting voices. This paper calls for a return to normalcy through the reconstruction of extant conflicts management machineries.

Keywords: Conflict Management, Industrial Peace, Labour-State Relations, Nigeria.

Introduction

Reactions to socio-economic crises constitute a foundation for reforms worldwide. While such reactions typically include international coercion, normative emulation and competitive mimicry, the ultimate aim of reforms is to redefine the role of the state in the economy (Henisz, Zelner & Guillen, 2005). Different reforms have been implemented in Nigeria although the country is yet to make appreciable progress in the management of industrial conflicts. Based on the aforementioned premise, this paper examined the following research questions: What are the
problems in the new policy for industrial conflicts management in Nigeria? How can ability for the management of industrial conflicts enhance industrial peace and development in Nigeria? These questions were examined through analysis of various documents. Studies on reforms and industrial conflicts in Nigeria were collated and analysed.

Following the implementation of various development plans between 1960 and 1985, the Structural Adjustment Programmes (SAP) were adopted in 1986 until 1999 when the Nigerian government embarked on another reform under the leadership of President Olusegun Obasanjo. The new reform is an integral part of the National Economic Empowerment and Development Strategy (NEEDS) under which several policies were formulated to promote privatisation, deregulation and commercialisation (Okonjo-Iweala & Osafo-Kwaako, 2007). The reform has resulted in only a partial success in some aspects of the Nigerian social structure especially in the areas of information and communication technologies (ICT). In light of the reform, the Nigerian Labour Congress (NLC) has contested several policies including deregulation and withdrawal of petroleum subsidies which have resulted in inflation and erosion of social welfare.

The NLC successfully organised four general strikes between 2000 and 2007 (Komolafe, 2007). Strikes remain the key element of industrial conflicts in Nigeria. Hyman (1989) described industrial conflict as an obstruction of normal work situation in which workers refuse to attend their workplace assiduously, perform their work conscientiously, and obey instruction submissively. In recognition of the NLC’s power to strike, the Nigerian government amended the Nigerian Labour Law especially through the enforcement of the Trade Union Act of 2005. This reform with the state renewed interest in criminalising strikes has produced a new climate of industrial relations in Nigeria. It has been shown that the plurality of an industrial organisation makes industrial conflict inevitable (Jameson, 1999). Therefore, situations that have progressively generated industrial conflicts in Nigeria can be attributed to industrial pluralism, which has been repositioned through several reforms.

It is essential to examine industrial conflicts mismanagement in the context of labour reform in Nigeria. Industrial conflict management is a decision making towards ensuring workplace justice. Failure in this direction can be described as mismanagement of industrial conflicts. In Nigeria, industrial conflicts management occurs in a matrix of unequal power relations and conflicting regulations. The use of
state machineries in the management of industrial conflicts has been pivotal in Nigeria. This raises the need for effective management of industrial conflicts to ensure workplace justice through neutrality in mediation and arbitration. Unfortunately, lack of effective management of industrial conflicts would contribute to Nigeria’s impending failure to achieve the Millennium Development Goals (MDG), which embodies national and international development initiatives (World Bank, 2007).

It has been shown that resolving conflicts and supporting post conflict reconstruction are prerequisites for achieving the MDG (Worldofa, 2008). In contrast, Aspinal (2007) demonstrated that exploitation would generate conflicts through an appropriate identity based collective action. An emerging situation in Nigeria appears to sustain outcries against exploitation of labour with recurrent industrial conflicts and lack of government readiness to redeem the situation. The next sections of this paper illuminate several issues including reform crises and antecedents of industrial conflicts in Nigeria. Problems in the new policy for the management of industrial conflicts were also examined prior to the discourse on the modalities for effective management of industrial conflicts in Nigeria.

