

An investigation into the social process of collective conciliation in Nigeria

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The candidate confirms that the work submitted is her own and that appropriate credit has been given where reference has been made to the work of others.

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ABSTRACT

This thesis investigates the social process of collective conciliation in Nigeria. The dominant approaches to understanding Alternative Dispute Resolution (ADR) and collective conciliation have adopted a relatively narrow approach, considering ADR in terms of authority, knowledge and the formal institutionally constituted roles of the key actors. This thesis offers a broader understanding that allows the examination of the 'social process' of collective conciliation. It considers the collective forms of interaction that take place between trade unions and management, with the assistance of an independent third party, during the resolution of collective employment disputes, hence revealing how this is shaped and conditioned by a broader set of institutional, political and organisational arrangements. This approach pays attention to a much wider set of relational factors that shape collective conciliation, with three particular sets of factors: information-sharing and communication between the parties; regulations, legislation and the politically contingent actions of state actors; and the historically evolving relations between trade unions and management, which are played out in specific disputes in the workplace being considered in detail. This thesis presents a study of collective conciliation in Nigeria; it builds upon interviews with key stakeholders and offers an analysis of three specific case studies of conciliation to shed new light on the social process of collective conciliation.

The study highlights the key role of the Nigerian state and the Ministry of Labour in shaping employment relations and collective conciliation processes and end results, through a mixture of formal policies and legislation, a dominant elitist and conservative ideology, and politically motivated appointments to key labour relations ministerial roles. These have had a profound effect on the perception by trade unions and management of the impartiality of the dispute resolution process. The study also highlights how the collective forms of interaction that take place among trade unions and management during negotiations influence the manner in which they share information with each other. It reveals the perception of the actors and confirms their willingness to negotiate compromise and attain resolution. Overall, this study offers a fuller, more nuanced approach to the study of collective conciliation by highlighting the significance of communication and information sharing, union and management relations and the role of the state in relation to conciliation processes and outcomes.

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LIST OF ABBREVIATIONS

ACA: Arbitration and Conciliation Act

ACAS: Advisory Conciliation Arbitration Service

ADR: Alternative Dispute Resolution

AR: Arbitration Rule

AUTOBATE: Automobile, Boatyards, Transport Equipment and Allied Senior Staff Association of Nigeria

CAC: Central Arbitration Commission Employment Tribunals

CB and N: Collective Bargaining and Negotiation

CCMA: Commission for Conciliation Mediation and Arbitration

CFRN: Constitution of the Federal Republic of Nigeria

CIAN: Chartered Institute of Arbitrators of Nigeria

CIPD: Chartered Institute of Personnel and Development

CR: Conciliation Rule

EAT: Employment Appeals Tribunal

ET: Employment Tribunal

FMCS: Federal Mediation and Conciliation Service

IAP: Industrial Arbitration Panel

IBB: Interest Based Bargaining

IBN: Interest Based Negotiation

ICMCN: Institute of Chartered Mediators and Conciliators of Nigeria

ILO: International Labour Organization

IMSSA: Independent Mediation Service of South Africa

IPCR: Institute for Peace and Conflict Resolution

IS: Information-sharing

LA: Labour Act

LMO: Legal and Mutual Obligation

MOL: Ministry of Labour

MWL: Ministry of Welfare and Labour

NECA: Nigerian Employers Consultative Association

NELEX: National Electronic Labour Exchange

NICNA: National Industrial Court Act

NICN: National Industrial Court of Nigeria

NLAC: National Labour Advisory Council

NUPENG: National Union of Petroleum and Natural Gas Workers

RBO: Relationships by Objectives

SEWUN: Steel and Engineering Workers Union of Nigeria

SL/R: State Legislation and Regulations

TDA: Trade Dispute Act

TUA: Trade Unions Act

TUC: Trade Union Congress

TUSIR: Trade Union Services and Industrial Relations

UK: United Kingdom

UMR: Union-management relationships

USA: United States of America

CHAPTER ONE

INTRODUCTION AND GENERAL OVERVIEW

1.1: Introduction

Collective conciliation plays a crucial role in the resolution of workplace disputes (Hale *et al.*, 2012; Towers and Brown, 2000). Studies of collective conciliation and Alternative Dispute Resolution (ADR) more generally have tended to focus on the formal roles of key institutions and actors, notably trade unions, management and the state. Much less attention has centred on the forms of interaction that take place between trade unions and management during the resolution of collective employment disputes, and how the behavioural and attitudinal positions of the parties towards each other shape conciliation processes and end results. This thesis gives importance to a wider set of relational factors to understand collective conciliation, notably: information-sharing and communication between the parties; regulations, legislation and the politically contingent actions of state actors; and trade union and management relationships. This study uses multiple case studies from Nigeria to show how these factors impact upon the collective conciliation process and its outcomes. Hence, the main contribution of the thesis is to advance an understanding of the social process of collective conciliation, through an empirical study of the Nigerian context.

There is a large body of literature that recognises the importance of collective conciliation; a continuation of collective bargaining. Over decades the study of collective conciliation and ADR has been a subject of debate among academic scholars in industrial relations and dispute resolution (Heery and Nash, 2011; Podro and Suff, 2009; Cunningham, 1970; Stern, 1968; Walton, 1967; Evan and MacDougall, 1967). Yet dominant approaches to understanding ADR, and by extension collective conciliation have tended to conceptualise it through the formal institutional roles of key actors (see for example, Ridley-Duff and Bennett, 2011). This approach diminishes the importance of power relations, and the behavioural and attitudinal positions of the parties towards one another, factors that are prominent in earlier models of bargaining and negotiation (Chamberlain and Kuhn, 1965; Walton and McKersie, 1965). This thesis advances an understanding of the social process of conciliation, taken to comprise the collective forms of interaction that take place between trade unions and management

during the resolution of collective employment disputes, with the assistance of an independent third party, and shaped by power relations and actions of other actors, notably the state. This explanation indicates that the determinations of the outcomes of disputes are dependent upon the actions and interactions between trade unions, management and conciliators. These actions are shaped by history, personalities, legislation and regulations as well as political and institutional arrangements.

The rationale and mechanics of collective conciliation in a range of different contexts are already well understood. It is recognised to be a process of assisted intervention whereby an independent third party provides an open platform for trade unions and management to engage in discussions that will enable them to identify areas of agreement and offer solutions to the issues that they see differently, such that a mutually acceptable resolution can be attained (ACAS, 2009). This description assumes that prior to conciliation, trade unions and management had undertaken some form of negotiations that resulted in divergence of opinions and disagreement, typically during collective bargaining. In order to address the situation, the assistance of an independent third party is required so that the discrepancies are acknowledged and resolved amicably, for further discussions to continue (Dawe and Neathey, 2008; Singh, 1986).

In understanding collective conciliation processes, the activities of the three main actors – trade unions, management and conciliators – have tended to be mapped and described with good practice guidance (Molloy *et al.*, 2003; Goodman, 2000; Hiltrop, 1985). The role of the conciliator is to provide a relaxed and comfortable environment for discussions between trade unions and management so as to ensure that they settle their differences amicably, or find a common ground that will enable them to move towards an agreement (Dix and Oxenbridge, 2004; Corby, 2005; Dix, 2000). In addition, the conciliator acts as a bridge builder by encouraging both parties to keep the communication lines open; however, it is not the duty of the conciliator to determine the outcome of disputes. The role of the trade unions and management during collective conciliation is seen as engaging in dialogue, which is aimed at promoting and protecting their different interests and those of their constituents (Van Gramberg, 2006; Abbott, 1998; Keller, 1991). This brings to light the idea that the responsibility of trade unions and management during collective conciliation is to actively seek common ground and resolve their dispute; since their common interest is attached to the continuity of the

employment relationships and promotion of economic improvement for their stakeholders.

Several studies on collective conciliation have reported that conciliators play a crucial part in the resolution of disputes (Broughton and Cox, 2012; Bond, 2011; Heery and Nash, 2011). However, surprisingly little attention has been paid to the social processes that surround the activities undertaken by conciliators and shape the actions of management and trade unions during the process of collective conciliation. This study goes beyond previous analysis by embracing a broader lens to understand collective conciliation. A broader set of relational factors are found to be important to understand collective conciliation; notably: information-sharing and communication state regulations and legislation and trade union and management relationships. This study argues that our understanding of the social process is necessary for an understanding of collective conciliation and its outcomes (Ruhemann, 2010; Dawe and Neathey, 2008; ACAS and Ipsos Mori, 2006; Molloy *et al.*, 2003).

There is a paucity of empirical evidence regarding actual examples of collective conciliation, particularly when compared to studies on individual conciliation (Goodman, 2000; Dix, 2000). Decentralisation and shrinking coverage of collective bargaining, restrictions on industrial action, reduced union autonomy, enhanced employer rights and a decline in union membership have all impacted on the extent of collective conciliation (Podro and Suff, 2009; Edwards, 2003; Hicks and Palmer, 2003). However, it is important to recognise that recourse to collective conciliation is also shaped by other factors including the nature of the issues in the dispute, the characteristics and history of the parties, the willingness by the parties to compromise, and the expectations of parties engaging in conciliation (Goodman, 2000; Hiltrop, 1985).

This study uses a qualitative case study strategy with semi-structured interview evidence from the Nigerian context to advance an understanding of the social process of collective conciliation. The Nigerian context is novel and appropriate to developing an understanding of the social process of conciliation because various methods of ADR are operational in Nigeria and collective conciliation has a relatively long history of use there. The Nigerian state and the Ministry of Labour have long been recognised as

having a key role in shaping employment relations and collective conciliation processes and outcomes through a mixture of formal policies and legislation, a dominant elitist and conservative ideology, and politically motivated appointments to key labour relations ministerial roles. These actions of the state are likely to have a profound effect on the perception of trade unions and management regarding the dispute resolution process. The Nigerian context also offers a useful site to develop an understanding of how collective forms of interaction that take place among trade unions and management during negotiations influence how disputing parties share information and communicate with each other. In summary, the aim of this thesis is to advance an understanding of the social process of collective conciliation through case studies of collective conciliation in Nigeria.

1.2: Research questions and objectives

The specific research questions to be addressed in the thesis are:

- What are the social processes of collective conciliation?
- How does the social process influence the actions of the actors in collective conciliation?
- In what ways does the social process between the actions of the actor's impact on the process and outcomes of collective conciliation?

In order to answer the research questions stated above, the aim is to achieve the following objectives:

- To explore the extent to which information sharing and communication might influence the actions of the actors in collective conciliation.
- To explore how state legislation and regulations impact on the actions of the actors in collective conciliation.
- To explore how union-management relationships affects the actions of the actors in collective conciliation.
- To explore how the actions of the actors influence the process and outcomes of collective conciliation.

This study uses a qualitative and exploratory case study strategy, to look at the process of collective conciliation in Nigeria. This approach enabled rich analysis and 'thick description' of the social processes that are involved in collective conciliation in a way that is the hallmark of intensive case study based research in industrial relations

(Bryman and Bell, 2015; Yin, 2013; Saunders *et al.*, 2011; Yin, 2009; Edwards, 2005). Data are drawn from three case studies of collective conciliations in Nigeria. The study occurred between 2016 and 2010 at Vono Plc, Tata Africa, ConocoPhillips/ Pilgrims Africa. Alongside this, interviews were conducted with key institutional actors and stakeholders involved in collective conciliation. In total, 45 interviews were conducted between May 2015 and March 2016. This research is supplemented with analysis of state and trade union documentation around collective conciliation in Nigeria.

1.3: Outline of the thesis

Chapter Two presents an investigation into the emergence and rise of ADR. It gives an overview of the concept of ADR in general and considers how ADR relates to other forms of dispute resolution. It then conceptualises ADR and collective conciliation and elaborates on the factors that comprise the social process of conciliation. In doing so, the chapter highlights the importance of examining a wider range of factors than those that have typically characterised dominant studies in the field in order to better understand the social process of collective conciliation. It concludes by presenting the main factors that comprise the social process of collective conciliation, namely information-sharing and communication between the parties; regulations, legislation and the politically contingent actions of state actors; and historically evolving trade union and management relationships.

Chapter Three considers the emergence of ADR and examines its nature and forms in Nigeria. It identifies the key issues that influence ADR in Nigeria as including politically motivated appointments to key ministerial roles, intervention methods of state-established institutions, legislation and regulations. The chapter demonstrates how these issues influence the perception of trade unions and management and impact on their confidence and assurance in the independence, objectivity and fairness of the process and the effect of conciliation.

Chapter Four presents the choice of methodology and justification for this qualitative and inductive study. The ontological and epistemological positions adopted for this study are realism and subjectivism. The term realism is used by this study in a way which asserts that through the use of appropriate methods the social world cannot be understood independently of the descriptions provided by the parties involved in the

process and responsible for the outcomes of conciliation. Within subjectivism contexts the world of work is seen as existing in a reality that is external to the social actors. This indicates that during collective conciliation trade unions and management interpret their world differently and as such relate with each other based on their interpretations. These ontological and epistemological standpoints inform the choice of research strategy and techniques, namely the case study and the use of interviews.

Chapter Five presents primary data on the political economy of the state in Nigeria. This evidence looks at the role of the state in formulating and implementing legislation and regulations that guide the activities of the actors, and the process and end results of collective conciliation. The chapter reveals difficulties that the state has had in Nigeria in strategically managing employment relations. It also explains the failure of the state to prioritise the importance of labour-related issues and show more enthusiasm towards the review of labour regulations, as well as their enforcement and implementation. In addition, it shows how the state has undermined the activities of other institutions involved in conciliation such that trade unions and management do not have confidence in their ability to effectively provide advisory and/or conciliatory services. In turn, stakeholders around collective conciliation lack confidence in the ability of the state and conciliators to take their interests into consideration during conciliation.

Chapter Six examines the factors that influence the procedures and end results of collective conciliation, drawing on primary data from trade unions, management, conciliators and other stakeholders in Nigeria that have a role to play in collective conciliation. The findings demonstrate the importance of a range of features to the success of collective conciliation, namely information-sharing and communication, trade-union and management relationships, state legislation and regulation. The findings also demonstrate that management's reluctance to engage in conciliation echoes their experiences and perceptions about how conciliators and trade unions use the conciliation platform to intimidate and constrain them to accept outcomes which do not reflect their interest; hence they default at the implementation stage. Trade unions, on the other hand, view management's unwillingness and failure to implement conciliation outcomes as a lack of interest in union-related matters and hence their stubborn and uncompromising approach and attitude during negotiations. During the process of conciliation, conciliators undertake the responsibility of explaining the standpoint of legislation and

regulations to both parties and through rapport, confidence and relationships building conciliators encourage trade unions and management to consider the issues in dispute more objectively and engage in communication, aimed at shaping their perception and actions and influencing their relationships and outcomes of conciliation.

Chapter Seven examines the social process of conciliation, building on the insights from Chapters 5 and 6 with detailed case study investigation of three collective conciliation cases from Nigeria between 2016 -2010. A clear finding that emerges from the analysis is the behaviour of trade unions and management towards their bargaining power and strategy and also towards each other prior to conciliation. The interview extracts presented in this chapter reveal how the interactions among trade unions, management representatives and conciliators tend to influence the attitude and behaviour of trade unions and management representatives and determines their willingness to communicate and share information, clarify issues in dispute and identify common goals, understand each other's interest and opinions and make compromises especially while applying problem-solving techniques to attain win-win resolution and sustain relationships at the end of conciliation. Consequently, the descriptions presented by trade unions, management representatives and conciliators about how their perception influences their attitude and actions and impact on the process and outcomes of conciliation is used to enhance an understanding of the social process of collective conciliation, which is the aim of this thesis.

Chapter Eight highlights the overall conceptual and theoretical contributions of the study. Its main contribution has been to identify and analyse the social process of collective conciliation. This is the first study to identify and investigate fully the model presented in figure 2.3 of chapter two of this thesis to practical collective conciliation disputes in Nigerian. This is also the first study to examine and demonstrate the importance of the role of the Nigerian state and the extent to which its reluctance and unwillingness to engage with trade unions and management related matters influence the perceptions of other stakeholders and impact on the way they communicate and interact with one other during negotiations, hence impacting on the process and outcomes of collective conciliation.

The empirical findings provide nuanced ways of applying the major themes presented in figure 2.3 to practical case studies as seen through the eyes of the actors that have a role to play in collective conciliation within the Nigerian context. The study reveals how management's opinions about the conciliators tend to influence their perception during conciliation. In addition, the mind-set of trade unions and management regarding conciliators' neutrality and impartiality during conciliation influences both trade unions and management's opinions and attitudes and impact on their actions during conciliation. The study further reveals that trade union and management actions during conciliation are typically influenced by historically evolving relationships, their understanding of legislation, regulations and issues in dispute, the implications of the mandate and expectations from their constituents and the reasonableness of conciliation outcomes.

1.4: Conclusion

Too little attention to date in the literature on ADR has been paid to the social factors that shape and support the structures of collective conciliation and impact upon its outcomes. This study extends understanding of the social process of collective conciliation by identifying the elitist and reluctant attitude of the Nigerian state regarding trade union and management related matters. It indicates the inability of the Nigerian state to set out its priorities, identify gaps in existing legislation and ensure the enforcement of conciliation outcomes. The passive attitude of the Nigerian state towards the Ministry of Labour (MOL) has undermined the latter's activities and denied it the funds needed to carry out its statutory responsibilities, hence other stakeholders lack confidence in its ability to effectively provide advisory and or conciliatory services. This study demonstrates the importance of the three features that comprise the social process of collective conciliation, namely information sharing and communication, the trade-union/management relationships, state legislation and regulations. It shows that during negotiations trade unions, management and conciliators tend to put into practice their understanding of these features, particularly when they are considering the issues in dispute and moving towards compromise and resolution. However, the perception of trade unions and management regarding the professionalism, objectivity and impartiality of the conciliator influences their opinion and attitude and impacts on their perceptions and actions concerning the process and outcomes of collective conciliation.

The most noticeable result that emerges from the analysis of the case studies is the significance of the role of the Nigerian state. The elitist and conservative attitude of the state, its reluctance and lack of political will to review obsolete labour legislation, its failure to provide a stable political, economic and safe environment for trade union and management activities all contributed to the emergence of disputes, influenced the perceptions of trade unions and management and shaped their actions and opinions during disputes. The importance of the historically evolving trade union and management relationships to the attitude of the parties and their willingness to share information with each other is established in the case study. For instance, it demonstrates how the Steel and Engineering Workers Union of Nigeria (SEWUN) trade union representative's initial view of their relationships with the new management in Vono influenced their initial action at the beginning of the dispute but changed considerably when the response from management was perceived to be unreceptive and insensitive. In the case of Tata, ConocoPhillips/ Pilgrims Africa, the trade union and management relationships seems to be less than cordial and as such, management tends to mention their frustration and unwillingness to share information or engage in communication with Automobile, Boatyards, Transport, Equipment and Allied Senior Staff Association (AUTOBATE) and SEWUN and (NUPENG) Nigerian Union of Petroleum and Natural Gas workers trade unions respectively because of their adamant and unwavering attitude and actions.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1: Introduction

Alternative Dispute Resolution (ADR) is referred to by the International Labour Organisation (ILO) as being a substitute for the court system, namely: a set of processes that comprise of negotiation, conciliation, mediation and arbitration (ILO, 1997). This description includes a set of approaches to settling disputes which in practice vary significantly in terms of their nature and use from one institutional context to another. For instance, in some contexts ADR refers to everything from assisted settlement discussions – where disputants are encouraged to consider issues directly with each other as a first step to later legal procedures such as an arbitration system or mini-trials that look and feel very much like court processes (Brown *et al.*, 1998).

In other contexts ADR may primarily be a means of bringing workplace justice to more people at lower cost and with greater speed than conventional government channels (Broughton and Cox, 2012; Heery and Nash, 2011; Podro and Suff, 2005). According to some scholars ADR may function as a means to overcome gaps or weaknesses in statutory dispute resolution institutions thus, supporting government agencies to meet their societal responsibilities more efficiently (Bendeman, 2007; Zack, 1997). In the UK workplace ADR seems to be increasingly used as a means of bringing employers, employees and trade unions together to resolve disputes without having to resort to litigation (Silberman *et al.*, 1993).

Conciliation is one of the most common and important forms of ADR. It is seen as a key mechanism for resolving workplace disputes. In the UK, for example, it has been estimated that conciliation is worth millions of pounds each year to the economy due to resolution outcomes in the form of recommendations and the number of days saved from strike actions (Dawe and Neathey, 2008; Meadows, 2007). In addition British employers, employees and trade unions agree that conciliation is a useful tool to help with the resolution of disputes (Hale *et al.*, 2012; ACAS and Ipsos Mori, 2006; Molloy *et al.*, 2003; Hunter, 1977).

Whilst there is a rising interest in the extent of and outcomes of conciliation, its nature in some contexts remains underexplored. To date, debates have tended to focus on a number of key aspects of conciliation including the contextual and institutional framework that surrounds it (Hawes, 2000; Goodman, 2000) and the personality and role or styles and strategies of conciliators (Dix *et al.*, 2008; Dix and Oxenbridge, 2004). Negotiating styles of conciliators have been identified as being particularly important in shaping outcomes (ACAS, 2014; Dix *et al.*, 2008; Dix, 2000). Other studies have reported how the end results of conciliation are dependent on the willingness of the parties to engage in negotiation and make compromises (Bond, 2011; Ruhemann, 2010; Dickens, 2000). More recent studies have focused on the attitude of the parties towards each other, the level of their tolerance of the involvement of an independent third party, and how the action of the parties determines the process and outcomes of conciliation (Broughton and Cox, 2012; Heery and Nash, 2011). Despite the fact that some of the factors mentioned can be considered to be the social processes of collective conciliation, a systematic understanding of them is still lacking. Although some models have been used to understand ADR (Ridley-Duff and Bennett, 2011) these models have not been applied to collective dispute resolution and even if applied, may not always generate the same outcomes.

This chapter draws on insights and conceptual tools from ADR; negotiation and collective bargaining literature to develop a systematic framework for better understanding the social process of collective conciliation is something which, to date, has been relatively neglected in studies of conciliation. From the ADR literature the framework put forward by Ridley-Duff and Bennett (2011) is examined in detail. The chapter also explores frameworks from the negotiation and collective bargaining literature, notably those that view labour negotiation and collective bargaining from the standpoint of power relations; alongside the behavioural and attitudinal positions of the parties. The explanation provides insights into the influence of stakeholder strategies and behaviours in relation to outcomes.

The nature and process of collective conciliation remains to date under-theorised in the literature since there is no existing systematic method in the collective conciliation literature that can be used to explore its social processes in detail. Collective conciliation takes place in the broader context captured in this thesis through information sharing,

union-management relations and the role of the state that influences the practice of conciliation and determines its effects.

This chapter is structured as follows. Section 2.2 examines the emergence and rise of ADR, the role of the state in ADR and the relationship between ADR and other forms of dispute resolution. Section 2.3 looks at models of ADR and collective conciliation and examines potentially useful frameworks for examining collective conciliation from the industrial relations literature. The dominant model for understanding ADR, by Ridley-Duff and Bennett (2011), is examined in relation to Wall *et al.*, (2001)'s framework on mediation and used for understanding the social process of collective conciliation, whilst insights from Chamberlain and Kuhn's (1965) model of collective bargaining and Walton and McKersie's (1965) model of negotiation are also explored. These models influenced the data collection and analysis of the findings presented in this thesis. Section 2.4 moves on to present a review of empirical studies on ADR and collective conciliation. These studies show that the meaning and nature of ADR and collective conciliation vary from context to context. Empirical studies help provide some understanding of how the state and legislation shape the nature and process of collective conciliation and impact on the end results. They also show how the nature and process of conciliation vary from context to context. Section 2.5 proposes a model that guides the data collection and analysis of the social process of collective conciliation presented in this thesis. It highlights why certain issues, namely those relating to actors and institutions, are important for analysis and how such issues have been considered among scholars. It concludes by presenting the themes that will guide the study and answer the research questions that will present an understanding of the social process of collective conciliation.

2.2: The emergence and rise of ADR

The concept of alternative dispute resolution has received considerable exposure in academic literature as a method of addressing workplace disputes in several contexts (Dickens, 2008; CIPD, 2007; Bingham and Pitts, 2002). According to the Advisory Conciliation Arbitration Service (ACAS) in the United Kingdom, alternative dispute resolution refers to a range of voluntary processes that involves a neutral third party bringing two disagreeing sides together to resolve disputes without having to resort to litigation (ACAS, 2008). Similarly, in Nigeria and Malaysia the concept of alternative

dispute resolution is viewed as a method where industrial conflicts and disputes are resolved confidentially and through the parties' co-operation with each other instead of through the public court system or formal litigation (Oseni and Ahmad, 2015; Oseni, 2015; Edwards, 1986). Advocates of ADR assert that whilst the context where ADR takes place varies, it can in some circumstances result in faster, cheaper, less adversarial outcomes capable of accomplishing better results for disputants than they could achieve through the practice of a legal process (Clarke *et al.*, 2012; Bendersky, 2007; Podro and Suff, 2005; Bendersky, 2003; Lipsky and Seeber, 2000; Costantino and Merchant, 1996; Silberman *et al.*, 1993; Ury *et al.*, 1988). Critics of this viewpoint argue that ADR is problematic. According to them, parties are more likely to settle for sub-optimal solutions at the end of ADR compared to court proceedings. In some cases ADR may also be more time-consuming and expensive than other means of settling disputes (Pugh and Bales, 2003; Marcus and Senger, 2001; Boulle *et al.*, 1998; Woolf, 1996; Fiss, 1983).

ADR has a long history of use in a range of contexts. Its increasing popularity over the latter part of the twentieth century can be attributed to a range of factors. Indeed, the use of such processes goes back thousands of years in many societies. However, in the modern context there was a renewed awareness of this process in the US and the UK in the post-Second World War period. In the US its use began to increase after the political and civil conflict of the 1960s (Fiadjoe, 2013; Teague and Roche, 2011; Cropanzano *et al.*, 2007; Goldberg *et al.*, 1985). This coincided with a decline in traditional institutions for mediation and increasing grounds for legal actions with the introduction of new laws protecting individual and civil rights. Another key explanation for the rise of ADR relates to the role of the state and the decline in unionisation and collective bargaining in the UK. This decline has been accompanied by a shift from strike action and other collective expressions of dispute towards a range of individual manifestations of dispute (Teague and Roche, 2012; Dix *et al.*, 2009; Dix and Oxenbridge, 2004; Lipsky *et al.*, 2003; Mistelis, 2003). An understanding of ADR needs to take into consideration the practices and developments that are reflective of broader systemic features that exist within national conflict resolution arrangements (Clarke *et al.*, 2012; Roche and Teague, 2012; McAndrew, 2012; Latreille *et al.*, 2007; Bercovitch and Houston, 2000; Hawes, 2000; Baker, 1999; Markesinis, 1990).

2.2.1: Forms of alternative dispute resolution (ADR)

Having based the above discussion on the concept and emergence of ADR it is important to consider its specific forms and examine their differences. Taking a perspective across different countries, Purcell (2010) identified two major processes of ADR: judicial and non-judicial. Judicial ADR involves judges or other court-appointed officers in dispute resolution while non-judicial ADR covers the mechanisms of conflict resolution in the workplace that fall outside the purview of legal regulations. There is one major form of judicial ADR: litigation or tribunal processes, which are usually publicly funded and controlled and carried out in public places such as courts or tribunals. This process requires the parties to appear before the judge whenever they are required to do so or face the outcomes. Litigation or tribunal processes are usually bound by comprehensive rules of procedure and presentation of evidence and testimony. It is the evidence presented by the disputing parties that will be used by a judge to determine the result of the dispute in accordance with the law (Van Gramberg; 2006; Lipsky and Avgar 2004; Bendersky 2003; Lynch 1997). Previous studies show that efforts have been made in countries (such as the USA, UK, Canada, Ireland, Australia and South Africa) to speed up the process and to reduce the cost of litigation or tribunal processes that have continued to be expensive and time-consuming methods for resolving disputes (Mironi, 2011; Gibbons 2007; Gregory and Cavanagh; 2007; Latrielle, and Knight 2007; Bendersky 2007; Meadows, 2007; McGovern, 1996).

The major forms of non-judicial methods of ADR are arbitration, mediation and conciliation. Mediation is a process where an impartial third party helps two or more disputants to work out how they would resolve their dispute. Although it can be argued that conciliation and mediation processes blend into each other, previous studies have distinguished conciliation from mediation on the basis that conciliators do not suggest solutions but instead try to assist the parties to resolve their differences on their own terms. Mediators on the other hand make recommendations to the parties on the way forward. The applicability of mediation tends to be limited to employee grievances and many of these arise out of interpersonal disputes only and not to a wide range of issues (Saundry and Wibberley, 2012; Latreille, 2011). Others note that mediation lacks formal discovery processes in addition to not having the procedural and constitutional protections guaranteed by litigation or the court system (Goodman, 2003; Radford,

2000). Notwithstanding the above explanation there has been a rise in mediation in the workplace in the UK and some studies point to the success of mediation in resolving individual disputes (Saundry et al., 2016; ACAS Annual Report, 2013; Latreille, 2011).

The process of arbitration involves an impartial judge or adjudicator. It is different to mediation because the parties' responsibility to determine the resolution to their dispute is yielded to the arbitrator. The obligation of the arbitrator is to make firm decisions on the case based on the evidence presented by the parties. Prior to appearing at arbitration the disputing parties are required to agree in advance that they will abide by the arbitrator's decision, which becomes binding in principle (Blain *et al.*, 1987; Maggiolo, 1971). Previous scholars argue that arbitration supports the parties to maintain a relationship (Mazirow, 2008). However, others contend that the parties do not have a right of appeal even when the arbitrator makes a mistake of fact or law. This is because there is no right of discovery in arbitration unless the arbitration agreement or the parties so provide it (Abbaspur, 2013; Mazirow, 2008).

Conciliation involves an independent third party who discusses the issues in dispute between the parties in order to help them reach a better understanding of each other's position and recognise key concerns such that a resolution might be reached. The main obligation of the conciliator is to provide an open platform for the parties to communicate and at the same time facilitate resolution. There are two types of conciliation – individual and collective. Individual conciliation involves the employer and individual employees without the involvement of the trade unions (Benjamin, 2013; Towers and Brown, 2000; Undy, 1999; Blain *et al.*, 1987). Previous studies conducted on individual conciliation in the UK reveal that the introduction of unfair dismissal legislation has led to an increase in caseloads and volume of applications and claims made by individuals to Employment Tribunals. In addition, there are changes in the configuration of applications and the nature of cases as well as levels of representation (Dix *et al.*, 2008). Other scholars emphasise that the increase in individual conflict and its resolution in the UK is due to the decline in union membership and union power. This suggests that individual conciliation is a response to the liberating features of collective disputes since it has become evident that trade unions find it more challenging to organise their members in the UK (Drinkwater and Ingram, 2005; Shackleton, 2002).

The focus of this study is on collective conciliation. Unlike individual conciliation, collective conciliation involves the employer and employee representatives. Collective conciliation typically involves among other things disputes over general pay, trade union recognition, changes in working practices, redundancy, discipline and dismissal (Latrielle and Knight, 2007; Curtis and Wright, 2001). Collective conciliation is usually carried out on a face-to-face basis and with union representation (Bendix, 2010; Corby, 2000; Dickens, 2000). Interest in and use of collective conciliation has varied over time. There was a growth in demand for collective conciliation in the 1970s but it fell dramatically in the 1980s due to sectoral and legislative changes and declining union power in the UK. The popularity of collective conciliation has also varied due to factors such as the nature of issues in dispute, characteristics of the parties, lack of willingness by the parties to compromise, unrealistic union and management expectations and parties engaging in conciliation as a form of manoeuvre rather than as a positive attempt to seek settlement (Dix and Oxenbridge, 2004; Goodman, 2000; Finnemore, 1999; Hiltrop, 1985). In the UK conciliation precedes mediation or arbitration in the resolution of collective employment disputes while in Nigeria; conciliation comes after mediation and before arbitration. Although these methods of ADR are carried out by different individuals, their task and responsibilities are interconnected as seen within the Nigerian context where unresolved collective conciliation disputes such as those relating to pay and conditions of employment are referred to the IAP by the Minister of Labour.

Apart from mediation, arbitration and conciliation, other forms of non-judicial ADR methods include negotiation, facilitation, investigation and fact-finding. These forms of ADR tend to be involved in all the three ADR processes and hence are part of the social process of collective conciliation and model presented in this thesis. Negotiation is basically a deliberative process where the disputing parties engage with one another in discussions with or without the intervention of a third party. Advocates of negotiation believe that it is possibly the most flexible method of dispute resolution because it involves the parties that are interested in the dispute. The invitation of the third party during negotiation is usually at the discretion of the disputing parties (Fisher, *et al.*, 2011; Provis, 2000; Colosi, 1993; Zartman, 1988; Nyerges, 1987).

In facilitation, the parties request the assistance of an independent third party to assist them in accelerating the process of negotiation. Adherents of facilitation maintain that it is appropriate for trade unions and management which are in situations where

relationships have deteriorated or where workplace-related changes are being anticipated. Its application reveals that it enables the parties to move from a competitive win-lose power struggle to mutual problem-solving orientation where they identify their joint problems and make efforts to exploit their joint gains by resolving them (Paulozza, 1999). Others argue that this process can become ineffective when the facilitator loses independence and neutrality or when the parties feel manipulated by the facilitator's approach (Schwarz, 2002; Weaver and Farrell, 1997; Rees, 1991). Although there is little in the process of negotiation that facilitation may lead to conciliation in individual and collective disputes, the facilitative role of the conciliator tends to improve the relationship that exist between the disputing parties and assist them to identify joint problems and proffer mutual solutions that sustain their existing relationship.

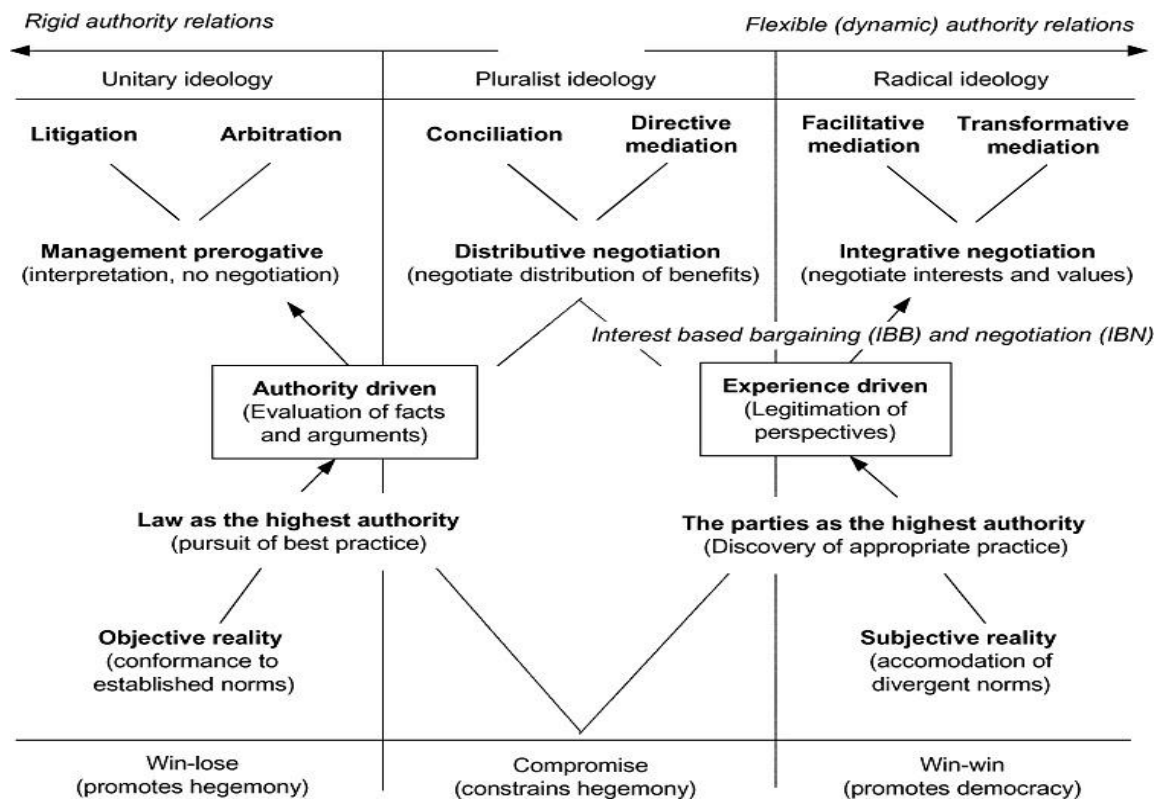
Finally, investigations are used in circumstances where diversity and discrimination or harassment and dismissal are at issue. In such instances an independent third party undertakes a comprehensive enquiry and produces a report that can be used at subsequent stages of the internal procedures or if the matter progresses further externally in a tribunal. Fact-finding is a process where an independent third party is asked to decide on the differences in the circumstances that exist between the parties without suggesting or recommending a solution to the dispute (Teague and Roche, 2012; Doherty *and* Teague, 2011; Van Gramberg, 2006; Lipsky and Seeber, 1999).

2.3: Conceptualising ADR and collective conciliation

Having set out the variety of forms that ADR can take and how it has been conceptualised in the literature, the question remains: what frameworks and models have been used to understand it and collective conciliation in particular? This section begins with a review of the dominant models of ADR, particularly the recent model put forward by Ridley-Duff and Bennett (2011) and used to understand aspects of ADR approaches to dispute resolution. This analysis is linked to the framework used by Wall *et al.*, (2001) for identifying outcome determinants of mediation and understanding its impact on the process and perceptions of mediation. Adjunct literature on collective bargaining and negotiation are also considered and in particular the models of Chamberlain and Kuhn (1965) and Walton and McKersie (1965). This thesis argues that these studies can provide analytical insight that can be used to inform the development and understanding of the social process of collective conciliation.

One recent model put forward for understanding ADR is that of Ridley-Duff and Bennett (2011), whose analysis presents an exploration of ADR approaches to dispute resolution-mediation. According to this study, in order to understand how the practice of ADR influences the outcomes of dispute resolution the development of a theoretical framework was necessary; based on the standpoint that supports interest-based bargaining and mediation and the opinions of management about authority and knowledge. The main result of this analysis shows that the nature of the employment relationship tends to influence the approaches of the parties when they are negotiating during ADR. Ridley-Duff and Bennett's (2011) theoretical assumption is categorised into two parts. The first notion is based on the enforcement of a consistent standard of fairness and equality. Impartiality, they argue, operates on the basis of investigating claims against an individual with the intention of discovering truthfulness during ADR. The object of investigation is the individual and their actions rather than relationships between parties. This inevitably leads to a focus on the personality and behavioural characteristics of the parties. Running counter to this is the second assumption, which is based on the premise that allegations stem from relationship and communication issues and not from behavioural characteristics. The object of investigation is the relationship, and the goal of the ADR method is to increase the capability of the disputing parties to maintain and develop their relationship. The theoretical framework is presented below.

Figure 2.1: Framework for understanding Alternative Dispute Resolution (ADR)



Source: Adapted from Ridley-Duff and Bennett (2011:18).

This framework has indicated the importance of the role of the state to establish industrial relations machinery that monitors the activities of trade unions and management and promotes industrial peace and harmony. The parties need to explore equitable procedures that accommodate diverse standpoints and promote fair play. It demonstrates the significance of the ideology of the parties in relation to their view about information sharing and their standpoint regarding the role of other stakeholders in the employment relationship. This model fits very well with Walton and McKersie's (1965) analysis, and in this thesis the model is used as a guide for data collection, analysis and conclusion.

Closely linked to the account presented by Ridley-Duff and Bennett (2011) is Wall *et al.*'s (2001) framework on mediation. Wall *et al.* (2001) considered the process of mediation and identified key themes that could be used to determine the possible outcomes of mediation as level of conflict, type of issue, stage of entry of the mediator, the balance of power between the parties, commitment of the parties to reach agreement, availability of resources, visibility of mediation and perception of mediator credibility

and trustworthiness. A review of the analysis by Wall *et al.* (2001) in relation to Ridley-Duff and Bennett's (2011) framework on ADR shows that both investigations focus on ADR and on mediation in particular. Furthermore, both studies highlight the importance of the role of the state and demonstrate the need for the state to make available the resources (legislation/funds/environment) needed for negotiation and to support the clarity and transparency of mediation. Ridley-Duff and Bennett's (2011) standpoint on the ideology of the parties about power and their opinion concerning information-sharing is corroborated in the explanation by Wall *et al.* (2001) about the level of commitment of the parties and their view regarding how the balance of power tends to determine the settlement.

The explanations presented by Wall *et al.* (2001) about the level of conflict as the strongest outcome determinant indicate that as the conflict increases during mediation so the probability of success through mediation decreases. The importance of the issues in dispute to the outcome of resolution is revealed with the explanations that issues of principle are much more difficult to mediate than those of right or substance. The stage of entry of mediators in the timeline of the dispute also has an impact on effects, thus confirming Ridley-Duff and Bennett's (2011) stance on the integrative and distributive behaviour of the parties during negotiations and its effect on end results which is reflected in dispute resolution and sustained trade union and management relationship. The explanations by both studies about the relationship that exists between the parties and their perception regarding the mediator show how the opinions of the parties impact on the process and the end results of mediation in the form of settlement, participant satisfaction and improved relationships.

The outcomes of Ridley-Duff and Bennett's (2011) analysis of the two approaches mentioned earlier reveal that the authority-driven approach tends to result in win-lose outcomes that conform to established norms and the authority of the state. This approach is more interested in obtaining more out of the process, and as such, is not interested in any relationship or willing to consider any opposing views during negotiation. This account is comparable to the descriptions by Chamberlain and Kuhn (1965) and Walton and McKersie (1965) on conjunctive or descriptive bargaining which tends to promote control and domination of one party by the other. The experience-driven approach that leads to the parties attaining win-win results views the parties, not the state, as the

highest authority, and as such, it does not consider the importance of the role of state legislation during negotiations, although it does accommodate divergent views and focus on relationship consequently, thereby making it comparable to co-operative or integrative bargaining, which takes into consideration the relationship of the parties. Ridley-Duff and Bennett's (2011) investigation of the combination of both approaches during negotiation indicate that when the parties consider the authority of the state and conform to established norms, the end results of negotiation will reflect the fact that it accommodates divergent views and its effects will be a compromise (reflecting the promotion of hegemony and democracy) similar to Wall *et al.*'s (2001) description of outcomes that promote settlement or contribute to settlement and improves the participants' satisfaction as well as enhancing the relationship.

The study by Wall *et al.* (2001) applied Lewin's (1951) Force-field analysis theory to the outcome determining factors to provide a theoretical lens through which the effects of mediation could be studied. The exploration of the combined analysis presented by Wall *et al.* (2001) was applied to practical dispute situations by Curran (2014) and used to understand the impact of mediation on the consequence of resolution in collective mediation. Curran (2014) considered the balance between restraining forces (level of conflict, stage of entry, type of issue in dispute and balance of power) and driving forces (commitment of the parties, availability of resources, visibility of the mediator and the likelihood of increase or decrease) in the settlement of dispute on the other hand, in relation to two industrial dispute cases in Ireland. The findings show that on examination of the outcome determinants in each of the cases, at the beginning of mediation the balance of the restraining and driving forces served to create a balance represented by stalemate. Moreover, both disputes arose due to redundancy and pay but over time the issues became a matter of principle, emotions were high and the pressure not to lose face had mounted between both parties. The restraining forces involved a passionate degree of conflict that had been prolonged. The balance of power that was located with the employer at the initial stage of the dispute was somewhat re-balanced towards the trade unions when public profile and support for the worker side became stronger.