Reform Crises in Nigeria

Reforms emanate from the emergence of an ideology known as neoliberalism, which first gained acceptance in Chile and Britain in the 1970s. This ideology stipulates the need for reduction in the role of the state in the economy for promotion of entrepreneurship, investment, and socio-economic development through reductions in subsidies, tax reform, tax cuts, stabilisation of money supply, free flow of trade and other market-oriented reforms (Henisz, Zelner & Guillen, 2005). These processes provide a background for the analysis of the Nigerian model of neoliberal reforms, which promote mismanagement of industrial conflicts. A brief summary of the global picture of implications of reforms was presented by Henisz, Zelner and Guillen (2005: 873) as shown in the following paragraph:

Dozens of countries adopted elements of market-oriented reform between 1980 and 1999. Whereas in 1980 only 10 countries had adopted such an element in telecommunications and 44 had done so in electricity, these figures had respectively increased to 124 and 94 by the end of 1999…Market-oriented reform has often come under attack.
in recent years. The California electricity debacle, for example, is typically blamed on "deregulation." Other prominent debacles, such as those involving Enron and WorldCom, are commonly associated with the private ownership of utilities …. regulatory reform is of limited value when the regulatory agency is charged only with monitoring a state-owned monopoly. In the case of a privatized monopoly, regulation that has not been depoliticized typically leads to corruption.

Harrowing experience of market failure in East Asia and economic doldrums in Latin America and the Community of Independent States (CIS) were adduced to political economy of reforms in the regions. It is apparent that politics of regulation and lack of transparency make reforms produce undesirable results. For instance, reforms were thwarted in Latin American and former communist countries due to the sale of the state-owned enterprises (SOEs) to privileged insiders on favorable terms (Henisz, Zelner and Guillen (2005). This situation with several criticisms elicited some reactions from a proponent of the Washington Consensus, an embodiment of ten neoliberal reforms that were established for Latin America in 1989 with the support of the International Financial Institutions in Washington, otherwise known as the Bretton Woods institutions (Williamson, 2005). An excerpt of his reactions is hereby presented:

The economic performance of most Latin American countries (Chile aside) in the decade and a half since I first enunciated what became known as the Washington Consensus has been pretty disappointing, especially in light of the high hopes that the region might get firmly back on the road of catch-up growth that were widespread when the policy changes were first implemented. We at the Institute for International Economics therefore convened a group of Latin American economists and tasked them with writing about what they saw as appropriate elements in their respective fields for an agenda that would get the region back on the rails. (Williamson, 2005: 202)

Surprisingly, the outcomes of the above mentioned international conference largely focused on the desirability of continuity rather than discontinuity with the liberalizing reforms of the Washington Consensus. Emphasis was also placed on the desirability in most Latin American countries of liberalizing the labor market to
promote participation in the formal sector with minimal social protections. There was general agreement on the need for strong institutions to ensure effectiveness of good policies. As reported by Williamson (2005), liberalisation is an example of good policies designed in 1989 for most Latin American countries to ameliorate their parastatals. This argument is plausible given the fact that with implementation of reforms, remarkable industrial progress was recorded in some countries including Botswana, Hong Kong, Singapore, Taiwan, and Korea (Collier & Gunning, 1999). However, Nigeria is among the countries with poor records of socio-economic development, following implementation of reforms. As reported by the World Bank (1998), the Nigerian industries remain underdeveloped despite implementation of reforms. In this context, industrial conflicts still loom with devastating implications for industrial development in Nigeria. The situation in Nigeria was described thus:

Civil servants generally received low pay and several fringe benefits such as free housing, free vehicles, and various other allowances that often led to waste and misuse of government resources. Weak management and oversight also meant that there were problems with ghost workers on the government payroll; while personnel and pension registers often were unreliable. Moreover, a weak incentive structure in the civil service, which did not foster good performance, resulted in a weak work ethic and poor service delivery by many government ministries, often characterized by hidden or outright corrupt behavior on the part of many civil servants. Reforms were therefore needed to re-professionalize the civil service and increase its focus on service delivery (Okonjo-Iweala & Osafo-Kwaako 2007:14)