The potential driving forces identified by Wall *et al.* (2001) did not act as an adequate counter-force to produce a settlement in both cases. Employers were committed to the process although the availability of resources was low in both disputes. The point to

consider is that the outcomes presented by Curran (2014) echo the importance of state authority and the relationship between the parties as well as their readiness to communicate, and its impact on end results is similar to Ridley-Duff and Bennett's (2011) explanation about the significance of the role of the state and how the parties' view of power influenced their relationship and communication and determined the end results of ADR, namely: win-lose, win-win and compromise. Additionally, both ADR theories and models have mentioned useful factors such as perception of the parties about the mediator, commitment of both parties to mediate and the balance of power between the parties that shape the social process of ADR and possibly conciliation, although the case of conciliation has been unexplored.

Outside of the ADR literature, other related studies have explored the social process associated with other collective negotiating environments. Chamberlain and Kuhn's (1965) and Walton and McKersie's (1965) theories and models on collective bargaining and negotiation present a comprehensive investigation of the interaction between bargaining power and strategies as well as the relationship and behaviour of the parties during collective bargaining and negotiations. For example, Chamberlain and Kuhn (1965) view collective bargaining from the standpoint of power relationships, which they describe as the capacity to secure another's agreement on one's own terms and conditions. Their study examined union and management strategies and procedures during bargaining and indicated its influence on outcomes. They also claim that the impact of union power and tactics on results are typically influenced by the timing of strikes and the influence of unemployment or insurance on their duration. This is in addition to union control of the supply of labour as well as the ability of unions to secure compassionate and sympathetic action. Management strategy, on the other hand, is usually characterised by violent opposition to union organisers and the circulation of employee black-lists or the engagement of manager's instigators and the refusal to employ union members except on terms agreeable to management and lockout of unionised employees Chamberlain and Kuhn's (1965) similar to the Nigerian context.

Chamberlain and Kuhn's (1965) study emphasises the need to consider broader contextual factors such as marketing, governmental and managerial issues and examine how these factors influence the actions of management and employees and possibly determine the end result of bargaining (Rose, 2004; Hameed, 1970; Flanders, 1970;

Nally, 1963). Thus, the attention in Chamberlain and Kuhn's framework is squarely focused on the social process of bargaining as contextualised. Chamberlain and Kuhn's explanation informs the development of two basic models of collective bargaining relationships: conjunctive and co-operative bargaining. According to them conjunctive bargaining takes place in situations where the trade unions and management come to reach a decision through absolute and unreserved conditions. The bargaining relationship within this context arises from the unconditional necessity that settlement needs to be reached for negotiations to continue. Supporters of this viewpoint assert that when less emphasis is placed on sustaining existing relationships (if any) by the disputing parties this form of bargaining may be suitable (Rout and Omiko, 2007; Spangler, 2003; Fisher *et al.*, 1991; Ury and Fisher, 1981), although it has the tendency to lead to destructive actions and sometimes forces the parties to focus too much on their differences instead of considering how their differences could be reconciled (Fisher *et al.*, 2011; Adell, 1967; Mabry, 1966). Others underline the failure of the analysis to develop sufficient theoretical and empirical links needed to understand the relationship that exists between bargaining theory and power (Bacharach and Lawler, 1981). The key point to consider is that this bargaining model does not reflect the trade union and management relationship that exists between the parties and it does not sufficiently capture communication and information-sharing.

The second approach put forward by Chamberlain and Kuhn (1965) is co-operative bargaining, and its dominant feature is the willingness of the parties to make concessions and achieve objectives that would not otherwise have been possible. Bringing this explanation to the workplace links it with the notion that even though employers and trade unions do not have a common interest, their ability to understand that their diverse interest is more capable of achievement when they allow each other to move towards their objectives is essential. Advocates of this view assert that it results in problem-solving approaches wherein the parties collaborate and decide to increase the value of the resources that need to be distributed. Other scholars describe this concept as principled negotiation, interest-based bargaining, integrative bargaining and win-win orientation (Stöckli and Tanner, 2014; Fisher *et al.*, 2011; Garaudel *et al.*, 2008; Sahdev, 2004; Salamon, 2000; Walton and McKersie, 1965). Critics argue that the explanations presented by Chamberlain and Kuhn (1965) have inadequately captured what might be considered to be social reality (Cutcher-Gershenfeld and Kochan, 2015; Kochan and

Cutcher-Gershenfeld, 2015; Bacon and Blyton, 2006). The key point to note is that the co-operative model promotes communication and relationship and inspires the parties towards considering diverse interests and opinions and making concession during negotiations.

The application of Chamberlain and Kuhn's (1965) concept of bargaining power to negotiation shows that it has influenced the work of generations of industrial relations scholars (Fells and Prowse, 2016; Lewin, 2016; Dhal, 2011; Bendersky, 2003; Mitchell, 1980; Gerhart, 1976; Kochan and Wheeler, 1975; Drotning and Lipsky, 1969). Previous studies reveal that parties' satisfaction with outcomes depends on the type of issues (interest-based issues involve the allocation of scarce resources; while value-based issues focus on the norms, beliefs and ideologies of the parties). Parties in interest-based negotiation tends to be pleased with integrative outcomes whereas those in value-based negotiations are usually satisfied with distributive ones (Stöckli and Tanner, 2014; Harinck and De Dreu, 2004; Harinck *et al.*, 2000). Scholars have identified the conditions that affect the success of co-operative bargaining as a degree of trust developed by the parties from their previous negotiations, level of expertise and style demonstrated by the negotiators, clarity of the bargaining issues and the capability of the negotiator to use problem-solving techniques to address issues (Schwartz, 1992; Druckman *et al.*, 1977; Deutsch, 1973).

What insights from Chamberlain and Kuhn's (1965) model on collective bargaining and power relationships can contribute to our understanding of ADR and collective conciliation? Chamberlain and Kuhn's (1965) analysis has highlighted the significant impact of relationships, information sharing and the role of the state on the outcomes of bargaining in their framework. Their study also places an emphasis on how strategic actions can be used to modify and if possible transform the parties' bargaining relationship and power. However, its translation to collective dispute resolution and conciliation in particular has been unexplored. Chamberlain and Kuhn's (1965) departure from non-behavioural way of bargaining to behavioural process has inspired other researchers in this field, such as Walton and McKersie (1965)'s behavioural study, which was influenced by Chamberlain and Kuhn's framework. Walton and McKersie (1965) view conjunctive and co-operative frameworks presented by Chamberlain and Kuhn (1965) as distributive and integrative sub-processes.

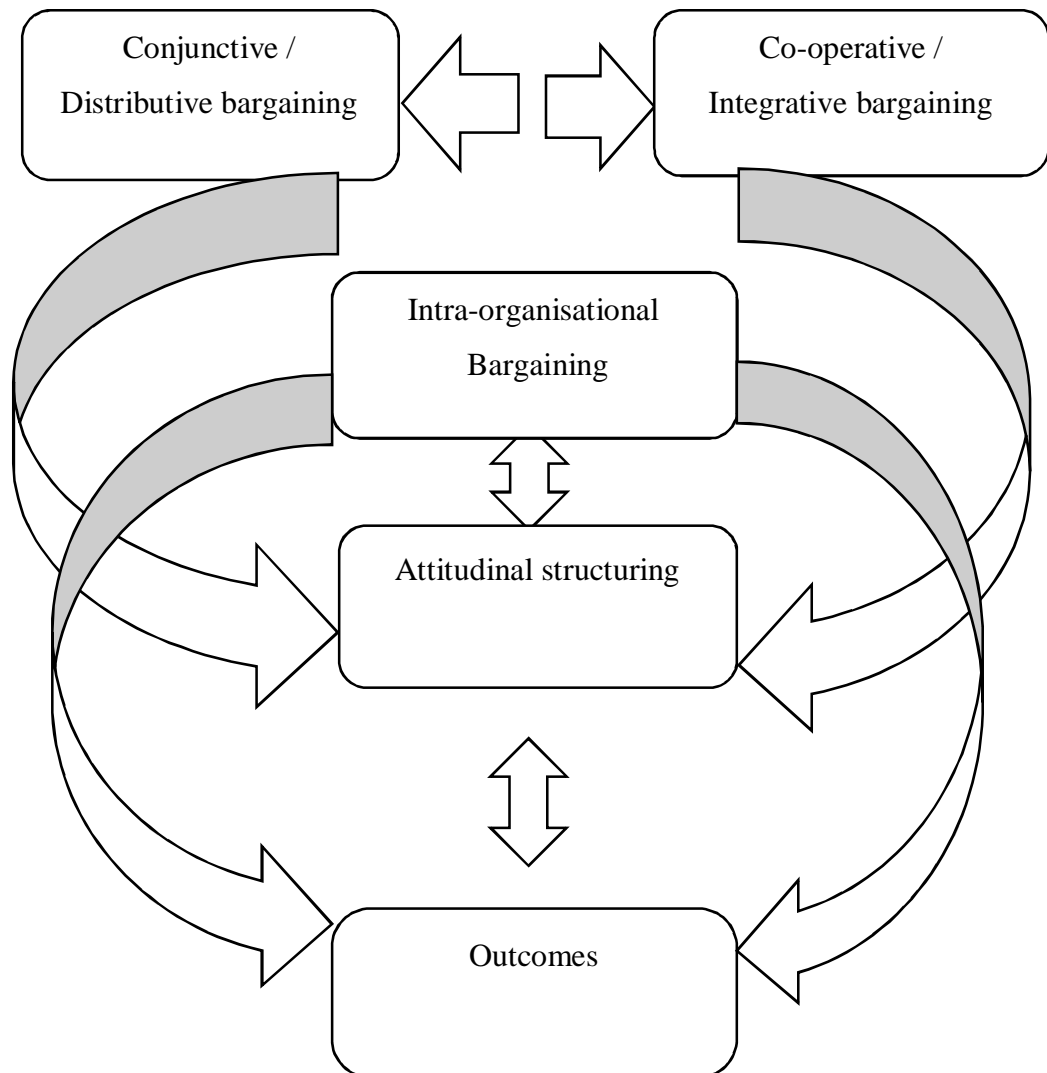
In addition, Walton and McKersie (1965) identified two other features of the negotiating process that could be used to understand negotiation. These are attitudinal structuring and intra-organisational bargaining. Intra-organisational bargaining enables the parties to negotiate with members of their constituency and regulate their approaches and thus it can be linked to distributive and integrative bargaining, because it recognises the diversity of interest within the workplace and confirms that during negotiations trade unions and management take into consideration the preference of their respective constituencies (Morley, 1992). This account emphasises the ability of negotiators to apply diverse intra-organisational bargaining strategies on members of their constituencies and used to modify the issues under dispute and if possible, amend or change the expectations of the constituent groups (Lipsky *et al.*, 2007; Kochan and Lipsky, 2003; Cutcher-Gershenfeld *et al.*, 1989). Intra-organisational conflict often produces insufficient formal authority at the bargaining table to complete an agreement, as negotiators tend to be uncertain about what commitments they can make during negotiations and therefore guard against any form of resistance, particularly from their constituents (Morley, 1992; Lax and Sebenius, 1986; Kochan, *et al.*, 1975). Previous studies on intra-organisational bargaining confirm that some union leaders are capable of attaining adequate authority to resolve or suppress internal conflicts, while others find it difficult to achieve a limited front for the purpose of negotiating with management. Management on the other hand tends to subdue disagreement among managers more easily when compared to trade unions (Friman, 1993; Turner, 1990). Other scholars argue that goal incompatibility and factors that provide the ability to interfere with the goal attainment of others are also significantly correlated with conflict. Pressures of imminent deadlines and the strong distributive stance of trade unions and management are likely to create tension (McKersie *et al.*, 2004; McKersie *et al.*, 1986; Kochan, *et al.*, 1975; Klimoski, 1972).

The phase of negotiation that involves reforming the attitudes of the negotiating parties towards each other is termed 'attitudinal structuring' Walton and McKersie (1965). This process shows how the perception of the parties shapes their behaviour and influences their relationship and the end results of negotiation. Attitudinal structuring demonstrates how the approaches of the parties during negotiation can be used to understand their opinion about the employment relationship and also how negotiators influence the mindset of their bargaining team members (Goldberg, 2015; Murnighan, 2015; Williams,

2015; Brett, 2015; Fisher and Shapiro, 2005). Negotiators can encourage their opponents to view issues presented during bargaining in a unified form that applies a joint problem-solving approach that cultivates an atmosphere of friendliness, mutual respect, trust and cooperation (Kochan and Lipsky, 2003; Fisher *et al.*, 1991; Peterson and Tracy, 1977). Critics of attitudinal structuring claim that in practice, the employment relationship is an economic relationship, and once it is established and sustainable the behavioural variables and functions will play their role within the limitations established by the economic forces (Strauss, 1992; Northrup, 1966).

Chamberlain and Kuhn's (1965) and Walton and McKersie's (1965) studies have considered collective bargaining and negotiation between employers and trade unions within the workplace and have emphasised the importance of power and mutual dependency and information-sharing in understanding the processes of collective bargaining and negotiation relevant to social processes. Both studies discuss the significance of the parties' relationship and their willingness to make concessions and how both relationship and willingness of the parties impact on the effects of resolution. Hence, they stress the need to understand the conditions that take place between institutional factors (legislation and regulation), social factors and they consider how it impacts on bargaining procedures and outcomes. In other words, these studies have focused on the social process of collective bargaining and negotiation (CB and N). However, its application to conciliation has been unexplored. The diagram below presents a graphic description of the discussions presented so far on CB and N theories and models.

Figure 2.2: Connecting Collective Bargaining and Labour Negotiation Models



Source: Adapted from Chamberlain and Kuhn (1965) and Walton and McKersie (1965).

Chamberlain and Kuhn's (1965) and Walton and McKersie (1965)'s models demonstrate the importance of relationships and indicate how a trade union and management alliance influences the mind-set of their respective representatives during negotiations and stimulates their readiness to accommodate diverse opinions and make a compromise that takes into consideration their common interest and relationship and suggests the expectations of their respective constituents. The presumed willingness of the parties to share information and communicate is closely connected to the bargaining behaviours cited by Chamberlain and Kuhn (1965). The disposition of the parties to build trust and manage the anticipations of their constituents shows the importance that both trade union and management ascribe to relationships. While affirming this point of view,

Walton and McKersie (1965) emphasise the significance of information-sharing to the promotion of diverse interests, especially at the end of negotiations. Information-sharing, according to these studies, can also be related to the opinion of the parties about the view of the state and its attitude to trade unions and management related matters.

Ott *et al.* (2016) provide an analysis of the impact of information-sharing on the parties' problem-solving abilities and willingness to approach negotiation. According to the study by Ott *et al.* (2016), the parties' ability to share information tends to discourage break-up behaviours and strengthen the negotiators' persuasive abilities which are aimed at enabling the attainment of a satisfactory resolution. The findings of Ott *et al.*'s (2016) study reveal that negotiators that prepare well and exchange information are positively linked to creativity and satisfying outcomes. The findings also show that overcoming deadlock by using various combinations (preparation, information exchange, creativity, power and persuasion) leads to satisfying outcomes. In addition, Ott *et al.* (2016) conclude that while deadlock should not be encouraged, neither should it be avoided, as overcoming deadlock tends to be an opportunity for satisfying outcomes. The point to note is that Ott *et al.*'s (2016) study affirms that when it comes to the required conditions for satisfying results, a combination of information exchange, persuasion and creative solutions tends to overcome deadlocks. Relating this account to collective conciliation, it shows how information exchange creates a calm and tranquil atmosphere that enables the parties to build a rapport and yield to the persuasive influence of conciliators, particularly when they are considering the issues in their dispute and making efforts to overcome deadlock with a view to attaining satisfactory results.

2.4: A review of empirical studies on ADR and collective conciliation in different contexts

Having considered the importance of power and the actions of a range of actors in relation to negotiation and bargaining outcomes, this section looks in more detail at empirical studies on ADR and collective conciliation. This review is undertaken in order to identify the specific factors (through empirical studies) that are involved in the process and results of ADR and collective conciliation. This is followed in section 2.5 by an elaboration of a model of the process of collective conciliation, building on the insights from sections 2.3 and 2.4. The emergence and nature of ADR and collective conciliation vary from context to context but in this section the particular focus is on ADR in South Africa, the United Kingdom, Canada and Japan. The analysis is grouped into three sub-sections. First, the environmental and institutional factors that shape the nature of collective conciliation in different contexts are considered; second, the legislative factors that shape the nature and process of collective conciliation are examined; and finally the third section investigates the findings of studies that have considered the attitudes and perceptions of the users of collective conciliation.

2.4.1: Meaning, nature and practice of ADR and collective conciliation in different contexts

In the UK, conciliation and arbitration have been available to employers and their trade unions since the 1800s, although these processes were in minimal use until the 1970s. Industrial courts and tribunal systems and industrial action were the preferred methods for resolving workplace-related disputes (Van Gramberg *et al.*, 2016; Saundry *et al.*, 2016; Hann *et al.*, 2016; Teague and Roche, 2012; Baker, 2002; Mistelis, 2001; Gould, 1998). The establishment of the Advisory, Conciliation and Arbitration Service (ACAS) was a key moment in 1975. ACAS was instituted as a publicly-funded independent organisation that performs a wide selection of functions ranging from handling complaints and giving advice to the providing of conciliation and mediation and arbitration services in both the public and private sectors. This non-statutory system of ADR, carried out by ACAS in the UK is not influenced by government policies however; its structure and organisation may be modified or changed by state regulations (Dix and Oxenbridge, 2004; Hawes, 2000; Goodman, 2000). More evidence on collective conciliation in the UK will be presented in section 2.4.3. The UK system of conciliation and arbitration shares some features with Canada and Japan. In the 1970s,

non-adversarial methods of resolving disputes had been successfully incorporated into the civil procedure system made available for collective dispute resolution in these countries (Forsyth and Smart, 2009; Funken, 2003). The state plays a key role in the formulation of legislation that frames the employment relationship through its contractual dimension and specifically, concerning the recognition and integration of ADR as an alternative method for resolving workplace disputes (Forsyth and Smart, 2009; Funken, 2003).

ADR does vary in nature, however, in different contexts. Pretorius (1993) describes the rise of ADR institutions in South Africa. According to Pretorius's (1993) study, the legal institutions of South Africa's apartheid government were viewed with a great deal of suspicion by the majority of the population, who had become frustrated and discouraged with the system of court proceedings because a power tussle had become the underlying factor influencing the activities of the parties. Alternative dispute resolution processes and their institutions were developed in South Africa in the 1980s. The state has since played a key role, as revealed in its attitude towards trade union and management related issues through the restructuring of the labour laws that make it possible for trade unions to engage with management in collective bargaining and alternative dispute resolution. The situation in South Africa demonstrates how contextual factors within the society translate to the workplace. It indicates how workplace related disputes between trade union and management are perceived and the way in which their perception impacts on the end results of resolution (Nupen, 2014; Bhorat *et al.*, 2009).

In Canada, conciliation and mediation are the primary dispute resolution processes available for the resolution of collective disputes. According to the Federal Mediation and Conciliation Service (FMCS) in Canada, conciliation is conducted by conciliation officers or by a conciliation board appointed by the Minister for Labour. Apart from the conciliation and mediation services provided by the FMCS, private mediation services are widespread in Canada because it is a required step for the parties to take before approaching the court for settlement. Meanwhile in Japan, three methods of ADR are commonplace: conciliation, compromise (a combination of litigation and mediation) and arbitration (Funken, 2003). The importance of the neutrality of ADR institutions while carrying out their responsibilities and the ability of the state to provide financial assistance makes it easy for these ADR institutions to effectively provide voluntary and

confidential as well as free services. The key point to note from Canada and Japan's ADR method is that conciliation is in operation and the state is responsible for providing the financial assistance needed by the ADR institutions to maintain their neutrality and provide a confidential service to trade unions and management.

2.4.2: Factors that shape the nature and process of collective conciliation

A range of studies have examined the factors that shape the nature and process of collective conciliation. Goodman's (2000) analysis examined the causes of disputes that are essential while shaping the nature and process of collective conciliation. Goodman's (2000) study in the UK identified the causes as: conflict over the terms and conditions of employment, trade union recognition, redundancy, dismissal and discipline, and changes in working practices. Other empirical studies in the UK (see Hale *et al.*, 2012; Heery and Nash, 2011) have examined the sources of requests for collective conciliation, and the findings reveal both employers' and trade unions' requests for conciliation, although a joint request for conciliation is becoming common. The findings from studies by Hale *et al.* (2012) and Heery and Nash (2011), also in the UK, put forward the idea that there is a rise in the level of awareness and acceptance of collective conciliation in the workplace. Thus, indicating conciliation may in some circumstances provide the platform needed by employers and trade unions to resolve their differences of opinion and continue with negotiations without resorting to litigation (Hale *et al.*, 2012; Heery and Nash, 2011; Goodman, 2000).

The role of conciliators has formed the focus of a significant portion of studies of collective conciliation. Some see the role of conciliators as enabling a voluntary settlement between the disputing parties (Hernández *et al.*, 2016; Poole, 2016; Dix, 2000; Lewis, 1982). Others maintain that conciliators carry out their role by acting as intermediaries in the exchange of information and ideas and ensuring that the parties maintain open communications with each other by clarifying issues and establishing mutual grounds for settlement (Clark *et al.*, 2012; Dix and Oxenbridge, 2004; Dix, 2000). Still others find that conciliators are involved in identifying likely barriers to progress by dispelling parties' unrealistic expectations. Furthermore, these studies maintain that conciliators consider with the parties the shortcomings of unresolved disputes, and create reassurance that an acceptable solution will be found (Poole, 2016; Cooper *et al.*, 2016; Goodman, 2000; Kessler, 1980; Goodman and Krislov, 1974).

Many studies (see Dix and Oxenbridge, 2004; Dix, 2000) have described the role of conciliators as providing a calm and informal atmosphere and understanding the difficulties that the parties are faced with and having a knowledge and experience of industrial relations. Conciliators may be able to offer suggestions to the parties about possible solutions by using their experience in a variety of ways specifically to build the confidence of the parties in the process and outcomes of conciliation (Hiltrop, 1985; ACAS Annual Report 2013/14; Dickens, 1979). These roles of conciliators have been grouped into three categories: reflexive, informative and substantive (Dix, 2000). Reflexive roles are concerned with responding to the needs of the parties and establishing a positive working relationship, while at the same time giving the conciliator a better insight and understanding of the case (Kressel and Pruitt, 1989; 1985). As information providers, conciliators are required to clarify the details of the case and to convey factual information to the parties. While acting in this capacity, conciliators are required to address discrepancies in the knowledge of the parties and ensure that both sides are equally aware and informed of the legislative dimensions of their case. Conciliators' substantive involvement allows them to move the parties towards resolving their dispute by exploring the strengths and weaknesses of the case. This substantive influence of the conciliator is a common feature of conciliation that allows the conciliator to assess where parties' interest lie and to consider what is achievable within the limit of the law to promote settlement (Pruitt and Carnevale, 1993; Hiltrop, 1985).

Following on from the explanations on the categorisation of the roles of conciliators, Dix (2000) maintains that the style of conciliators (reactive-proactive, message bearer-influences, passive-forceful) can have a significant impact on the process and results of conciliation. Conciliators' ability to initiate a connection with the parties tends to shape the opinion of the parties about the process of conciliation and have an impact on their view about the approach of the conciliator and the results of conciliation. The conciliators' style – message bearing and seeking to influence – relates to the intention of conciliation to provide an open platform for effective communication. This description highlights the duties of the parties and explains the responsibilities of the conciliator during negotiations. Although some conciliators discuss the details of the case and make an effort to influence the decisions of the parties while bearing messages from one party to the other, others simply convey the required information without

engaging with the parties. The behaviour of the conciliator during this process can be said to be a reflection of the personality and technique that the conciliator decides to apply at the different stages of the dispute. It suggests the importance of the way in which conciliators present the arguments of each party and how they (the conciliators) strive to gain the confidence of the parties while seeking to influence the effects of negotiations (Dix, 2000).

These different conciliation roles do, it seems, have an impact on the process and outcomes. Conciliators may decide to act their roles out concurrently to fulfil a variety of purposes, particularly as a case progress. The most satisfied service users tend to be those who have experienced more proactive styles of conciliators (Hale, *et al.*, 2012; Dix *et al.*, 2008; ACAS and Ipsos Mori 2006; Dix 2000), which help the parties to rethink their positions on the dispute. In addition to the role of the conciliators, other factors that have a significant impact on the nature and process of end results of conciliation include: the years of experience of the conciliator, the nature of the involvement of the conciliator, and training, level of involvement or participation of the conciliator in the practical settlement of the dispute (Gibbons, 2007; Dix and Oxenbridge, 2004; Molloy *et al.*, 2003).

2.4.3: Attitudes and perceptions of users of collective conciliation

Several studies have argued that the approach and opinion of the parties about the conciliator and the process of conciliation tend to influence the outcomes of resolutions. For instance, Molloy *et al.*, (2003) claim that conciliation is mostly used by parties in a dispute when they feel that they cannot move forward without assistance (Heery and Nash, 2011; Dawe and Neathey, 2008; Dix and Oxenbridge, 2004). Others maintain that parties opt for conciliation when they fail to agree or when negotiations have broken down and internal dispute machineries have been exhausted (ACAS, 2014; ACAS and Ipsos Mori, 2006; Goodman, 2000). Some studies assert that the use of conciliation is informed by the desire of the parties to obtain independent and unbiased assistance (Dix *et al.*, 2008; Molloy *et al.*, 2003; Dix, 2000), while others affirm that the choice of conciliation is mainly due to its being the next step in the dispute procedure, or because the settlement process requires the parties to conciliate before they can proceed to arbitration (ACAS, 2014; Heery and Nash, 2011; ACAS and Ipsos Mori, 2006).

The central point to take note of is the importance of the parties acknowledging their inability to resolve the dispute and their request for third party assistance. Where collective conciliation is not used, this may be attributed to the view that the disputes have not reached a total impasse (Dawe and Neathey, 2008; Molloy *et al.*, 2003). Others affirm that disputing parties do not see what solution conciliators could find that they cannot possibly find themselves (ACAS, 2014; Bond, 2011; ACAS and Ipsos Mori, 2006). Studies assert that disputing parties are of the opinion that it is their job to sort out disputes without bringing in outsiders, hence signifying the parties' perception about the amount of control that conciliators might have over the case and the fact that what might sound reasonable during conciliation might seem very different outside to their members.

The attitude of the parties towards the conciliator and the conciliation process is a crucial factor here. For instance, the use of conciliation could be perceived by some trade unions and management as a sense of personal failure. Others could view the conciliator as an outsider who does not have as much in-depth knowledge about the industry and the peculiarities that exist within the workplace such as the union-management relationship. This description informs the attitude of some trade unions and management representatives who conclude that the role of the conciliator is not important during conciliation (Bond, 2011; Ruhemann, 2010). According to this viewpoint, since the role of the conciliator is limited to facilitating and not making a judgement on the case like arbitrators or judges, then the parties may as well sit back in the comfort of their workplace and proffer solutions to their dispute; especially since the outcome of conciliation needs to be implemented by employers and trade unions and not by the conciliation. This standpoint indicates that the involvement of conciliators in a collective employment dispute tends to undermine the traditional oppositional dynamics of industrial relations (Bond, 2011; Ruhemann, 2010).

The non-use or low use of collective conciliation can be attributed to fear and anxiety. According to studies by Broughton & Cox (2012) and Heery and Nash (2011), some employers are of the opinion that by involving conciliators in a collective employment dispute it would result in loss of their control of the settlement process and its possible outcome. This demonstrates the importance of adequate information and education of trade unions and management representatives, as well as other stakeholders that have a role to play in collective conciliation. Training and communication tend to eliminate

anxieties and worries by providing opportunities for inquiries to be made about the process and expectations at the end of conciliation. They also provide knowledge of the importance of legislation and the impact of this on negotiations and end results. Additionally, training and communication allow the parties to ask questions and make clarifications will erase misinterpretation and shape their perception as actors and determine the results of collective conciliation (Broughton and Cox, 2012; Heery and Nash, 2011).

Studies do confirm the importance of the conciliator alongside a host of other institutional and contextual factors in shaping the process and outcomes. For example, an empirical investigation by ACAS and Ipsos Mori (2006) into the settlement rate and satisfaction of disputing parties revealed that 44% of respondents confirm that conciliators' involvement facilitated the rapid resolution of their case or helped them to move closer towards resolving their dispute. Others reveal that customer satisfaction is particularly high in disputes where most of the key issues were resolved or when some progress was made towards resolution (Booth, *et al.*, 2016; Hale, *et al.*, 2012; Dawe and Neathey, 2008; Hiltrop, 1985). Advocates of this view specify that conciliators who proactively seek agreement with disputing parties record a high rate of satisfaction (Hale, *et al.*, 2012; Dawe and Neathey, 2008). Others establish that the conciliator's ability to identify areas of agreement and disagreement while exploring the parties' points of view on the dispute is also usually associated with a high satisfaction rate. More recent studies that examined the impact of collective conciliation on outcome of disputes and timing of assessment reveal that conciliation has assisted in bringing the parties closer together and has also helped them to avoid industrial action and speed up resolution (Hale, *et al.*, 2012; Heery and Nash, 2011; Bond, 2011; Ruhemann, 2010; Dawe and Neathey, 2008). Still others assert that conciliation has impacted positively on the relationship that exists between the parties and improved the result of the resolution. Studies that considered the impact of conciliators' non-intervention in dispute situations confirm that the case would have resulted in the dispute remaining unresolved or being steered towards industrial action or a strike (Hale *et al.*, 2012; Dawe and Neathey, 2008). The important idea to consider is that irrespective of the approach or style that the conciliator decides to adopt during conciliation the principal aim of building a relationship and exploring the parties' points of view on the dispute, then

providing a rapid resolution to improve the results is essential for high customer satisfaction rate (Heery and Nash, 2011; Bond, 2011; Ruhemann, 2010).

Effective communication is an important tool for conciliators because at the end of conciliation it is anticipated that the parties understand each other's position and the legislation, and can identify the strengths and weaknesses of their case with a view to making a compromise when necessary for the dispute to be resolved (Meadows, 2007; Molloy *et al.*, 2003). Parties seek the assistance of conciliators when they are apprehensive about the future; as soon as the parties decide to approach conciliation they need to understand the need to de-emphasize the power relationship key features of Collective bargaining and Negotiation (CB and N). This is because during conciliation the parties are responsible for proposing solutions that will sustain their relationship. Previous studies assert that instead of the parties maintaining entrenched and deeply-rooted positions during discussions their willingness to negotiate and make concessions is essential, because it has the tendency to facilitate a rapid resolution (ACAS, 2014; Hale *et al.*, 2012; Broughton and Cox, 2012; Bond, 2011; Heery and Nash, 2011; Ruhemann, 2010).

As discussed earlier in this chapter, collective conciliation is an extension of collective bargaining and negotiation. Previous studies on ADR, Collective bargaining and Negotiation (CB and N) have considered and provided an understanding of the factors that influence outcomes. These studies reveal the importance of the role of the state and how the attitude of the state towards trade unions and management related matters influence the perceptions of the trade union and management during negotiation. In addition, it shows how power and mutual dependency and information-sharing offer an understanding of the process and outcomes of ADR, CB and N. However, these studies did not consider how these factors can be applied to collective employment disputes. Within the context of a broader social and institutional framework where ADR CB and N takes place, this study emphasises the need to investigate how the factors of power relationships and the behaviour and attitude of the parties can be used to understand the social process of collective conciliation. This study focuses on investigating the structures that will be used to understand the social process of collective conciliation.

2.5: Towards a framework for understanding the social process of collective conciliation

The social process of collective conciliation is taken in this thesis to mean the collective forms of interaction that take place between trade unions and management during the resolution of collective employment disputes with the assistance of the conciliator. In order to determine the processes and outcomes of dispute resolution our understanding of the collective procedures and interplay that takes place among the actors is essential. A number of frameworks from the ADR, CB and N literature have provided valuable insights into the issues of power relationships and the behaviour and attitude of the parties, and how these shape the results of mediation as well as collective bargaining and negotiation. It makes sense to try and use the insights from the ADR, CB and N literature to understand collective conciliation because these studies point towards a set of factors that together can be called the social process of collective conciliation. Three major themes that have emerged from the analysis presented in this chapter, namely: information sharing and communication, state legislation and regulations, and the trade union-management relationship will be considered. The following section examines the themes and presents an analysis that can be used to link ADR, CB and N to conciliation and advance our understanding of the social process of collective conciliation.

2.5.1: Information-sharing and communication

In this section this study is particularly interested in investigating information-sharing and communication processes with regard to their influence on the actions of the parties during collective conciliation. Linking the explanation in this section to Ridley-Duff and Bennett's (2011) model of ADR and also to Chamberlain and Kuhn's (1965) and Walton and McKersie's (1965) models on CB and N it presents an analysis of how information-sharing shapes the actions of the actors and increases their capability of maintaining their relationship. The ideology and philosophy of management about employment relations determines its disposition and attitude towards trade unions. This attitude of management tends to reveal the way in which management procedures influence its choice of a distributive or integrative negotiation stance during CB and particularly during dispute resolution. This suggests that if one party has a conjunctive or win-lose orientation they can decide to share less information and gain more, to the detriment of the other party. Alternatively, the parties can decide to adopt the co-operative and integrative mind-set that will enable them to willingly share information

and find a common interest that will lead them to make concessions and sustain their relationship.

Bringing this explanation to our discussion on collective conciliation, the parties' attitude towards negotiation (distributive or integrative) is likely to influence the way they share insight and information about the key issues in their dispute. The parties need to have trust and confidence in the neutrality and impartiality of the third party because this will enable them to share information with the conciliator. The perception of the parties about the fairness and objectivity of conciliation builds on their assertion about the end results and the way it influences the process of conciliation. These factors shape how the parties share information with each other and with their constituents, particularly during negotiations. Trade unions and management representatives need to manage the diverse views of their constituents when they are considering the outcomes of negotiations, especially when it does not meet their expectations. Within the context of this study, information-sharing and communication will be described as the exchange of facts and evidence between employers and trade unions and conciliators. Depending on the demeanour of the parties, the transfer of information and communication could be characterised by distortions and inaccuracies that could result in misrepresentation and suspicion or misunderstanding (Mesmer-Magnus and De Church, 2009; Julibert, 2008).

Studies demonstrate that information-sharing makes it more likely for trade unions and management to reach agreement and accomplish their objectives (DiGiovanni, 2012; Creane and Davidson, 2008; Morishima, 1991). Adherents of this viewpoint identify factors that influence information-sharing activities to include the ideology and history of the parties, the setting of expectations and anticipation by the parties, the nature and character of the parties, the timing and duration of negotiations, and the structure of democracy within the workplace all mentioned earlier in this chapter (DiGiovanni, 2012; Creane and Davidson, 2008; Morishima, 1991). Other studies establish the fact that broader contextual and behavioural factors such as the political administration and legal system, role and attitude of the state towards trade unions and management matters and their relationship all influence the way parties share information and engage in communication (Napathorn and Chanprateep, 2011).

Critics have however raised the fear of disruptive communication and its effect on creative processes; that is, how it influences the personalities and willingness of the parties to share information and communicate effectively (Mesmer-Magnus and De Church, 2009; Julibert, 2008; Lewin, 1984; Kochan and Katz, 1980). Others affirm that information-sharing is associated with higher compensation and when the trade unions are effectively informed about the actual financial position of the organisation they tend to agitate for more wages and salaries. Closely linked to this view are studies that confirm that companies are less likely to share relatively sensitive information with employees and trade unions because sharing future market strategies with employees could be negatively linked to a company's productivity and profitability. In addition, an important connection is said to exist between information-sharing and partnership or teamwork. According to these studies, management's presentation of relevant information about the financial position of the organisation to trade unions could encourage employee collaboration and develop a positive union approach to issues (Aragón-Correa, *et al.*, 2013; Kleiner and Bouillon, 1991).

The parties' readiness to share information impacts on their approach towards negotiation and compromise and how this factor influences the relationship that exists between the actors and impacts on the outcomes of resolution. During ADR, CB and N the parties are involved in the process of communication and information-sharing. The mind-set and bargaining behaviour of the actors (adversarial and distributive) tends to determine how willing they are to share information and engage in communication that would influence their attitude and affect the outcomes of the resolution. Bringing this explanation to our discussion on collective conciliation, this study maintains that factors such as the setting of expectations and anticipation by the parties, the nature and character of trade unions and management, the structures of democracy within the workplace, and the role and attitude of government towards trade unions and management matters all have a tendency to shape the way the parties share information during negotiations and to influence the outcomes of collective conciliation.

2.5.2: Trade union-management relationship

In order to understand the nature of the union and management relationship this section builds on the discussion that was presented on ADR, CB and N. It shows how the power relationship between trade unions and management determines their willingness to

reach agreement and sustain a relationship, hence indicating the significance of the influence of this power relationship on the actions of the actors and end results of negotiations. It is imperative to point out that when the parties approach collective conciliation, their mind-set about power struggle, mentioned in CB and N literature and needs to be toned down so that the focus of negotiation will be more on finding solutions that will bring together their respective interests.

In this section, emphasis will be placed on the attitude and behaviour of the parties towards each other and to the process and end results of collective conciliation. It explores how the parties' insight about their relationship impacts on their approach and behaviour, as well as their experience and views regarding the end result of conciliation. It gives prominence to the role of the actors and considers their perception about this role during collective conciliation. Furthermore, it explores how the character of the actors emerges and shows the way it influences their attitudes and opinions during negotiations. It also echoes how the behaviour of each actor influences the mind-set of others and shapes their actions and at the same time influences the outcomes of collective conciliation.

The trade union-management relationship can be described as an on-going established association that exists between an employer entity and a trade union organisation. This relationship is said to be interested in the negotiation and administration of agreements that covers mutual understanding about wages, hours of work and other terms and conditions of employment (Wagar, 1997; Thornicroft, 1992; Cooke and Meyer, 1990). Others claim that the trade union and management relationship in organisations has traditionally been characterised by a good level of wages and benefits, well-developed grievance procedures and strong adherence to seniority, restrictive work rules and job classification processes. Other studies argue that when the union-management relationship is not cordial it tends to result in higher labour costs and more strike cases, increased law suits and arbitration and a decline in human resource control (Barbash, 1984; Perry and Hunt, 1978; Derber, 1960).

The central idea to reflect on is that the union-management relationship is usually influenced by factors such as the character of the parties, the history of employment relations and the emergence of trade unions. Linking this explanation to the discussion

on information-sharing, this study maintains that when the union-management relationship is cordial it tends to determine the willingness of the parties to engage in negotiations, share information and also make compromises. The trade union and management relationship shows the way in which parties' perceptions about their role influence their attitude and mind-set about the process and outcomes of conciliation. This study demonstrates that when the union-management relationship is cordial there is a tendency for the parties to resolve their differences by using the machinery for internal dispute settlement. However, when tension begins to build or when the relationship becomes less cordial, the parties can decide to seek the assistance of a conciliator. Given the above investigation, it is vital for conciliators upon approaching the parties to first identify the stage of the union-management relationship and ascertain the factors that inform the relationship. The conciliator needs to consider how the relationship can improve such that the end results of resolution not only resolve the dispute but also promote mutual benefits (Schuster, 1983; Golden, 1955; Lester and Robie, 1948; Dubin, 1948).

2.5.3: State legislation and regulations

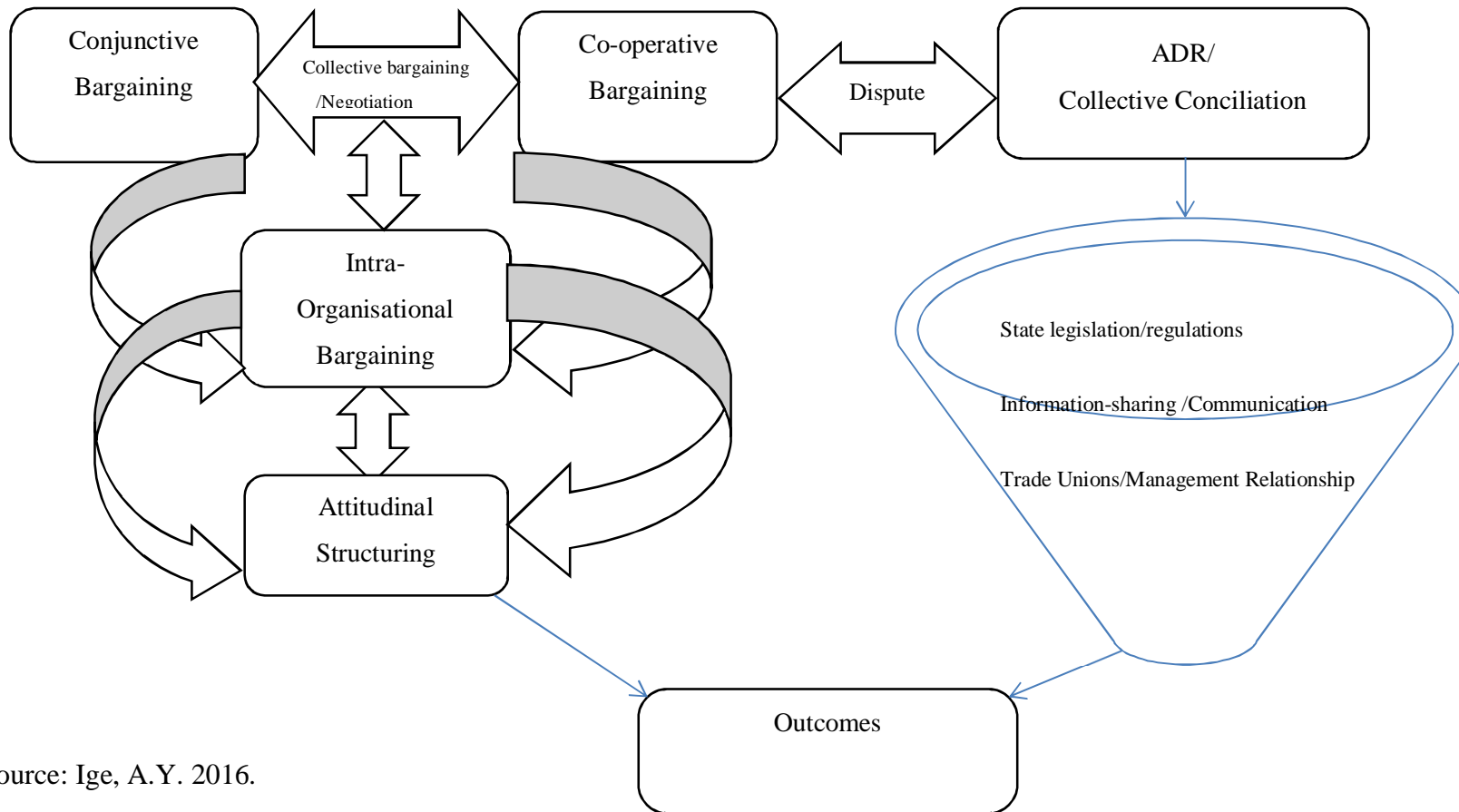
Statutory legislation and regulations are usually endorsed by the state legislative arm of government. Members of Congress, Parliament or National Assembly as it is the case in Nigeria are elected politicians who make laws and create legislation that guide the activities of the executive and judicial arm of government as well as other stakeholders (such as trade unions and management) that carry out their business and employment related activities within the state. Before a legislative bill becomes law, it is debated upon by members of the legislature and given the nature of the activities of members of Parliament or National Assembly in a given session, the possibility that a 'given bill' will be debated upon in Parliament or National Assembly within a given session can be ascribed to the legislative priority of the government in power. This study argues that in order to understand the collective forms of interaction that take place during collective conciliation, an exploration of the impact of the attitude and role of state regulations and legislation on the actions of trade unions and management matters is essential. State regulations and legislation tend to influence the views of union and management about how the activities of the state contribute to the issues that relate to them and to the process and results of collective conciliation.