The above submission is a typical justification of the need for reforms in Nigeria. However, despite regimes of reforms in Nigeria, tangible industrial development has not been entrenched and major institutions are replete with crises. Each regime of reforms is accompanied by lingering industrial crises and mounting socio-economic malaise. Thus, the Nigerian reforms, which are expected to enhance quality of lives, have succeeded in reducing living standards of the majority thereby fuelling controllable industrial crises in the country. In the contexts of the Nigerian industrial social structure and popularity of strikes, peace building has been a fundamental challenge.
Labour Reform and Industrial Conflicts in Nigeria

Labour reform refers to amendments of aspects of the labour law. The Nigerian labour law includes different Acts including the Labour/Employment Act, Workmen's Compensation Act, Factories Acts, Trade Disputes Act and the Trade Union Act. A typical model of labour reform is the 2005 Trade Union Act, which includes new orders. For instance, in the 2005 Trade Union Act, the Nigerian government ordered that in collective bargaining all registered trade unions must constitute an electoral college to elect members who will represent them in negotiations. Thus, the Nigerian government has amended the most important step in the collective bargaining procedures, that is, the statutory recognition of trade union as a bargaining agent for the employees within the bargaining unit in relation to terms and conditions of employment. Labour reform has been criticised in this regard. The modalities for constituting an electoral college were not specified (Okene, 2007a). This gap may generate more industrial conflicts and open up opportunities for the state or employers to manipulate criteria for the selection of representatives for negotiations. It is argued that each of the components of the labour law requires major and detailed review, and thus singling out the Trade Union Act for patchy amendment is inadequate (Otobo, 2003).

The 2005 Act seeks to promote industrial democracy and collective bargaining as crucial mechanisms in the determination of wages and other terms and conditions of employment in compliance with the ILO requirements (ILO, 2002). Section 2 of the 2005 Trade Union Act provides that trade union membership is voluntary and no employee shall be forced to join any trade union or be victimised for refusing to join (Okene, 2007a). Contrary to the automatically compulsory membership clause in the earlier Acts, the 2005 Act provides for voluntary trade union membership though not without restriction on number of persons (50) required for constituting a union. Putting restriction on trade union membership contravenes Convention 87 of the ILO but it can be attributed to government desire to regulate activities in the Nigerian industries.

Thus, the question of dichotomy between international solidarity and national interest can be raised in the emerging industrial relations in Nigeria. Basically, during negotiations for each of the machineries for industrial conflicts management in Nigeria different issues such as state power, problem of representation, social relations of production and labour resistance are critical. The Nigerian government
has renewed the state interest in criminalising strikes, which attract N10,000 fines or six months’ imprisonment for each striker. This renewed interest can be seen in the 2005 reform of the Nigerian labour law (Sections 6 and 9 of Trade Union Act, 2005). Criminalising strikes has implications for human security. Citing the 1990 Trade Disputes Act, an Ikeja High Court ordered the NLC to cancel the 2003 strike while the Nigerian government ordered the Nigeria Police to suppress the strike. Thus, in attempts to quell the strike, the Nigeria Police killed about nine people and arrested several people across the country (Oshunkeye, 2003).

Unfortunately, the Nigerian government regulation against strikes negates the global recognition of strike as an essential tool in trade unionism. The right to strike has been described as an indispensable component of a democratic society and a fundamental human right (Getman & Marshal, 2002). Also, the ILO condemns prohibition of legal strikes (ILO, 2006). Contrary to expectations, many industrial conflicts have been frustrated in Nigeria. The contradiction between the ILO standards and the operations of state machineries in Nigeria provides an opportunity for the discourse on industrial conflict management within different levels of governance - international, regional, and national - that constitute dilemma for labour (Stevis & Boswell, 2008). The organised labour, which bears the larger chunk of the consequences of industrial conflicts, has been trapped in this context. For instance, the state oppressive machineries and manipulation of the labour ministry have become major obstacles against the organised labour participation in the management of industrial conflicts in Nigeria. Lack of satisfactory management of conflicts has motivated parties to conflicts to ventilate their grievances through alternative channels such as strikes and lock outs.