The aim of this section is to explore the role of the state and consider how it influences the regulations that guide the activities of the actors. It presents an analysis of how the attitude of the state towards labour-management related issues influences and shapes the mind-set of other actors and impacts on their perceptions of the process and the outcomes of collective conciliation. It reveals the disposition of the state towards the review of labour regulations and their enforcement. It considers the role of the regulatory institution – the Ministry of Labour – and examines how it carries out its statutory obligation of providing a conciliatory service. It deliberates on the perception by other actors of the factors that influence the state legislation and regulations and the role of the conciliator, as well as the processes and outcomes of conciliation. Within the context of this study, legislation will be considered as the guiding principle that monitors the employer-employee relationship and activities. These rules take into consideration the nature of employment relations and determine how responsibilities are shared and accounted for among the actors that operate within the workplace.

Advocates of this viewpoint affirm that one of the duties that trade unions provide for their members is to negotiate collective agreements. Others assert that bargaining legislation is enacted to improve the efficiency of negotiations and reduce the union's resolve to embark on strike action. The application of legislation provides an understanding of the shared tasks and responsibilities that recommend what is required of both parties in terms of their attitude and behaviour during negotiations (Hall and Media, 2015; Campolieti *et al.*, 2014; Cramton *et al.*, 1999). Other scholars argue that legislative variables do not have a statistically significant effect on strike incidence because the duration of a strike is usually influenced by policy variables (Campolieti *et al.*, 2014; Cramton *et al.*, 1999). Bringing this explanation to our discussion on collective conciliation demonstrates the significance of the role and attitude of the state and the way it impacts on the review of labour regulations and enforcement. This study links with the idea that the parties' perceptions of the attitude of the state towards union-management related matters tend to influence the opinion of the trade unions and management about the fairness and impartiality of the process and the end results of collective conciliation.

Having considered the broader thematic factors that this study argues are important for our understanding of the social process of collective conciliation, it should be pointed out that the themes are theoretical abstractions. These factors have not been applied empirically to collective conciliation. Thus, the collection and analysis of data will increase the ability of this study to contribute to the body of knowledge that will be used to understand the social process of collective conciliation. The diagram below indicates the connection between this study and previous studies of ADR, CB and N. As mentioned earlier in this chapter, the factors considered in ADR, CB and N studies have not been applied to conciliation. These studies present an in-depth insight into the factors –power and relationship, information-sharing and communication, role of the state and behaviour of the parties – that together can be called the social process of collective conciliation. However, in order to advance our understanding of the social process in practice there is a need to consider the broader social and institutional context that surrounds the process of conciliation. This study argues that the application of the three factors (state legislation and regulation, information-sharing and communication, and trade union and management relationship) to an analysis of collective dispute situations provides an understanding of the social process of collective conciliation in practice.

Figure 2.3: outlines a process that involves the processes of ADR if a settlement is not resolved and as an alternative to industrial action



Source: Ige, A.Y. 2016.

2.6: Conclusion

In conclusion, this chapter has shown the contribution of different scholars and explained how their studies facilitate an understanding of ADR and collective conciliation, in particular. Firstly, the chapter examined Ridley-Duff and Bennett's (2011) theoretical assumptions in relation to Wall *et al.*'s (2001)'s framework on mediation, in order to consider how identified factors influence the view of the parties regarding the authority of the state and their opinion about information-sharing and relationship and the end results of mediation. Chamberlain and Kuhn's (1965) assessment of CB from the standpoint of a power relationship indicate the need to consider bargaining within the context of characteristic conditions that focus on the need for some agreement to be reached. This has informed the development of two basic models of bargaining relationship, namely: conjunctive and co-operative bargaining, with the key features of both models as relationship, information-sharing, and the willingness of the parties to negotiate, make concessions and attain a resolution.

The application of the key features to collective conciliation may not generate the same result, however, because Chamberlain and Kuhn (1965) place more emphasis on how strategic actions can be used to modify and if possible transform the parties' bargaining relationship and power. Their departure from the non-behavioural way of conducting the bargaining process to behavioural procedures inspired other researchers in this field. Walton and McKersie (1965)'s behavioural study describe the conjunctive and co-operative framework as distributive and integrative sub-processes. Additionally, the authors identified other features of negotiating processes as attitudinal structuring and intra-organisational bargaining; this study places an emphasis on the need to view negotiation as a broader feature of industrial relations.

Looking towards ADR and collective conciliation, the studies by Chamberlain and Kuhn (1965) and Walton and McKersie (1965) have considered collective bargaining and negotiation between employers and trade unions within the workplace. They highlight the importance of power and mutual dependency while

explaining the processes of CB and N, hence laying an emphasis on the significance of the parties' willingness to make concession and the impact of this on outcomes. Furthermore, these studies have stressed the need to understand the circumstances and conditions that take place between institutional factors that impact on bargaining procedures and outcomes. This suggests that the parties' perception of the state and of other actors tends to influence their attitude and affect the process and end results of conciliation. These studies focus on the importance of constituents and the ability of trade unions and management representatives to attain their expectations and build confidence in the effects of negotiations, consequently contributing to an understanding of the social process of CB and N. Additionally, these studies have identified the elements of CB and N that indicate the importance of information sharing, the trade union and management relationship and the role of the state in their framework, and as such, it makes sense to try and use these insights to understand collective conciliation, because it points towards a set of factors that together can be called the social process of collective conciliation, although its application to collective conciliation is novel.

Having identified the gap in the existing literature, this chapter turns to a close examination of our understanding of collective conciliation through a broader lens. It proceeds to investigate how the key elements and themes (information sharing and communication, state legislation and regulations, trade union-management relationship) from the existing literature on ADR, CB and N can be used to contribute towards an understanding of the social process of collective conciliation. It notes that the themes were only abstracted theoretically and needed to be tested empirically; these themes form the basis of the interview schedule that guided the researcher during data collection. Primary data that was collected and analysed was used to present the contribution of this research to the body of knowledge on how the social process of collective conciliation can be understood. The setting where the themes will be investigated empirically needs to be considered and so the next chapter will examine ADR institutions that are involved in collective dispute resolution in Nigeria. It investigates the nature of conciliation and looks at

empirical studies that have examined the opinions of trade unions' and employers' representatives during collective conciliation in Nigeria.

CHAPTER THREE

ALTERNATIVE DISPUTE RESOLUTION AND COLLECTIVE CONCILIATION IN NIGERIA

3.1: Introduction

This chapter provides a detailed contextual understanding of employment relations, ADR and collective conciliation in Nigeria. This contextual understanding is important in order to comprehend the specific evolution of ADR and collective conciliation in Nigeria, the particular configuration of employment relations institutions and the role of different stakeholders such as trade unions and employers' associations. This chapter is divided into three sections and structured as follows: Section 3.2 considers the history and emergence of ADR in Nigeria. It offers a contextual overview of the employment relations system in Nigeria and then moves on to examine the nature and context of ADR, forms of ADR that are operational in Nigeria and key dispute resolution institutions, notably the National Industrial Court of Nigeria. Section 3.3 examines collective conciliation in Nigeria. It considers the nature and process of collective conciliation and the forms of interaction that take place during ADR and collective conciliation in Nigeria. It investigates empirical studies that have been conducted on collective conciliation in Nigeria, examines the nature and forms of disputes that are resolved during such conciliation and considers the effectiveness of the process in practice. The findings confirm the significance of the roles and responsibilities of the actors (employer, trade union, state and conciliator). It highlights the procedures inherent in the dispute resolution mechanism and reveals how the weakness of state machinery frustrates the process of conciliation in practice. It then proceeds to consider what previous studies have presented, concerning the perceptions of users about the outcomes of collective conciliation in Nigeria, and then concludes.

3.2: History and emergence of ADR in Nigeria

In order to have a comprehensive account of ADR mechanisms in Nigeria, an investigation into the basic structures of employment relations (pre-colonial, colonial and post-colonial eras) is essential (Otobo, 1988; Ubeku, 1983). An understanding of the key features of employment relations in Nigeria needs to begin with the pre-colonial era when paternalism was in operation in the predominantly agricultural economy: the father was the employer and members of his immediate family were the employees (Yesufu, 1982; Lovejoy, 1974; Iwuji, 1968). With the advent of colonialism, the political and administrative activities of the British government led to the introduction of a more formal, voluntary employment relations practice derived from the Anglo-Saxon model of industrial relations (George *et al.*, 2012; Dike, 2008). Within this framework, workers and employers are seen to be in the best position to deal with situational factors, such as conflict, that tend to arise within the workplace (Lovejoy, 1974; Florence, 1957). The state is not expected to intervene directly in dispute settlement procedure, although it is required to establish the legal framework needed for voluntary negotiations and collective bargaining (Dike, 2008; Ubeku, 1983).

Critics of this model argue that the colonialists imposed voluntarist employment relations practice on Nigerians based on the predominant socio-political and economic philosophy in Britain without taking due consideration of the unique culture, principles, level of civilisation and prevailing employment relations practice in Nigeria (Adebisi, 2013; George *et al.*, 2012; Onimode, 1981; Ananaba, 1969; Kilby, 1967; Cook, 1943). The activities of early nationalist-war veterans led to labour unrest focused on the desire for labour, economic and democratic reforms in the 1920s. This led to the replacement of the voluntarism model of employment relations by state interventionism employment relations practice in the 1940s. This practice continued after independence in 1960, and during the military administration, which ended in 1993 (George *et al.*, 2012; Ubeku, 1983). Scholars affirm that in the 21st century, Nigeria's employment relations system is best described as a hybrid: the system depicts a combination of voluntarism and state intervention. It demonstrates the importance of the role of the state in employment

relations and the degree to which its participation impacts on the policies that guide industrial relations practice in Nigeria (Adebisi, 2013; George *et al.*, 2012; Ubeku, 1983).

The tripartite actors that operate within the employment relations context in Nigeria are: trade unions, employers' association and the Nigerian state-represented by the Ministry of Labour. According to the Trade Union Act (1990) 'a trade union is defined as any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers'. Given this description, there are two major umbrella trade unions that represent the interest of employees (junior and senior) in Nigeria. The Nigeria Labour Congress (NLC) was founded in 1978, following the merger of four different organisations namely: Nigeria Trade Union Congress (NTUC), Labour Unity Front (LUF), United Labour Congress (ULC) and Nigeria Workers Council (NWC). NLC has twenty-nine affiliated unions and a total of four million members.

The second umbrella union is the Trade Union Congress of Nigeria (TUCN). TUCN was officially registered in 2005 but prior to this time, it was known in the 1980's as Federation of Senior Staff Associations of Nigeria (FESSAN) and in the 1970's as Senior Staff Consultative Association of Nigeria (SESCAN). TUCN has twenty-two affiliated unions and a total of 2.5million members. A review of the aims, objectives and roles of NLC and TUCN reveals that both unions are committed to promoting and safeguarding the economic and social welfare of their members by preserving and extending their rights within a just, free and democratic society. This suggests that the aims and objectives of trade unions in Nigeria is to maintain favourable industrial relations practice that strengthens collective bargaining and safeguards equitable observance of collective agreements reached between the trade unions and employers; with a view to enhancing the quality of life, income and working conditions of workers. The role of trade unions in Nigeria can therefore be summarised as providing supporting data and documents during negotiations, influencing labour legislation and improving bargaining abilities of affiliate members. In addition, trade unions intervene in industrial disputes by

ensuring that the outcomes of dispute resolution takes into account the need to protect the employees and support union affiliates (George *et al.*, 2012; Trade Union Act, 1990; Ubeku, 1983).

The employers' association body registered and recognised by trade unions and the Ministry of Labour is the Nigeria Employers' Consultative Association (NECA). NECA was established in 1957 and its aim is to provide favourable conditions for government to deliberate and consider socio-economic and labour related policies and issues with private sector employers. Although NECA can be described as a trade union given the descriptions presented in the Trade Union Act (1990) NECA affirms that even though it is the umbrella organization of employers in the Organised Private Sector of Nigeria it is not a trade union. Consequently, NECA does not relate with trade union organisations during collective bargaining or dispute resolution however; NECA is recognised as employers' representatives during the review of minimum wage, labour laws and the practice of industrial relations in Nigeria. NECA provides advisory and consultative services to their members with a view to promoting harmonious business environment that brings about increase productivity and efficiency. This explanation indicates that while there is an association that represents the interest of employees during collective bargaining and dispute resolution in Nigeria, there is no employers' association that carries out this function and as such, this obligation is conducted by management representatives within individual organisations. This indicates that the responsibility of negotiating with trade unions during collective bargaining and dispute situation has been ascribed as part of the responsibilities of the Human Resource Manager (HRM) on behalf of the organisation's management (Fajana, 2007; Otopo, 2000; Adewumi, 1997; Otopo and Omole, 1987).

The role of the Nigerian state in employment relations is based on the premise that employers and trade unions cannot be left with the responsibility of regulating the workplace (Badejo, 2011; Otopo, 1983). Some scholars claim that direct state intervention in labour related matters is aimed at promoting democracy and safeguarding economic, political, social, historical and international

responsibilities (Badejo, 2011; Otopo, 1988). Contenders of this viewpoint maintain that state regulations in labour related issues are often manipulated in the growth of employment, wages and salaries, collective bargaining, industrial conflict and trade union administration (Otopo, 2000; Fashoyin, 1991; Otopo and Omole, 1987). Others suggest that the Nigerian state tends to protect sectorial and private interest. According to these studies, this attitude of the state is usually opposed with resistance among trade unions in the form of strike action (Badejo, 2011; Damachi and Fashoyin, 1986; Trevoedjre, 1969). These studies assert that a nation's economic growth cannot be realized without the activities of profit-making private companies and whenever trade unions seek improvement in their terms and conditions of employment they are seen as a threat by the state (Geary, 1985; Otopo, 1983). This is because the state wants to minimize disruption to production, eliminate threats to investment and ensure a buoyant economy, especially when members of Nigeria's ruling parties and elite system are the investors that own the private companies operating in Nigeria. Trade unions are perceived by the Nigerian state as potential alternatives and as such, the state develops strategies to deal with the pressured threat by trade unions (Badejo, 2011; Otopo, 2000; Otopo and Omole, 1987).

For some, the intervention of the state in employment relations in Nigeria regulates the economy, stimulates technology and overcomes unnecessary bottlenecks that may arise especially during dispute resolution (Otopo, 2000; Damachi and Fashoyin, 1986). Critics on the other hand contend that the Nigerian state is biased and its neutrality is in doubt. According to these studies, the state is dedicated to the promotion of private property. This becomes evident in the manner in which the state has historically given concession to employers through reduced tax, custom duties and minimum wages to the detriment of the workers and trade unions (Badejo, 2011; Kilby and Kilby, 1969). As a major employer of labour, the Nigerian state is expected to set the pace for private employers by establishing a standard for good employment relations practice. However, this does not seem to be the situation, as studies emphasise that the state simply creates more misperception and disenchantment with the kind of policies adopted in the public

sector (Otobo, 1992; Keller, 1991; Fashoyin, 1991). Others maintain that the outcomes of the state's regulatory functions are suspect because they have the tendency to be manipulable, pliable and contestable especially at the implementation stage. Other scholars contest the effectiveness and timing in the settlement of employment relations disputes (George *et al.*, 2012; Badejo, 2011). According to these studies, the bureaucratic and deliberately sluggish consideration and administration of justice tends to undermine and weaken the process of resolution (Otobo, 1992; Fashoyin, 1991). Others maintain that the overbearing and domineering influence of the state on the decisions of the court and other settlement institutions not only undermines their integrity, but also brings about contempt for and disregard of these institutions (Adebisi, 2013; Otobo, 2000).

Trade unions have made it their responsibility to address deep-rooted inequalities that may arise within the Nigerian state (Okolie, 2010; Fajana, 2007; Otobo, 2000; Adewumi, 1997). Some have argued that given the prejudiced disposition of the Nigerian state during its intervention in employment related issues, the main weapon that trade unions can use to exercise their relational power during negotiation is strike action (Kolagbodi, 1995; Fashoyin, 1987; Ubeku, 1983). The state has whittled down the effect of this with the introduction of inhibiting legislation such as the Trade Disputes Act (1976) that constrains the activities of trade unions, particularly their right to strike (Badejo, 2011; Fashoyin, 1987; Ozaki, 1987). Furthermore, the state denies workers in the public sector the right to strike by categorising their operation as an essential service and thus subjecting them to compulsory arbitration in lieu of exercising their right to strike (Okene, 2010; Okolie, 2010). Even in the private sector the right to strike seems to be constrained because of the procedures laid down. According to these studies, in instances when trade unions are dissatisfied with the award of the industrial court, they are advised to begin another round of the settlement process instead of embarking on a strike (Adefolaju, 2013; Badejo, 2011; Jacobs, 1993). These scholars argue that given the above situation trade unions perceive their re-run of the process as frustrating and tantamount to a waste of time and effort, given the cumbersome and burdensome nature of the process (Okene, 2010; Adewumi, 1997). The most noticeable impact

of state legislation on trade union activities in Nigeria is in relation to membership. Previous scholars argue that trade union membership has continued to decline, with fewer than 11% out of 29 million wage earners organised into trade unions (Otobo, 2007; Fajana, 2007). According to these studies, the number has continued to decline in both the public and private sector. Others assert that industrial relations practices in Nigeria are becoming inadequate because of the inability of trade unions to prevent employers' infringement of human rights and poor treatment of employees (Adefolaju, 2013; Adebisi, 2013; Okene, 2010; Adewumi, 1997).

Having set out the key features of employment relations practice and how the role of the state and trade unions has evolved within the Nigerian state, a closer consideration of ADR mechanisms in Nigeria is crucial. They are comprised of mediation, arbitration and conciliation. The term ADR has been defined by several scholars within the Nigerian context. For instance, Aina (1998) describes ADR as mechanisms used in settling differences of opinion fast and without altering the relationships that exist between the parties. Closely linked to this viewpoint are scholars who describe ADR as the procedures used to resolve disputes as alternatives to the traditional resolution mechanism of the court (Fagbemi, 2014; Asonibare, 2011). In the Nigerian context ADR is seen as a quick, relatively non-adversarial and objective process for resolving disputes when compared to legal proceedings. In addition, while resolving a dispute using ADR in Nigeria emphasis is placed on sustaining the mutual relationships that exists between the disputing parties (Fagbemi, 2014; Asonibare, 2011; Orojo and Ajomo, 1999).

The Trade Disputes Act (1976) in Nigeria introduced formal processes for managing disputes. Trade dispute as described by some scholars is any disagreement that exist between employers or among employers and employees connected with employment, non-employment and physical conditions of work (Akume and Abdullahi, 2013; Fajana, 2006; Aturu, 2005). The 1976 Trade Disputes Act was repealed in 2004 and under the terms of the 2004 Trade Disputes Act, the first stage in the process of resolution of trade dispute is for the parties to explore internal procedures made available within the organization. If and when

this initial attempt fails the next alternative is when the parties jointly agree on the appointment of a neutral and impartial third party known as the mediator. Mediators are labour officers that work and are trained in the Ministry of Labour however; their appointment to preside over mediation meeting is dependent on the mutual agreement of both parties. Given that mediators are trained officers at the Ministry of Labour and based on their level of training, knowledge and understanding of the process of mediation, the responsibility of the mediator is to explore with the disputing parties the possibility of resolving the issues in dispute by making suggestions and recommendations on the way forward, with a view to attaining amicable settlement of the dispute. In Nigeria, mediation is the first ADR method that disputing parties are required to explore before completing the Trade Dispute 3 (TD/3) form which allows them to officially declare a trade dispute. The process of mediation is considered before conciliation and arbitration in Nigeria because; it gives the disputing parties the opportunity to re-consider the issues in their dispute for the first time with the assistance of an independent third party in the person of the mediator. Also mediation can be said to be less formal compared to conciliation because once the parties complete the TD/3 form, the dispute is said to have commenced the formal process towards resolution and the final stage of this process is the National Industrial Court (Trade Disputes Act, 2004; Otobo, 1987).

According to the TD Act (2004) disputing parties are expected to embark on the process of mediation within seven days of the date on which the dispute arose. If settlement is not achieved by the mediator within another seven days of his or her appointment, the dispute is reported in writing by the mediator. The disputing parties are also required to complete the TD/3 form which is forwarded with the report of the mediator to the Minister of Labour and Productivity. The completion of the TD/3 form by the disputing parties formally indicate the failure of settlement at mediation, existence of trade dispute and willingness of the parties to proceed to the next stage of resolution which is conciliation (Trade Disputes Act, 2004; Ojielo, 2001). However, TD Act (2004) allows the Minister of Labour to apprehend a dispute even before it is reported by the parties or the mediator. In situations like

this the Minister informs the disputing parties in writing of his apprehension of their case and makes suggestions or propositions on the steps that could be taken by the parties to resolve the dispute (Odoziobodo, 2015; Kale, 2011; Trade Disputes Act, 2004; Ojielo, 2001).