**Antecedents to Labour Reform and Industrial Conflicts in Nigeria**

The genesis of industrial conflicts in Nigeria can be located within the pre and post colonial industrial structures. Artisans’ organisations known as the guild systems survived before the advent of colonialism, which opened doors to official recognition of trade unions. The first formal Trade Union, the Southern Nigeria Civil Service Union (SNCSU), was formed in 1912, at a meeting attended by 33 pioneer members including weavers, hunters, potters and blacksmiths (Tokunboh, 1985). The background factors that triggered the emergence of trade union in Nigeria were the colonial military expedition, the capture of Lagos in 1851 and the Benin Exploration of 1889 as well as the establishment of the Royal Niger Company in
1900. These factors led to modern intensive economic activities and labour administration which produced the institutional foundation in the emergence of formal trade unions in the country.

The second formal trade union, the Nigerian Civil Service Union (NCSU) was established in 1914 following the colonial amalgamation of northern and southern protectorates. Then, the pitiable conditions of labour impregnated the conception that unionism is a labour tool of struggle against exploitations. However, in the early stage of trade union development in Nigeria, few industrial conflicts were recorded. For instance, on 9th January 1920, the Nigerian Mechanic Union embarked on the first official strike to resist insufficient wages, long hours of working, stoppage of war bonus, and non-payment of wages for public holidays. With the success of the 1920 strike, the colonial governors introduced trade union laws in their colonies. Thus, it can be deduced that after formal establishments of trade unions in Nigeria industrial conflicts became popular and have been discouraged by governments.

The 1938 Trade Union Ordinance and the 1973 Trade Union Act marked the centrality of state regulations in Trade Union development. In-between these periods serious industrial conflicts (strikes) broke out and were mismanaged but the power of the organised labour gathered momentum. After the Second World War, trade unions became more powerful in Nigeria. The African Civil Service Technical Workers Union (ACSTWU) organised the first general strike on 21 June 1945. The 1945 strike lasted for 45 days with participation of over 32,000 workers. Then, labour demanded for a 50 percent increase in cost of living allowance (Damachi, 1985). The political and ideological environment of collective bargaining became more hostile after the 1945 general strike as the state managed to disorganise the organised labour. Subsequently, Trade Union in Nigeria underwent several restructuring before the emergence of the NLC as the national centre of trade unions in 1976.

Industrial conflicts became unprecedented since the 1980s following the experience of adverse consequences of neoliberal reforms. Labour resisted government policies with the growth of dictatorship by enthusiastically embarking on general strikes in the following years: 1921, 1945, 1981, 1994, 2000, 2002, 2003 and 2004 (Otobo, 2006; Damachi, 1985). The NLC also successfully organised four general strikes between 2000 and 2007 (Komolafe, 2007). The 2003 strike remained the largest general strike in Nigeria. The NLC declared the strike to redress the
policy of the Nigerian government, which adopted 54 percent increase in the prices of petroleum products.

**Problems in the New Policy for Industrial Conflicts Management in Nigeria**

The state and labour have been battling in the management of industrial conflicts in Nigeria since the colonial era. The enormity of industrial conflicts and the state attempt to quell them resulted in the 1976 Trade Disputes Act, which was amended in 1977 and 1990. The Act provides internal and external dispute settlement machineries including voluntary and compulsory procedures. Primarily, within seven days, the declared conflicts are expected to be resolved through the application of internal mechanisms the failure of which makes external machineries necessary. External machineries include mediation, conciliation, the industrial arbitration panel (IAP) and the national industrial court (NIC). Mediation is a process reliant on a neutral third party (the mediator) to identify the disputed issues, develop options, consider alternatives and facilitate disputant agreement (Nadrac, 1997).