Conciliation is the next stage of the dispute resolution process. On receiving the 'failure of settlement' report from the mediator and the completed TD/3 form from the disputing parties, the Minister is expected to appoint a conciliator. In most instances the group of conciliators appointed by the Minister of Labour for this purpose are senior labour officers, chief labour officers and other high ranking officers that work and are trained at the Ministry of Labour and in particular, the Trade Union Services and Industrial Relations (TUSIR) Department (Conciliation Rules, 2004). The responsibility of the conciliator at this stage in the dispute settlement process is to investigate and obtain full account into the reasons and conditions that surround the dispute. In the course of discussions with the parties, the conciliator's expectation is assist the parties identify the key issues in dispute during negotiations and to facilitate resolution (Njoku and Nwosu, 2007; Ezejiofor, 1997). In circumstances where settlement is not reached within seven days of the appointment of the conciliator or if, after attempting to negotiate with the parties, the conciliator is satisfied that settlement cannot be attained, the conciliator can report in writing to the Minister of Labour the failure to resolve the dispute at conciliation.

Upon receiving the report on the failure to resolve the dispute at conciliation, the Minister is expected to refer the dispute for settlement at the Industrial Arbitration Panel (IAP) within fourteen days; hence, the process of conciliation precedes IAP in Nigeria (Njoku and Nwosu, 2007; Conciliation Rules, 2004; Ezejiofor, 1997). It is imperative to mention that the failure of the parties to resolve the dispute at conciliation indicates their readiness to hand over their right to decide the outcome of resolution to the arbitrator. It also illustrates the preparedness of the parties to accept the outcomes of arbitration and its implication on trade unions and management relationship. The IAP consists of a chairman, a vice chairman and

other members all of whose appointment in the first instance is for a four year period and renewable only for another four years. Although members of the IAP and assessors are not employees at the Ministry of Labour, the TD Act (2004) empowers the Minister of Labour to pay members of the IAP and assessors their remuneration based on the approval of the Minister of Finance.

In Nigeria, there are three types of arbitration hearing namely: arbitration tribunal, sole arbitration and single arbitration. Arbitration tribunals consist of the chairman and vice chairman who are usually appointed by the Minister of Labour while other members of the tribunal are nominated by the disputing parties: two of the appointed members are nominated by the organisation hence, representing the interest of the employer. Another two nominees are appointed by the employees and their trade unions. In addition, the employer and trade unions are expected to nominate one arbitrator each from among the members of the IAP to be involved in the arbitration process.

The Arbitration and Conciliation Act (1990) makes provision for sole arbitration process and the arbitrator that presides over the hearing is selected from among the members of IAP by the chairman. A single arbitrator is usually appointed by the chairman of IAP but assisted by one or more assessors. Within the context of arbitration in Nigeria, assessors are appointed by the chairman of IAP. The panel of assessors consist of persons recommended and endorsed by the Minister of Labour for the purpose of arbitration and their aim to represent the interest of employers and trade unions during arbitration hearing. When the dispute is presented for arbitration the IAP is expected to consider the case and make its award within twenty-one days of its formation. Prior to the arbitration hearing the parties are expected to submit their statement and all the documents/evidence that they consider relevant to the hearing and every statement, document and information supplied to the arbitrator or arbitration tribunal must be communicated by both parties to each other. The IAP gives both parties sufficient advance notice of the hearing date, venue and time. The parties are also given adequate time to prepare for any meeting of the arbitrator or arbitration tribunal for the purpose of

inspection of documents, goods or other properties. The IAP informs the disputing parties in advance to the hearing that if they fail to appear at arbitration or fail to produce documentary evidence at the arbitration hearing the IAP has the right to continue with the proceedings and make an award on the dispute. During the arbitration hearing the arbitrator is required to accord both parties equal treatment and full opportunity to present their case so as to ensure fair and impartial hearing. The responsibility of the arbitrator is to determine the relevance, pertinence and weight of any evidence placed before it by the disputing parties; and at the end of the hearing make an award. The award of IAP is not communicated by the panel to the parties instead, it is sent to the Minister to consider its desirability before presenting the award to the disputing parties.

If the parties are unhappy with the award at the end of arbitration they can within three months from the date of the award refer the case to the highest court for trade dispute settlement in Nigeria: the National Industrial Court of Nigeria (NICN) (Onyearu, 2015, Arbitration and Conciliation Act, 1990). This explanation indicates that the disputing parties can progress with resolution by making an appeal on the award of their case at the industrial court hence; arbitration comes before industrial court in the dispute resolution process in Nigeria. The NICN consist of the President whose appointment is based on the recommendation of the National Judicial Council (NJC) subject to confirmation by the upper legislative arm (Senate). Other members of the NICN are Judges appointed by the President of the court on the recommendation of the NJC. Consequently, selection into the NICN is dependent on the legal qualification and practice by the candidates for not less than ten years in Nigeria. Additionally, candidates for the position of President and Judge in the NICN are required to have considerable knowledge and experience of the law and practice of industrial relations and employment conditions in Nigeria.

NICN exercise jurisdiction in matters connected with labour and employment relations, trade unions and workplace related issues such as conditions of service, health, safety and welfare of employees. The NICN also has the authority to preside

over matters relating to Factories Act, Trade Disputes Act, Trade Unions Act, Workmen's Compensations Act or any other Act or Law involving to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws. Furthermore, the NICN has the authority to apply its influence on matters connected with the grant of any order restraining any person or body from taking part in any strike, lockout or any industrial action, or any conduct in furtherance of a strike, lock-out or any industrial action. The NICN's prerogative also covers disputes that are connected with unfair labour practice or international best practices in labour, employment and industrial relation matters, interpretation of international labour standard connected with child labour, child abuse and human trafficking (Constitution of the Federal Republic of Nigeria-Third Alteration Act, 2010; NIC Act, 2006).

On receiving a case at the NICN, the Court is empowered to confirm a judgment, an award or order made by the Court, tribunal or body mentioned in the matter before it; to vary a judgment, an award or order made by the Court, tribunal or body mentioned therein; to set aside a judgment, an award or order made by the Court, tribunal or body mentioned therein; to order a rehearing and determination on such terms as it thinks just; to order judgment to be entered for any party; to make a final order or other order on such terms as it may think fit to ensure the determination on the merits of the matter in dispute between the parties. The court may also decide to make a final order on the terms of the case as it may deem fit. The aim of the NICN at this stage in the dispute resolution process is to ensure final and absolute settlement that is based on the evidence presented by the parties and on the merits of the case (NIC Act, 2006). The decision awarded by the NICN is usually binding on the parties because the NICN is recognised as a superior court of record in Nigeria. This suggests that once a case is decided by the NICN it is no longer subject to appeal or to the supervisory jurisdiction of any other court in Nigeria. The key point is that the NICN has ultimately exclusive authority over labour, trade union and industrial relations matters in Nigeria (Worugi *et al.*, 2007; NIC Act, 2006; Kanyip, 2003).

The process as set out above involves a relatively rapid progression of disputes towards resolution with each stage taking a matter of days and weeks, rather than months. However, critics of this ADR method in Nigeria argue that within the context of the TD Act (2004) the Minister of Labour and Productivity has absolute power to refer unresolved disputes as the case may be. According to these studies the position of the Minister is political and as such, his appointment could be said to be a reflection of the standpoint of the political party in power (Onyearu, 2015; Omobamidele and Adekunbi, 2013). This suggests that based on the power invested in the Minister of Labour there could be a tendency for the process of trade dispute resolution to be influenced or manipulated. It could also put the independence, impartiality and objectivity of the process in doubt, in the view of employers and trade unions (Okaka and Eriaguna, 2011; Aturu, 2005). Looking at the empirical evidence on the extent of mediation, conciliation and arbitration reveals that in 2015 a total of 212 disputes were reported for mediation but only 3 of these were resolved. Statistical evidence shows that between the years 2010-2014 a total of 1,182 disputes were reported at mediation and only 80 (6.7%) of these reported cases were settled (Onyearu, 2015; Omobamidele and Adekunbi, 2013).

Turning to arbitration, many have argued that it is little more than an abridged form of hearing. The parties' decision to choose arbitration is seen by many to indicate their willingness to relinquish their decision-making rights to the arbitrator and also to accept in good faith, the outcome of arbitration (Essien, 2014; Orojo and Ajomo, 1999). The arbitration rules reveal that arbitrator's decision on a dispute can either be binding or non-binding on the parties, as the case may be. If binding, the arbitrator's award is final and the party that succeeds may decide to implement the outcome of the award against the other party. However, if the award is not binding on the parties the decision would be viewed by the parties as a form of recommendation that can be used to settle the dispute (Arbitration Rules 2004).

Critics of this view affirm that because of the extensive influence and control given to the Minister of Labour over the IAP in the TD Act, the IAP seems to be a unit under the Ministry of Labour. This suggests that there is no opportunity for the IAP to demonstrate its independence and impartiality to the disputing parties (Essien, 2014; TD Act, 2004; Arbitration and Conciliation Act, 2004; Arbitration Rules 2004; Orojo and Ajomo, 1999). Empirically generated findings on arbitration in Nigeria reveal that in 2015 a total of 105 disputes were reported and only 9 of such disputes were resolved. Statistical evidence shows that between the years 2010-2014 a total of 353 disputes were reported at arbitration and 65 (18%) of these were settled (Essien, 2014; Orojo and Ajomo, 1999).

Conciliation has been described among scholars in Nigeria as an alternative way of settling disputes (Onyearu, 2015; Orji, 2012). According to these studies, the process of conciliation involves the conciliator assuaging, pacifying and calming the disputing parties during negotiations with the aim of achieving resolution (Njoku and Nwosu, 2007; Black *et al.*, 1999). In Nigeria, studies have drawn similarities between conciliation and mediation because both processes require the intervention of neutral third parties (Aturu, 2005; Orojo and Ajomo, 1999). Closely linked to this view are studies that affirm that in mediation and conciliation the third parties do not have the power to impose binding opinions on the parties and as such, the outcome of the dispute is based on the agreement of both parties (Orji, 2012; Anekwe, 2010; Njoku and Nwosu, 2007; Black *et al.*, 1999). However, there are key differences in the processes associated with conciliation and mediation. Conciliators bring the parties together to find a compromise solution to their dispute while in mediation the mediator draws up the terms of settlement, which represents a fair compromise of the dispute based on available information and evidence (Orji, 2012; Anekwe, 2010; Njoku and Nwosu, 2007; Ezejiolor, 1997). Unlike arbitration, conciliators do not give a decision on the dispute; instead, the aim of conciliation is to encourage to parties to come to their own settlement of their dispute (Arbitration and Conciliation Act, 2004; Arbitration Rules 2004). In arbitration, the parties are required to present their case formally during the hearing while in conciliation the conciliator relates with the parties informally. The

outcome of conciliation depends on the will of the parties, while in arbitration the verdict is given by the arbitrator who makes the award (Orji, 2012; Arbitration and Conciliation Act, 2004; Arbitration Rules 2004; Orojo and Ajomo, 1999).

Empirically generated findings on conciliation in Nigeria reveal that in 2015 a total of 296 disputes were reported, of which 191 were resolved. Statistical evidence shows that between the years 2010-2014 a total of 1,547 disputes were reported at conciliation and 873 of these cases (56.4%) were settled. Compared to arbitration and mediation there is a much higher success rate with conciliation and some have suggested that the process is effective in assisting the parties to identify their mutual interest, make a compromise and achieve resolution (Ministry of Labour, 2016).

An important role in dispute resolution is also played by the National Industrial Court of Nigeria (NIC Act, 2006; TD Act 2004). This is a judicial institution established by the TD Act (1976) but which only became operational in 1978. The aim of the court on its formation was to promote industrial harmony through timely but impartial resolution of disputes arising from industrial relations. In accordance with the above objective the NICN is empowered to confirm a judgment, an award or an order made by the IAP (Onyearu, 2015; Worugi, *et al.*, 2007; NIC Act, 2006). In addition it can decide to vary a judgment, set aside an award, order a re-hearing and determination of a case, make a final order and ensure the determination of the dispute depending on the merits of the issues in dispute. While carrying out its responsibilities the NICN is expected to maintain integrity, reliability, transparency and fairness (NIC Act, 2006; Kanyip, 2003; Constitution FRN, 1999). In addition, the court is required to provide an enabling environment for industrial development and economic growth. The above explanation suggests that while carrying out its adjudicatory functions the NICN is obliged to enable a supportive environment that would encourage the cordial settlement of disputes and stimulate friendly labour and industrial relationships (NIC Act, 2006; Orojo and Ajomo, 1999).

In 1999 the Nigerian Constitution established NICN as a superior court of record in Nigeria (Constitution FRN, 1999). This indicates that NICN can now exercise exclusive jurisdiction in civil cases and matters that relate to labour, trade unions, industrial relations and problems that arise from the workplace such as conditions of service, health and safety, welfare of labour and other related matters. In 2006 the National Industrial Court Act strengthened the roles and responsibilities of the NICN further (NIC Act, 2006; TD Act 2004; Kanyip, 2003; Constitution FRN, 1999). It confirmed the role of the NICN in assisting with the resolution of disagreements concerning work environment, conditions and terms of work, and workplace-related Acts such as the Factories Act, Trade Unions Act, Labour Act, Workmen's Compensation Act and Trade Disputes Act. Furthermore the NICN under the 2006 Act continues to have the ability to resolve disputes that are connected with strikes, lock-outs, industrial action, trade unionism and employer's associations (Onyearu, 2015; Worugi, *et al.*, 2007; Kanyip, 2003; Orojo and Ajomo, 1999). Beyond this, the disputes where the NICN can assist in determination include those relating to the minimum wage, unfair labour practices, discrimination and sexual harassment at work, application or interpretation of international labour standards, child labour and child abuse, human trafficking, and the interpretation and application of collective agreements (NIC Act, 2006; TD Act 2004; Constitution FRN, 1999).

3.3: Collective conciliation as a form of ADR in Nigeria

As outlined in section 3.2, the process of conciliation in Nigeria can be said to have commenced with the appointment of the conciliator (Arbitration and Conciliation Act, 2004). The conciliator's initial action is to contact the parties in dispute in writing. In this letter the conciliator informs the parties of his or her appointment and role, which is to assist with the resolution of the dispute. This is followed by an initial stage of conciliation in which the conciliator reminds the parties to submit a written statement (which both disputing parties can see) recounting the nature of the disagreement and their key concerns, before the confirmed date for conciliation. Furthermore, the conciliator informs the parties that they are expected to send a copy of the statement to the other party as well, for them to read through and

prepare their defence (Conciliation Rule, 2004). At the hearing, the process of conciliation is very similar to that in other countries. The conciliator assures the parties of the confidentiality of the process and its outcomes and notifies the parties of the need to negotiate in good faith by providing evidence and making submissions when necessary (Arbitration and Conciliation Act, 2004; Conciliation Rules, 2004). Once the introduction has been made by the conciliator, the aggrieved party is asked to present their case and the other party is then requested to defend their position based on the presentation made by the aggrieved party. In the course of the hearing the conciliator may decide to meet the parties separately. The intention of the conciliator during this process is to deliberate with the parties on the issues in dispute in more detail and also to identify the underlying factors that influence the positions of the parties (Arbitration and Conciliation Act, 2004; Conciliation Rule, 2004).

If the conciliator identifies elements of settlement that can be acceptable to both parties the conciliator can decide to draft the terms of agreement and present these to the parties for comment. After receiving their comments, the conciliator may decide to reformulate the terms in light of the observations presented by the parties. If at the end of conciliation the parties reach an agreement on the settlement of their dispute, a written settlement agreement is drawn up by the conciliator at the request of the parties, and signed and dated by them. In instances where the dispute is not settled by conciliation, the conciliator drafts a disagreement letter stating the issues and dispute and the steps taken at the conciliation stage. The case is then referred to the Minister of Labour who can assess it and decide whether to refer it to the IAP (Arbitration and Conciliation Act, 2004; Conciliation Rule, 2004).

Research in the Nigerian context has highlighted the important role of conciliators in assisting disputing parties to reach an amicable resolution by using the principles of objectivity, fairness and justice and by taking into consideration the rights and obligations of the parties, usage of trade concerns, circumstances surrounding the dispute and previous business practices between the parties (Arbitration and Conciliation Act, 2004; Ojielo, 2001). Studies have also examined the

circumstances of collective conciliation. Collective bargaining and industrial conflict are two key factors associated with recourse to conciliation (Phillips, 2013; Anyim *et al.*, 2012). Conflicts during collective bargaining are linked to salary and wages, leave and salary allowances, hours of work, retrenchment and other matters connected to the terms and conditions of employment (Ekwoaba *et al.*, 2015; Ibietan, 2013; Anyim *et al.*, 2012). Studies have argued that public sector organisations in Nigeria are more likely to see trade union and management related disputes due to a greater presence of trade unions, more rigid bureaucratic structures, and mechanistic management philosophies and attitudes. However, disputes and recourse to conciliation do also occur in private sector Nigerian organisations (Phillips, 2013; Ofoele, 1986; Akpala, 1982).

Strikes are another factor associated with recourse to collective conciliation (Uzoh, 2016; Ifedi, 1994). Research studies in the Nigerian context have considered the factors associated with conciliation outcomes. According to these studies, this mind-set of the actors has the tendency to impact on their perception and determine their willingness to resolve the issues in dispute and promote amicable resolution (Odoziobodo, 2015; Akinwale, 2011). The opinion of one party towards the other tends to influence their actions during negotiations. In the Nigerian context, studies have also highlighted that procedures inherent in the dispute resolution mechanisms, and the relative weakness of state machinery tend to frustrate the process of dispute resolution (Oghenekaro, 2013; Akume and Abdullahi, 2013; Olawale, 2011). The key point to take into consideration is that the perception of the actors regarding the attitude and behaviour of each other, as well as the process and outcomes of conciliation, is important because it has the tendency to influence their opinion and determine their willingness to conform to the outcomes of negotiations (Uzoh, 2016; Odoziobodo, 2015; Akume and Abdullahi, 2013).

3.4: Conclusion

In conclusion, this chapter reveals that prior to the colonial era paternalist employment relations practice was in operation in Nigeria, but during colonialism voluntary employment relations practice was introduced and later replaced with state interventionism. In the 21st century, Nigeria's employment relations system can be described as a hybrid one, a combination of voluntarism and state intervention in its approach. The role of the state is based on the premise that employers and trade unions cannot be left with the responsibility of regulating the workplace. The state has been accused by scholars of protecting sectorial and private interest because members of the Nigerian ruling parties and elite system are the investors that own the private companies operating in Nigeria. The impartiality and neutrality of the state has been contested and the outcomes of the state's regulatory functions are suspect because they have the tendency to be manipulable, pliable and contestable particularly, at the implementation stage. The main weapon commonly used by trade unions to exercise their relational power is strike action. The state has been indicted for whittling down the effect of the strike weapon by its introduction of inhibiting legislation that constrains the activities of trade unions. The impact of state legislation on trade union membership is evident, as this has continued to decline, with fewer than 11% of 29 million wage earners organised into trade unions.

The process of conciliation in Nigeria is different from other countries like UK because in Nigeria, the disputing parties are required to explore mediation before moving on to conciliation but in the UK conciliation is used first by the parties. Conciliation can be said to have commenced with the appointment of the conciliator by the Minister of Labour in Nigeria; this again is different from the UK when the conciliator is appointed by ACAS. Nevertheless, one similarity between the method of conciliation in Nigeria and the UK is that if at the end of conciliation the parties reach an agreement on settlement, a written settlement agreement is drawn up by the conciliator, and signed and dated by the parties. In instances where the dispute is not settled the conciliator drafts a disagreement and refers the case to the Minister of Labour who then decides on the next step. Empirical studies on

conciliation in Nigeria confirm that the roles and responsibilities of the actors highlight the procedures inherent in the dispute resolution mechanism in Nigeria. They demonstrate the extent to which the weakness of state machinery frustrates the process of conciliation in practice. No previous research in Nigeria has considered the perception of the actors regarding the effectiveness of collective conciliation, nor has any previous study considered the opinion of the actors regarding their behaviours, perceptions and actions during collective conciliation.

CHAPTER FOUR

RESEARCH METHODOLOGY

4.1: Introduction

This chapter presents the choice of methodology and the justifications for this inductive study. The findings presented in the empirical chapters of this thesis are based on the data collected from 45 semi-structured, qualitative interviews that took place in Nigeria during 2016. The interviews were conducted separately among conciliators, trade unions, management representatives and other stakeholders that have a role to play in collective conciliation, in Nigeria. The choice of qualitative research is due to its suitability for generating data used to address the research questions that enables the researcher to enhance an understanding of the social process of collective conciliation which is the aim of this study (Bryman and Bell, 2015; Creswell, 2012; Saunders *et al.*, 2011).

The nature of research questions need to take into consideration how the population in the study make sense of and understand their experiences, especially during their interactions with each other during conciliation. To restate, the research questions in this thesis are:

- What are the social processes of collective conciliation?
- How do the social processes influence the actions of the actors in collective conciliation?
- In what ways do the social processes between the actions of the actor's impact on the process and outcomes of collective conciliation?

In order to achieve the research questions, the following objectives will be considered:

- To explore the extent to which information-sharing and communication might influence the actions of the actors in collective conciliation.
- To explore how state legislation and regulations impact on the actions of the actors in collective conciliation.

- To explore the rate at which the union-management relationships influences the actions of the actors in collective conciliation.
- To explore the impact of the actions of the actors on the process and outcomes of collective conciliation.

The aim of this study is to present an understanding of the social process of collective conciliation by using case studies from Nigeria. The case study approach and qualitative interviews are well suited to studying the social process of collective conciliation, given their suitability for presenting our understanding and consideration of the subjective experiences of conciliators, trade unions, management representatives and other stakeholders that have a role to play in collective conciliation. The case study research strategy and the use of interviews recognise the importance of diversity and multiplicity in the nature of disputes, characteristics of the parties and their experience at conciliation (Bryman and Bell, 2015; May, 2011). It identifies how this involves the presentation of methods that are adaptable, flexible and workable (Edwards, 2005; Creswell, 1994).