Parties to conflicts are equally empowered to appoint a mediator, who is expected to be neutral in facilitating amicable management of conflicts within seven days or report the failure of mediation to Labour Minister, who within 14 days can appoint a conciliator or constitute the IAP for conflict management. Key attributes of a mediator are neutrality and impartiality in mediation. Neutrality refers to ability to refrain from favoritism and bias in either word or action, while impartiality refers to having equidistance from the parties and responsibility to ensure fairness of the mediation process (Cooks & Hale, 1994). The difference between impartiality and neutrality lies in the mediator’s responsibility to ensure fairness towards the parties during the process (impartiality) and being free from bias (neutrality) (Boulle & Nesic, 2001).

Studies on dispute management showed that neutrality could encourage mediator’s passivity (non-intervention), which in turn may put the more powerful disputants at an advantage (Winstanley & Woodall, 2002). Unlike the mediation and conciliation which must be concluded within seven days each, the IAP can reconcile the disputants and recommend awards within 21 days or more depending on the discretions of the Labour Minister. Parties to conflicts can reject the IAP award within seven days or allow its publication in the gazette. The NIC is the final binding path to conflict management but questions of fundamental rights can be referred to court of appeal (Otobo 2006; Aturu 2005).
Workers in essential services are not expected to pass through conflict management procedures in Nigeria. However, the Nigerian governments’ definition of essential services violates the ILO standards which demand that essential services should be interpreted very strictly. The ILO has warned that the principle whereby the right to strike may be limited or even prohibited in essential services would lose all meaning if national legislation defined essential services broadly. In line with the ILO insistence that essential services are only those interruption of which would endanger the life, personal safety or health of the whole or part of the population, Otobo (2003) condemned the list of essential services in Nigeria and described it as fake and politicised.

Each stage of conflict management is guided by rules including due notice of any matters in contention; a right to be heard; adjudication or facilitation by an impartial third party; and provision of reasons for the decision made. The importance of the provision of reasons for the decision made was demonstrated by Greenberg (1994) in his study of a new “no smoking” policy in a US workplace. Greenberg reported that because employees had been provided with information and a clear rationale for the unpopular policy, they embraced the changes without dispute. It was suggested that:

the process of explaining decisions helps employees adapt to change, but lack of explanations is often regarded by employees as unfair, generating resentment toward management and toward the decision (Daly 1995: 416).

Conflict management systems have been described as providing for workplace justice (McCabe & Rabil, 2001). Good conflict management procedures provide the opportunity to systematically redress an injustice without litigation, strikes or other forms of industrial actions (Mesch & Dalton, 1992). A conflict management procedure perceived to be fair will be used and regarded as effective and result in greater perception of fair treatment and enhance job satisfaction (Peterson & Lewin, 2000; McCabe, 1987). Situations surrounding industrial conflicts management in Nigeria especially the relative weakness of state machineries and prolongation of industrial disputes have affected peace making efforts. Mismanagement of industrial conflicts is a key outcome of the weakness of the state machineries.
The movement from mediation to other channels of industrial conflict management is evidence of the availability of compulsory procedures for industrial conflict management in Nigeria. However, the machineries for industrial conflict management in Nigeria are slow and tricky. The state and labour usually perceive industrial conflicts from different perspectives. The state usually conceptualises industrial conflict negatively while labour employs it as negotiation instrument in a bid to obtain benefits. Fundamentally, a common interest of both the state and labour is the need to manage industrial conflict to ensure industrial peace and development. A major means of achieving industrial peace is mediation. However, the neutrality of a mediator can translate into perpetuation of power inequality between disputant parties especially if the mediator plays the role of advocacy in mediation rather than being an advocate for mediation (Cook & Hale, 1994).

It has been argued that in the absence of mediator’s intervention, mediation is intrinsically unfair, unless disputants are of roughly equal personal and professional status (Tillett, 1991). The issue of mediator intervention designed to balance power remains a fundamental controversy in alternative dispute resolution (ADR) two decades after the implementation of ADR schemes in the US and Australia. There have been a variety of responses to this mediators’ dilemma. With power imbalances in the Nigerian industrial relations, the mediator’s attempt to balance power can constitute bias and the failure to balance power will result in the maintenance of power imbalance. This was succinctly captured by Astor and Chinkin (1992: 107), stating that: ‘if two unequal parties are treated equally the result is inequality.’ This situation can be difficult when a power imbalance is not immediately obvious as indicated here:

‘in interpersonal disputes, power can be based on financial superiority and/or emotional and psychological factors, that is, on an ability to control others or the parties may have different levels of intelligence, articulation and ingenuity’ (Clarke & Davies, 1992: 71).

The procedures of conflict management in Nigeria are characterised by preventable delay before and after mediation, conciliation and arbitration. These procedures can be merged to reduce delay and ensure timely management of industrial conflicts. This kind of merger has yielded result in China (the most populous country and a leading industrialised country in the world). The
contemporary Chinese mediation is different from the current alternative dispute management (ADR) in the USA and Australia where mediation is generally separate and distinct from court trials and mediators do not operate with nearly as much discretionary power as Chinese judges (Huang, 2006). If mediation fails in China, arbitration or adjudication will follow under the same judge unlike in Nigeria where conflicts move from mediator to different officials such as conciliator, the IAP Chairperson and the NIC Judges. In Nigeria, conflicts can linger for over two months and may remain pending in the vicious cycles of adjudication. Industrial actions are considered illegal during adjudication and the law has apparently created a vicious circle of compulsory arbitration from which workers cannot escape (Okene, 2007b). Thus, the organised labour in Nigeria seems to have lost hope in the state machineries and has moved towards the establishment of a labour party. It is believed that labour party can wrestle power and correct the anomalies in the state machineries for conflict management.

**Conclusion**

As demonstrated in the above discourse, reforms have generated numerous industrial conflicts and the state has been controlling the machineries for conflicts management in Nigeria. Nigerian governments amended the Nigerian Labour Law several times without adequate consultation with the NLC. The continuous marginalisation of the organised labour in the formulation and implementation of policies is a major factor that has made industrial conflicts uncontrollable in Nigeria. This situation has affected trade union development with grave implications for state-labour relations. Nigerian governments and labour have been at loggerheads in pursuit of diametrically opposing goals. A scrutiny of the 2005 Trade Union Act shows numerous factors militating against effective management of industrial conflicts in Nigeria.

Evidently, the state reliance on top-bottom approach has proved defective. For instance, Nigeria has signed and ratified treaties but lacked the needed capacities and willingness to comply fully with their provisions. The contemporary industrial situation in Nigeria is positively negative because the institutions and structures available in Nigeria can be utilised for effective management of industrial conflicts but they have not been activated due to low level of enforcement mechanisms, which has been attributed to internal constraints on the government
(Hafner-Burton, 2008). Such internal constraints include poor leadership and corruption.

Therefore, the problem of strikes in Nigeria calls for veritable alternatives. Adoption of the model of industrial conflict management in the Middle East and North Africa (MENA) may strengthen the management of industrial conflicts in Nigeria. Pro-democracy organisations are mostly involved in conflict management and peace building in MENA. For instance, in addition to modern negotiation and mediation, leading political parties in Morocco and Yemen engaged in systematic conflict management training programmes (Safa, 2007). Similarly, the emerging labour party in Nigeria can make systematic conflict management training programmes a top priority in its manifestoes. Fundamentally, all the aspects that contradict the international standards in the Nigerian Labour Law should be reversed and replaced with comprehensive social security policies that can facilitate rapid management of industrial conflicts.
References