This chapter is structured as follows. Section 4.2 reflects on methodological considerations. It presents an understanding of the social world where conciliation takes place. It examines the nature of reality and the way the world operates (ontology). It investigates the assumptions that constitute acceptable knowledge in the field of industrial relations (epistemology). Section 4.3 presents the justification for qualitative study and interview, a common method used among scholars in industrial relations. Section 4.4 presents the ethical considerations that guide this study and concludes the chapter.

4.2: Methodological considerations

In order to understand the world, social science requires a set of ontological and epistemological rules on how the world is perceived and interpreted. This comes with the basic belief about the nature of knowledge and description of truth or reality (Saunders *et al.*, 2009; Bryman and Bell, 2012; Edwards, 2005; Moustakas, 1994, Creswell, 1994). The social process of collective conciliation, which is the phenomenon of this investigation, requires us to have access to the dynamic social world where conciliation takes place. This influences our consideration of the ontological and epistemological position of this study.

Ontology relates to what we believe constitutes social reality or the way in which the social world operates (Maxwell, 2012; Blaikie, 2007; Blaikie, 1993). In this study the chosen ontological assumption is based on the postulation of realism which recognises that truth is a subjective and independent process, formed by the circumstances and experiences of the actors (Saunders *et al.*, 2009; Moustakas, 1994, Creswell, 1994). Realism has been employed based on its ability to enable the researcher to separate the realities that emerge during data collection from the external realities that surround the phenomena and events. This subjective process of separating realities tend to increase the way the researcher considers how trade unions and management make sense of their world and the way this understanding influences their perceptions and actions during conciliation and impact on the outcomes of resolution (Bryman and Bell, 2012; Gill and Johnson, 2002).

The social world under investigation is termed social because human interactions determine and define its existence. The social phenomena under investigation exist without the knowledge of the actors who establish or conceptualise them in the course of their interactions (Marshall, 2008; Ackroyd and Fleetwood, 2000; Blaikie, 2000). For example, trade unions and management representatives do not engage in bargaining and negotiations with the primary purpose of reaching disagreement and requesting the assistance of conciliators. Yet this tends to be the outcome of the unintentional and inadvertent consequence of their actions and interactions. Sayer (1992) suggests that the world is reliant on and influenced by

basic conditions that tend to impact on the way the actors construct their social interactions, particularly during dispute resolution-collective conciliation (Sayer, 1992; Bhaskar, 1979). In the context of collective conciliation, social actors are influenced by actual and real processes and procedures which have a significant impact on their actions and behaviours. The physical and contextual environment where dispute is resolved is considered to play a substantial role in changing the actions and behaviours of the actors, their perceptions, and the process and results of conciliation.

Epistemology is closely related to ontology. The ontological viewpoint of researchers dictates their belief about the nature of reality and the kind of relationships they should have with the phenomenon of study (Bryman and Bell, 2015; May, 2011; Crotty, 1998; Sayer, 1992). Epistemology is concerned with what is acceptable knowledge. According to Bryman and Bell (2015) the epistemological position of the researcher is used to present an understanding on how social phenomenon that is been studied can be known and how this warranted knowledge can be established. It considers questions such as how is knowledge derived, and how is it tested, verified and substantiated (Bryman and Bell, 2015; Saunders *et al.*, 2011; De Gialdino, 2009). Previous studies argue that the ontological and epistemological perspective of any study must be consistent (Bryman and Bell, 2012; Saunders *et al.*, 2009). Others assert that if the perspective on the nature of reality is unknown it will be difficult to consider what might be relevant knowledge in the research process (King and Horrocks, 2010; Mason, 2002).

The theoretical perspective adopted in this research accepts a world that exists independently of the human mind. However, the meaning attributed to this world depends on the interpretations presented by the people that operate within it (Crotty, 1998; Sayer, 1992; Guba and Lincoln, 1989). There is no doubt that this world has a main influence on interpretations, but as individuals engage with each other within this world there is a tendency that different understandings could arise among the actors regarding the same phenomenon. This study is not bound to

objectivism, which claims that reality exists in objects independently of our knowledge (Schwandt, 2015; Banister, 2011; Clarke *et al.*, 1999). As we engage with this world and interact with the people that operate within it we are able to explore the differences in their understanding and meanings, which allows for in-depth consideration of the process of giving meaning to their experiences, the context that shapes their actions and behaviours, their account of what this means to them, using their own language and terminologies. This method offers an in-depth understanding of what exactly is going on (Bryman and Bell, 2015; Saunders *et al.*, 2009; Creswell, 1998; Sandelowski *et al.*, 1997). It provides the access that is required to establish how each actor responds to the issues in dispute and to relate with other actors during the process of collective conciliation. Hence, realism is viewed in this study on the social process of collective conciliation based on the explanations offered by trade unions, management representatives, conciliators and other stakeholders that have a role to play in conciliation in Nigeria.

4.3: Case study research

The strategy adopted for this research is case study. Studies that have adopted the case study approach claim that it has the ability to present in-depth explanations and analysis of complex social phenomena (Yin, 2013; Gerring, 2004). Thus in order to understand the social processes that are involved in collective conciliation an analysis of the social factors that influence the actions of the actors, and the impact on the effects of collective conciliation, would be required. In order to accomplish this aim the use of multiple case studies was selected because it gives the researcher the opportunity to examine and present the study's research strategy on the social process of collective conciliation by using two distinct elements that comprise of interviews among stakeholders that have a role to play in collective conciliation in Nigeria and case study evidence of collective conciliation disputes in Nigeria.

Interviews were conducted among key stakeholders that have a role to play in collective conciliation. This gave an insight into the nature, process and outcomes of collective conciliation in Nigeria, as presented in Chapters Five and Six. Detailed

case studies of three specific disputes were obtainable in the second element of this study and presented in Chapter Seven. The case studies in Chapter Seven build on the explanations presented by the stakeholders in Chapters Five and Six of this thesis. All of these explorations are used by the researcher to present an understanding of the social process of collective conciliation.

Yin (2013) describes a case study as an intensive and thorough study of a particular part or element for the purpose of understanding a larger class of a similar and comparable unit and in this study the explanations presented among trade unions, management representatives, conciliators and other stakeholders that have a role to play in collective conciliation in Nigeria is used to enhance an understanding of the social process of collective conciliation. It presents an investigation of the subset of a whole given its similar characteristics and features that it shares with the whole. This implies that the findings of a case-study can be used to make generalisations for the entire unit. Other studies confirm that case studies present rich and robust data required for empirical descriptions of particular instances of a phenomenon based on a variety of data sources (Yin, 2013; Gerring, 2004; White, 1989). The key point to consider is that empirical studies require a variety of sources for data collection and case studies offer the kind of rich and robust data needed for such analysis.

Case study research is commonly used in the field of industrial relations (see Edwards, 2005; Traxler, 2003; Grimshaw *et al.*, 2001; Dix, 2000; Goodman, 2000; Dickens, 2000; Sayer, 2000; Fleetwood, 1999; Ortiz, 1998; Western, 1997; White, 1989; Morgan and Sayer, 1988; Edwards, 1987). These studies confirm that case study research provides rich empirical descriptions needed to analyse the complex ways in which for instance, strategies are devised and implemented in the study of industrial relations (Beynon *et al.*, 2002; Yin 1989). A range of studies have used case studies to illustrate aspects of the employment relationships and the methodology has allowed researchers to investigate and gain insight into the nature of phenomena such as relationships which are complex in structure and difficult to access (Ram and Edwards, 2003; Edwards, 2005). For example, studies have used

case research to look at management techniques in total quality management and teamwork (Wilkinson *et al.*, 1997) while others have used it to compare the experiences of different groups; for example, to look at the gender pay gap in the UK and Australia (Grimshaw *et al.*, 2001). According to these studies, case study research can contribute to improved conceptualization of practices and interventions that impact on the context of a wider set of relationships (Geary, 2003; Geary and Dobbins, 2001; Findlay *et al.*, 2000; Ortiz, 1998; Thompson and Wallace, 1996). This gives the researcher the liberty to tease out and disentangle complex sets of factors and relationships through continuously moving back and forth between different stages of the research process (Verschuren, 2003; Edwards *et al.*, 2002; Harley, 2001; Marchington *et al.*, 1994).

Findings from other studies that have analysed case studies reveal that building a theory from cases makes each case a distinct inquiry that stands on its own as a specific analytical unit (Eisenhardt and Graebner, 2007; Flyvbjerg, 2006). In this study on the social process of collective conciliation the process of conducting case studies occurred through recursive cycling among case data; this informed emerging assumptions and existing literature (Eisenhardt and Graebner, 2007; Flyvbjerg, 2006; Eisenhardt, 1989). It made clear the outcomes of the study, which reveal the rich, real-world context where collective conciliation takes place, and how this assists with the development of detailed and comprehensive theories.

In the first element, interviews were conducted among key stakeholders (at Federal, state and local levels) that have a role to play in collective conciliation in Nigeria. Twenty-three interviews were conducted among Zonal Directors, State Controllers, Assistant Directors, Deputy Directors and Chief Labour Officers at the Ministry of Labour as well as Chairman and President of Employers' Associations, Management representatives, Executive Secretary of Employers' Associations; Director, Nigeria Employers' Consultative Association (NECA) and HR Managers who have been involved at one time or another in collective conciliation in Nigeria (see Appendix 1 a & b for full list of interviewees, their positions and involvement in this study). The interviews provide insights into the nature, process and outcomes

of collective conciliation in Nigeria and this forms the basis of Chapters Five and Six of this thesis.

The second element builds on the explanations presented in the first element. Three detailed case studies of specific disputes centred on redundancy benefits, non-payment of gratuity, and failure to introduce an employee hand-book were selected in manufacturing (Vono Plc), oil and gas (ConocoPhillips/ Pilgrims Africa) and automobile (TATA Africa) industries. Twenty-two interviews were conducted among trade union representatives, HR managers and conciliators who were involved in the specific disputes mentioned above; Chapter Seven of this thesis is based on these interviews. The central idea remains that the analysis of these case studies was used as the underpinning for developing and building up the theory inductively (Bryman and Bell, 2015; Saunders *et al.*, 2011). This study is qualitative and as such non-numeric data was collected and analysed. Data was collected through the use of interviews conducted with conciliators, trade unions, management representatives and other stakeholders who have a role to play in collective conciliation in Nigeria. It is the investigation of the social factors and its impact on the activities of the process and outcomes that was used to present an understanding of the social process of collective conciliation (Saunders *et al.*, 2009; Thorne, 2000).

4.3.1: Interview process

Interviews were the main research instrument used to gather evidence for this study. Two sets of interviews were conducted. Firstly, interviews with stakeholders and actors in the collective conciliation process provided an overview of the social process of conciliation in Nigeria. Secondly, detailed interviews were conducted among conciliators, trade unions and management representatives in three specific disputes where collective conciliation had occurred. The interview process involves a conversation between the interviewer and the respondent or interviewee. In this study on the social process of collective conciliation the interviewer asked

the interviewees questions and based on their responses more probing and insightful questions were asked (see appendix 2 for interview schedule).

The process of interview reveals that the phenomenon under study tends to dictate, to a large extent, the method and type of respondents that will be required for data collection and analysis. The objective of this study informed the research questions and influenced the type of data and method of data collection (Creswell, 2012; Kvale and Brinkmann, 2009; Kvale, 2008). In order to obtain more management views on conciliation, interviews were conducted among Employer's Associations: Chairman, President, Management representatives, Executive Secretary and HR managers who have been involved at one time or the other in collective conciliation in Nigeria.

The basis of Chapters Five and Six of this thesis is informed by interviews conducted among twenty-three interviewees who form the broader range of stakeholders that gave an insight into the nature, process and outcomes of collective conciliation in Nigeria. This is followed by twenty-two interviews with respondents who were involved in three specific disputes which form the basis of the case studies presented in Chapter Seven. Letters were sent out requesting respondents to participate in the research (see Appendix 3). Based on the responses, the researcher proceeded to arrange the interview dates and times with the respondents (Greig and Taylor, 1999; Hycner, 1999; Welman and Kruger, 1999). Prior to the interview dates, the researcher sent more detailed explanations about the study and scope of the interviews. At the start of each interview the researcher explained and clarified some of the issues raised in the consent form and this was signed before commencing the discussion. The consent form used is included as Appendix 4 (Schwandt, 1997; Babbie, 1995).

The choice of a semi-structured interview was informed by the type of discussions and data that needed to be collected for analysis. A semi-structured interview has the capacity to allow the concepts and perceptions reflected in the questions to stimulate discussions such that it presents an inductive method of gathering data to be unfolded (Yin, 2013; Caelli *et al.*, 2008; Caelli, 2001; Kensit, 2000; Davidson,

2000). The use of semi-structured interviews demonstrates a conscious effort to find out more data on the way in which the respondents describe their role and the process of conciliation. Semi-structured interview questions documented in the interview schedule served as the basis for the thematic guide from which investigations and further explorations were generated. This interview process enabled the researcher to have access to more detailed and comprehensive information, beyond the initial answers provided by the respondents (Welman and Kruger, 1999; Bentz and Shapiro, 1998; Kvale, 1996; Bailey, 1996). The remainder of this section explains how the interviews were conducted.

Alongside interviews among stakeholders about the general nature, process and outcomes of collective conciliation in Nigeria, interviews were conducted among trade union officials and management representatives in the case studies –Vono Plc, Tata Africa and ConocoPhillips. The duration of the interviews was between fifty-five minutes and one hundred and twenty minutes. The interview questions varied depending on the organisation, the individual's role and position, and the cause of the dispute. For instance, while the trade unions (AUTOBATE and SEWUN) that were involved in the Tata Africa Services disputes were asked questions concerning their relationships with each other and the extent which they jointly addressed the issues in the dispute, the management of Tata was asked questions relating to how their explanation of the legislation informed their understanding of the process of conciliation and impact of their understanding and actions on the results of resolution.

In addition, both the trade unions and management were asked to describe some of the key elements of the process of conciliation based on their experience. Based on the responses presented, respondents were then asked to describe how the identified elements shaped their actions and impacted on the outcomes of collective conciliation in practice. Face-to-face interviews were conducted in a number of locations which included offices in Lagos and Abuja, Nigeria. In the majority of these locations the researcher met the respondents in their offices. In other instances, a room was allocated within the organisation for the interview so as to

ensure privacy and confidentiality (Cameron *et al.*, 2001; Bentz and Shapiro, 1998).

In order to address the research questions and meet the objectives of this study it was important to undertake an in-depth examination of general responses from other stakeholders and respondents involved in the selected case studies (Bryman and Bell, 2015; Saunders *et al.*, 2011). The responses from these stakeholders and respondents provided an insight into the nature and process of conciliation and hence an understanding of the social process of collective conciliation. The researchers understanding of the reality of the social process of collective conciliation is presented through the eyes of the parties who have experienced it in practice. Using their language and terminologies these information-rich explanations are used by the researcher to explore the research questions and gain theoretical insights into the social process of collective conciliation

The information generated from respondents during the interviews were harmonised with minutes of conciliatory meetings that were presented to the researcher by conciliators to read and return back. In addition, the observation of two conciliation cases enabled the researcher to witness what the process of conciliation entails in reality and to figure out how the perceptions of trade unions and management during conciliation tends to influence their actions and impact on the way the issues in dispute are considered hence allowing the researcher to observe how the interactions among these actors emerge consequently enabling the researcher to present an understanding of the social process of collective conciliation in Nigeria (Babbie 1995; Crabtree and Miller 1992).

In the case of interviews with stakeholders that have a role to play in conciliation in Nigeria, this study reveals how the descriptions presented by these respondents demonstrate the way the opinions of the parties at the start of conciliation regarding employment relations influence their attitude regarding their bargaining power and strategy and also the way their interactions with the conciliator during conciliation impacts on trade unions and management's choice of attitudinal structuring and

intra-organisational bargaining hence influencing the promotion of trust, communication and relationship that tends to determine the outcomes of resolution at the end of conciliation (Boyd 2001; Arksey and Knight 1999; Creswell 1998). The exploration of the social processes involved during the settlement of the disputes presented in the three case studies confirm the data presented among stakeholders that have a role to play in collective conciliation in Nigeria presented in chapters Five and Six of this thesis (Boyd 2001; Arksey and Knight 1999; Creswell 1998; Holloway, 1997). Consequently data collated by the researcher during interviews, observations and review of documents have been used to address the research questions of this study and present an understanding of the social process of collective conciliation which is the aim of this study.

In the course of the interviews, field notes and memos were taken. The choice of field notes became necessary because the human mind tends to forget quickly so the researcher made use of field notes to retain the data that was gathered. It is important to mention that the process of reflecting on field notes taken during data collection steered the researcher to consider how social factors influence the actions of the actors and impact on the outcome of collective conciliation, in practice. In addition to field notes another important source of data collection that was used was memos. Just like field notes, memos were used to record what the researcher heard, saw, thought and experienced in the course of collecting and reflecting on the process of data collection (Saunders *et al.*, 2011). In this study, field notes and memos were used as diaries or chronicles because these present a narrative of the account of what happens during data collection (Bryman and Bell, 2015).

4.3.2: Case elimination and selection criteria

In the course of the review of literature on collective conciliation in Nigeria it became obvious that there is no official data base that provides detailed information on the nature and causes of disputes, the names of the trade unions and organisation's management involved, the numbers of workers and the duration of the dispute, outcome of the dispute with or without the assistance of conciliators and the contact details of other actors that were involved in the dispute. This study

provides a collation of key collective conciliation disputes from 2010-2016 in Nigeria (a tabular presentation of the cases considered is available in Appendix 5). This list is a subset of the cases of conciliation described in Chapter 3. The list contains those collective conciliation cases in which trade unions and management representatives gave the MOL permission to allow the researcher to have access to their information. This enabled the researcher to build up a general picture of the collective conciliation cases in Nigeria. The table on collective conciliation disputes presented in appendix 6 reveals that there are more disputes in the private sector (27) when compared to the public sector (18). However, public sector disputes tend to generate more public attention because of the large number of workers that are involved – usually thousands – compared to the private sector with either tens or hundreds of workers. The impact of a public sector dispute tends to affect the general public more because this sector provides essential services within the economy. In the majority of the cases reviewed the key issues in the disputes were related to non-payment of salaries, redundancy, and trade unions related disputes, among others. These disputes cut across different industries such as construction, education, health, oil and gas, manufacturing, pharmaceutical, transportation, agriculture and banking. A more comprehensive list is presented in Appendix 5.

The three case studies that form the basis of the analysis presented in Chapter 7 was arrived at through the elimination criteria presented below:

- The case or dispute must have been completed no less than five years from the time of the research (so covering the period 2010-2015).
- The dispute should have completed its full life cycle of disagreement (where applicable), strike, or third party involvement, with resolution attained or possibility of resolution.
- The issues causing the dispute allow for the generation and analysis of the social process of collective conciliation.
- Ease of accessibility of the researcher to the actors involved in the dispute.
- Willingness of the actors to take part in the research and discontinue at will.

Through the application of these criteria three cases were identified where disputes had occurred as a result of the following issues: redundancy benefits, non-payment of gratuity and the failure to introduce an employee hand-book. The breakdown of the cases reveals that the organisations that were involved in these disputes operate in three different industries: manufacturing, automobile, and oil and gas. At the end of the selection process, the organisations that were finally selected were: Vono Plc, Tata Africa and ConocoPhillips/ Pilgrims Africa. The context of these cases is outlined in more detail at the start of Chapter 7. However, some basic details of the cases are: The dispute on non-payment of employee gratuity between Vono Plc and SEWUN started in July 2011, lasted 1 year and 3 months and was resolved in October 2012. The Tata Africa dispute with AUTOBATE and SEWUN on the failure to introduce an employee hand-book started in 2010 and was resolved after six years in 2016. The ConocoPhillips/ Pilgrims Africa and NUPENG dispute on redundancy payment started in 2013 and the dispute was resolved after five month in January 2014.

4.4: Ethical considerations

The issue of ethics is significant in qualitative research. In order to ensure ethical research in this study the University of Leeds policy on ethics was applied. It sets out the principles underpinning ethical research conducted at the university and provides guidance on the application of these principles. Previous academic research carried out at the university has been conducted according to the principles of academic excellence, integrity, inclusiveness and professionalism. In order to ensure that this research is conducted with integrity the researcher guaranteed that the principles of honesty and openness are observed in the conduct of this study and publication of its results in conformity with the university's ethics policy (see Appendix 6 for ethics approval).

Previous studies within the university have been conducted with respect for participants and in compliance with legislative requirements; the study conforms to the university's research ethics policy. It was subjected to ethical review and

approval by the Research Ethics Committee of the university so as to discourage controversial or high-risk research. An ethical approach to research is not expected to involve any impediment to the pursuit of knowledge; instead it provides clear recognition and preparation for any risk which may be inherent in the pursuit of research. In this study reasonable measures were taken to protect the health, safety and psychological wellbeing of the researcher and all the respondents that were involved. The locations and settings of the study were subjected to reviews under the national health and safety legislation and the university's health and safety regulations. The dignity of all respondents was respected, valued and appreciated. Respondents were informed that they had the right to an appropriate opportunity to give their consent to participate, withdraw from or refuse to take part in the study, without any form of inducement or adverse consequence.

According to the university's ethics policy the expectation is that researchers will obtain and record the informed consent of respondents. The policy requires that respondents must be given clear information about the study's aims, as well as the risks, benefits and nature of their involvement (Miller *et al.*, 2012; Bless *et al.*, 2000; Arksey and Knight, 1999). The policy also require that respondents must be given sufficient time to reflect upon any information that they are given. The researcher must be satisfied that this information has been understood by the respondents. In this study the researcher made use of an informed consent form. The items in this form include records that the respondents are participating in the research. It contains information on the purpose of the research, confidentiality, procedures for data collection and the voluntary nature of the study. Prior to each interview the consent form was read, clarified and signed by the respondent and researcher before the commencement of interviews (Kvale, 2006; Street, 1998; Holloway, 1997; Kvale, 1996; Bailey, 1996).

With regards to data storage and protection, the Leeds University ethics policy was applied. This policy requires the researcher to conform to the Data Protection Act 1998, Human Rights Act and University's Code of Practice on Data Protection. In this study, the data was obtained and protected fairly and lawfully, and processed

under specified conditions. The data was processed in accordance with the respondents' rights and kept safe from unauthorised access, accidental loss or destruction. The researcher confirms that the collected data is adequate, relevant and not excessive, is kept up to date and will not be reserved for longer than is necessary for the purpose of this research. Interviews were audio-recorded with the permission of all the interviewees. At the end of each interview, codes and dates were assigned to each recording and then it was downloaded on Nvivo software. At the end of each interview the researcher listened to the recordings, made notes and transcribed the discussions in order to allow the voices of the respondents to speak. During this process the researcher ensured that the recording equipment was functioning well and spare batteries were available. In all the settings, each interview was free from background noise and interruption (Easton *et al.*, 2000; Arksey and Knight, 1999; Bailey, 1996). At the end of each interview, files with divisions were opened for each respondent in addition to hard copies of pamphlets and other documents. Consent forms, field notes, and sketches made by respondents during discussions and made available to the researcher were all documented. Accordingly, the interview transcriptions and other documents are stored electronically on the university's hard-drive and encrypted for the purpose of data protection (Caelli *et al.*, 2008; Caelli, 2001; Lofland and Lofland, 1999; Miles and Huberman, 1994).

4.5: Conclusion

In conclusion this chapter presents the choice of methodology that informs the data collection and the basis of the empirical chapters of this thesis. Forty-five semi-structured interviews were conducted among conciliators, trade unions, management representatives and other stakeholders that have a role to play in collective conciliation in Nigeria. Realism recognises that truth is a subjective and independent process formed by the circumstances and experiences of the actors. In this study on the social process of collective conciliation, this study considers a world that exists independently of the human mind and affirms that the meaning attributed to this world depends on the interpretations presented by trade unions, management representatives, conciliators and other stakeholders that have a role to

play in collective conciliation in Nigeria. While these actors engage with each other during dispute resolution within the social world there is a tendency that different understandings could arise regarding the same phenomenon. It also enables the researcher to engage with the world and interact with the people that operate within it and as such it allows the researcher to give meaning to the experiences, actions and behaviours of the actors using their own languages and terminologies hence these understandings have been used to address the research questions and present an understanding of the social process of collective conciliation which is the aim of this study.

The case study strategy gives the researcher the opportunity to present data collection by using two distinct elements of collective conciliation in Nigeria. The first element presents interview outcomes among key stakeholders at federal, state and local levels. These interviews provide an insight into the nature, process and outcomes of collective conciliation in Nigeria and form the basis of Chapters Five and Six. In the second element, data was collected from three specific case disputes: first, the Vono Plc and SEWUN dispute on management's non-payment of employee gratuity, which started in July 2011 and was resolved in October 2012; second, the ConocoPhillips/ Pilgrims Africa and NUPENG dispute on non-payment of redundancy benefit, which started in 2013 and was resolved in January 2014; third, the Tata dispute with AUTOBATE and SEWUN on the failure to introduce an employee hand-book, which started in 2010 and was settled in 2016. In order to obtain robust and rich data, the generalisation of this study is based on the researcher's efforts to apply the set of results derived from the study to some broader theory rather than to the population studied in the research. The findings of this study are consistent across conciliators, trade unions, management representatives and other stakeholders that have a role to play in collective conciliation. Dix (2000) advises that studies need to be cautious that the controversial nature of the issues in dispute, characteristics of the parties, their actions and perception of the process and outcomes of conciliation may differ.

CHAPTER FIVE
UNDERSTANDING THE SOCIAL PROCESS OF COLLECTIVE
CONCILIATION IN NIGERIA: INTERVIEW EVIDENCE ON THE
ACTORS

5.1: Introduction

This chapter presents evidence on the social process of collective conciliation drawn from key stakeholders in conciliation representing the Ministry of Labour (national, state and local) representatives from employers' associations and trade unions, and conciliation bodies involved in the process of conciliation in Nigeria. The chapter considers how information-sharing and communication, state legislation and regulations and trade union-management relationships influence the nature of collective conciliation, and how these factors shape the outcomes. Many studies on ADR and collective conciliation have looked at the involvement of the stakeholders during negotiation and bargaining, and have examined the importance of the institutional context on outcomes. However, the ADR literature has tended to adopt a narrower focus that does not take fully into consideration the dynamism of the interaction that takes place between management and other actors such as the state and trade unions during collective conciliation. In an effort to fill this significant gap this chapter looks in detail at the role of each main actor in the conciliation process: the state, conciliators, unions and management. The chapter highlights the significance of the role of the state in the conciliation process through its attitude towards trade unions and management related issues as well as its disposition towards the review of regulations and its enforcement. Furthermore it explores the manner in which the bargaining and negotiation behaviours of trade unions and management influence conciliation processes impacting in particular on their capacity and willingness to share information during dispute resolution.

The chapter begins with discussion on the political economy of the state. Particular emphasis is placed on the role of the state as a setter and enforcer of labour legislation and regulations. It reveals the lack of sincerity of the Nigerian state to prioritise labour related matters, to update obsolete legislation and to empower state

established institutions responsible for facilitating the resolution of trade related disputes and promoting cordial union-management relations. This section highlights the key role of the Ministry of Labour (MOL) in conciliation. This Ministry carries out its statutory obligation of providing a collective conciliation service for trade related disputes in Nigeria. Beyond this, and more importantly, the Ministry impacts significantly on union and management perceptions about the process of collective conciliation, its fairness and objectivity and the likely impact of conciliation. The chapter then moves on to look in more detail at the actors that take part in collective conciliation. In this section, three stakeholders in the conciliation process are considered, namely: the state (and in the conciliation process their conciliators), trade unions and management representatives. The role of each stakeholder, their perceptions and their typical actions during conciliation are examined. Specifically this section seeks to shed light on the way in which information-sharing and communication, state legislation and regulations, and trade union-management relationships influence the nature of collective conciliation and how these factors shape the consequence of collective conciliation in Nigeria.

5.2: Political economy of the state

The significance of the role of the state and its agencies in Nigeria in the formulation and implementation of legislation and policies that guide employment relations and collective conciliation cannot be overstated. The state has the authority to confer wide-ranging powers on some of its institutions, notably labour courts, arbitration panels and ministries, to implement policies to try and promote cordial employment relations. As mentioned in Chapter Three, the Nigerian state is best described as a hybrid (reflecting a combination of British voluntarism and a very strong element of state control). The intention of the state is, among other things, to achieve economic and social goals and to ensure the maintenance of a high level of employment. The state enacts legislation that will guide the conduct of these actors including during dispute resolution and collective conciliation. The state provides intercessory functions that tend to have a significant impact on the activities of the actors during collective conciliation in Nigeria. The statutory role

of the state in collective conciliation is clearly defined and prescribed through the Trade Disputes Act (2004) that gives authority to regulate and ultimately settle disputes. This standpoint was confirmed by a conciliator who said:

If you go by the Trade Disputes Act it is stated there that it is only the state that has the power to take control and see to the resolution of dispute. This means that when the parties fail to resolve their dispute the state can decide to take up the case or intervene in its resolution especially when the economy is affected in the process (Stakeholder 4, conciliator).

This description highlights the level of authority bestowed on the state by legislation and the extent of state powers. In the view of trade unions and management, since the mid-1990s the state has become more elitist, obdurate and conservative in its approach, with implications for conciliation. The state is perceived to have an unyielding and inflexible outlook around employment relations issues, hence limiting transformation, modification or change in employment relations. This explanation echoes trade union and management perspectives regarding the attitude of the state and how it discourages them from making significant progress that guide employment relations. Given this illustration, an assessment of the attitude of the state towards labour and management related policies and guidelines in Nigeria can be described as frustrating and depressing, as confirmed by a trade union respondent who said:

I think the body language of the government in power goes a long way to indicate its mind-set....this is why Nigeria is a backward nation today because when you look at their policy framework it has always been about elitism and they don't even have the intention to change it so that we can see if we can marry it with a little communism and get things done properly. This has been the problem in Nigeria since the colonial days till date and no one has thought outside the box to change the strategy; because the

institution has already been structured so it is in their frame of mind that as it was done in the days of John the Baptist so shall we continue (Stakeholder 10, trade union representative)

This attitude of the state towards labour related issues is also reflected in the behaviour of the state towards the established tripartite platform responsible for addressing labour related matters. The stated aim and motive for the establishment of the National Labour Advisory Council (NLAC) was to provide for discussion and collaboration between the government and the organisations of workers and employers, particularly at the national level, on matters relating to social and labour related issues and international labour standards. In practice, the demeanour of the state towards the funding and operation of this institution reveals a lack of sincerity. In reality NLAC, comprising representatives from the main national employers' association, trade unions and government is more or less moribund in its activities. It has become clear from the interviews that members of NLAC have not been able to hold meetings or engage in consultations that will enable them to deliberate on critical and fundamental labour-related issues, due to a lack of financial empowerment by the state. Thus the inability of NLAC to carry out its function has resulted in labour related disputes degenerating into industrial crises thereby undermining the potentials of NLAC in Nigeria's employment relations. A conciliator confirmed this point when he blamed the state for not funding NLAC, which is responsible for providing advisory services and promoting cordial employer-employee relations. He said:

We have the National Labour Advisory Council which is a tripartite platform that represents Government, Labour and Employers; they address labour related issues. We are supposed to be meeting quarterly. The council is as good as just a platform on paper. For the past one and half years we haven't met due to lack of funding to convene the meeting and issues that normally would have been resolved at that platform degenerate into industrial crisis. That platform could even serve as an alternative dispute resolution

platform. What the MOL does is to look for who has the ability to fund such meetings so that is the situation we find ourselves in (Stakeholder 4, conciliator).

This suggests that the state is failing to prioritise the importance of labour related issues and that the situation has worsened over the years due to changes in political administrations, increase in corruption practices, lack of continuity of uncompleted programmes and projects of past government. Alongside this platform, state-established institutions that implement ADR functions are also guided by legislation or Acts of Parliament (set out in Chapter 3). As identified in Chapter 3, the Nigerian context is distinctive here. Unlike some countries, the role of conciliators tends to differ from those of arbitrators and mediators. This is because in Nigeria conciliators are usually employed as government officials who function in the collective bargaining arena in accordance with legislative recommendations made available by the Labour Act in Nigeria. It has become evident that in the field of employment relations, labour legislation recognises conciliation as one of the alternative methods for the resolution of employer-employee related disputes.

Nigerian labour laws, however, seem to be inadequate for handling the present-day industrial relations atmosphere that has developed. This crevasse in employment legislation can be linked to the attitude of the state and in particular the lack of political will and reluctance of the legislative arm of the state to review and critically analyse the laws that guide employment relations and in particular, collective conciliation. For over ten years the legislative arm of government, the National Assembly, has failed to review the labour legislation. This delay has been attributed to a lack of stability and inconsistency among legislators to recognise the importance of labour legislation and its influence on the nation's economy. The implication of this is that labour laws do not meet up with international standards and as such employers find it difficult and highly challenging to do business within the Nigerian context due to a fear of violating international principles and standards. Alongside this, the research has revealed a prevailing attitude of blocking or slowing the passage of legislative bills in the upper and lower chambers

of the National Assembly. Respondents highlighted that corruption and exploitation were commonplace. Some suggested that before legislative bills can be passed in the Nigerian National Assembly they have to be case-backed or else they will not be approved:

The bill has been in the National Assembly for over 10 years...in fact, at the last National Assembly the labour laws passed the second reading, I don't know if this present assembly will take it from there or start all over. But we all know that if you send a bill and you don't cash-back it will die a natural death there...is it the same MOL that complains about lack of funding to do what they are legally set up to do that will be cash-backing a bill (Stakeholder 2, conciliator).

As mentioned earlier in this section, the nature of labour relations in Nigeria tends to discourage the application and operation of more recent and contemporary international labour legislation. Consequently it dampens the morale of employers and trade unions and discourages them from building their trust and confidence in the willingness and ability of the state to promote cordial employer-employee relations. The interviews revealed that in order to manage this situation, the International Labour Organization (ILO) has made rigorous efforts to assist the Nigerian state by providing both the human and financial capacity required to facilitate the review of existing obsolete labour legislation in Nigeria and bring the laws up to date. While confirming the view, a trade union respondent let out his annoyance on the behaviour of the state as expressed by the legislators. This description reflects the lack of political will and reluctance of the political class in Nigeria to update the existing labour legislation, irrespective of local and international support that have been provided to facilitate and expedite the process. According to this trade union respondent:

[As] you can imagine, the ILO gave a technical task team that involved a lot of money; both human and financial capacity was put into it, and as I'm talking to you it is still there in the National

Assembly. So it means that if they review it today, then it is due for another review...there are a lot of defects in the political ideology and system of this nation and one of the defects is the composition of the National Assembly (Vono 4, trade union representative).

This quote shows how disappointed employers and trade union representatives are, regarding the unwillingness and reluctance of the state to formulate legislation that ought to promote a good industrial relations climate, attract foreign investment, create employment for the citizens and boost the economy of the nation. The following sections look in more detail at specific state institutions and organisations that surround and inform the process of collective conciliation. This investigation begins with an analysis of the MOL.

5.2.1: Ministry of Labour

As mentioned earlier in this chapter, given that conciliators are government officials, they tend to reside and carry out their functions in the Ministry of Labour (MOL). The duty of the MOL in Nigeria is to ensure safe, fair and harmonious work practices essential to the social and economic wellbeing of the people. In addition to its other functions, the Ministry is responsible for providing conciliation service for employers and trade unions during a trade dispute. Within the context of dispute resolution and in particular, collective conciliation, the role of the MOL is to appoint an impartial conciliator whose obligation is to provide a conducive and encouraging environment where the disputing parties can come to discuss the issues in their dispute. While acting in this capacity the conciliator is expected to explain to both parties the position of the labour law as it relates to the issues in dispute as well as assisting the parties towards common goals. Respondents argued that the MOL should be classified as an economic ministry even though at present it is not. This is because when labour-related disputes degenerate into an industrial crisis they could result in strikes and lock-outs that could disrupt the nation's economy. At the moment the MOL is categorised as a non-economic ministry and as such the financial distribution allocated to the ministry is insignificant when compared to its duties and responsibilities. This implies that notwithstanding the

enormous obligations and tasks of this ministry its activities have been incapacitated due to a lack of financial capacity. As such, its relevance and ability to carry out its responsibilities and remain relevant among other stakeholders within the employment relationship have been undermined, as one conciliator said:

So there are lots of issues: the gap is there, but the awareness isn't all [that we do]. What we do is report the activities of the ministry but we don't tell the public what the ministry is doing. Under normal circumstances the ministry is supposed to have a television programme, maybe a half-hour programme that tells the viewers the activities of the ministry. We don't have flyers and even if we do you can't have a flyer that'll cover all that but can only have a document that has been averted....like we used to do, then we do a ministerial briefing where the department will tell you what they are doing. And by the way, we used to have what they call a labour handbook that tells you the story of the MOL but that was a long time ago because the last review was made and stopped in 1992. That was when we had the very first Nigerian Labour Handbook which was launched by the administration of President Ibrahim Babangida (Stakeholder 11, conciliator).

The quotation reveals the manner in which information providing undertakings of the MOL has been weakened. It highlights the influence that this process has had on the significance of the ministry among other stakeholders. It reveals that for over twenty-four years the MOL has not published any labour handbook or flyer or produced any television programme to create awareness about its role and activities to its stakeholders, unlike other agencies. As such, the majority of its stakeholders perceive the ministry as an established government agency whose responsibility is to promote the interest of organised labour associations such as the Nigeria Labour Congress (NLC). While confirming this point a trade union respondent said:

And most people view the MOL as NLC: this is because if the ministry is well funded there would have been a deliberate programme on air [and] in print telling people the role of the MOL. It is only the unions and few managers that know what they do and it is based on the constitution that established the unions (NUPENG 3, trade union representative).

The implications of the misconception about the role of the ministry by other stakeholders can be attributed to the ministry's lack of awareness of the need to provide information about its roles and activities, and hence its lack of responsiveness. Whenever some employers are involved in dispute with trade unions there is a tendency for them to be unwilling to approach the MOL for conciliation service. This is because this group of employers could be among the category of respondents that view the activities of the Ministry as favouring the interests of trade unions and not employers. Furthermore, a definite point that can be inferred from the investigation is the fact that the inability of the state to rise to its legislative responsibilities has impacted negatively on the way the ministry carries out its statutory responsibilities such as implementing its duties among stakeholders, commanding respect and imposing measures needed to sanction offenders that do not comply with the result of collective conciliation.

Furthermore the politicisation of the appointment of the Minister of Labour has created challenges for running a ministry that is related to employment relations. A lack of understanding and knowledge of labour laws, the employment relationship and the nature of union-management relations in the private and public sectors by state appointed Ministers of Labour tends to impact on their actions and decisions. Subsequently the action of the minister has tended to undermine confidence in the Ministry to offer reasonable and impartial assistance especially during dispute resolution. According to one employer respondent:

Much as I know that the Minister is a politician we should still be able to find a round peg in a round hole for a technical arm of

government like this. This is a technical arm; they are not there for the private sector alone even for the civil service. So it must be somebody that has the labour laws at his or her disposal; one who can interpret and understand it; and there are lots of them in this country. You can't just bring in a politician who doesn't have the knowledge about industrial relations... simply because he is in the party in government and you make him minister and he gives the shot. So, it is more of a political problem they should look for a technical class to lead technical arms of government like this (Stakeholder 17, employer representative).

The state nomination of Permanent Secretary in the MOL is another area of contention. The responsibility of the Permanent Secretary within the ministry is to act as the head of the administrative arm while the Minister is the head of the ministry's political arm. Appointment of Permanent Secretaries in the MOL by the state impacts on their activities and influences the opinion of other stakeholders about the importance of the role of the MOL especially during labour-related disputes. When employees that work in the ministry begin to approach certain positions such as Director they will start to participate more actively in state politics so as to gain recognition and make the necessary connections. The aim of this is to enable them to be nominated for the position of Permanent Secretary whenever the need arises. The mind-set of such employees at this critical stage in their career is important here. An unqualified candidate who is loyal to the political party in government or who is highly connected to political aristocrats could be selected for the position of Permanent Secretary based on his or her connection rather than based on merit, professionalism, proficiency or expertise. A management respondent hinted at this when he said:

Even at that they are politicians; they just move them from one ministry to the other. They are political office holders: the moment government in power are not there they are replaced, haven't you noticed that? They are supposed to be the head of the ministry (chief

executives) but in most cases they are reshuffled around so the idea of permanency and going up to understand the problems of the ministry is not there. Today the moment you arrive at the position of directorship in the MOL you are moving close to your retirement. So, these are fundamental issues but we don't really have professionals as such in the system (Stakeholder 16, employer representative).

These negative attitudes of stakeholders towards the activities of the Ministry have resulted in many stakeholders being unwilling to approach the MOL for conciliatory assistance. It has also given rise to their reluctance to implement the effect of collective conciliation in Nigeria, as one respondent noted:

So whatever way we look at it we have seen that workers have succeeded in winning the conscience of the MOL. Honestly, I am reluctant to go there because my experience over there wasn't pleasant (Stakeholder 20, employer representative).

The process of appointment of both political and administrative office holders in the ministry is highly opinionated and contentious. As a result, employers and unions tend to lack confidence in the neutrality and impartiality of the MOL and its ability to provide a conciliation service in a fair and objective manner due to the prejudiced and intolerant way that the Minister and Permanent Secretary in the MOL are appointed. In summary, there is evidence that the legislative role of the state is important because it provides intercessory functions that guide the activities of labour and management. The significance of the attitude of the state and how it shapes the perception of other actors while impacting on their actions has become evident during the interviews. For instance, the reluctance of the state to review obsolete labour legislation as well as its elitist and conservative outlook has been described by trade unions and management as discouraging. This is because it echoes the demeanour of the state towards labour-management relations issues and the way its insincerity impacts on the implementation of its legislative obligations

that ought to assist with the promotion of good industrial relations and sustenance of the nation's economy.

Overall, then, there are challenges to the Ministry in carrying out its responsibilities and asserting its relevance among other stakeholders. Furthermore, the section has shown how some stakeholders view the ministry as an established agency that is responsible for the promotion of the interest of organised labour organisations in Nigeria. The implication of this point of view suggests the influence of perception and its impact on the actions and end results of conciliation.

5.3: Actors involved in collective conciliation

As mentioned earlier in Chapters Two and Three, the state possesses constitutional powers to formulate legislation and establish dispute resolution institutions with these institutions providing collective conciliation functions. It is within the context of these established institutions that conciliators are mandated to operate. The other actors that are particularly responsible for the outcomes of collective conciliation in Nigeria are the trade unions namely: NLC and TUC and their affiliate members and on the management side; the Human Resource Manager. The abilities of these two actors to sustain their sovereignty and autonomy to negotiate with one another during collective conciliation, with the assistance of the conciliator, have a significant influence on the end result. To understand this process and its effects requires an analysis of the role of conciliators, trade unions and management representatives. The focus of this section of the chapter is to present empirical evidence from the data collected among the actors that have a role to play in collective conciliation in Nigeria. Evidence from the thematic analysis has been collated using three classifications/themes that consider the roles of conciliators; employers' representatives and trade unions during collective conciliation in Nigeria. In order to understand how the roles of the actors influence the actions of other stakeholders during conciliation, our consideration on the account of these actors regarding their perception of the role of other actors is vital. This is because; it illustrates how the role of each actor influence the actions and perceptions of other stakeholders and impact on the process and outcomes of resolution hence; the

discussions in this section will focus on the role of the actors and the opinion of other stakeholders concerning this role during conciliation.

5.3.1: The role of conciliators during collective conciliation

The neutrality and impartiality of conciliators during conciliation has been emphasized by several studies. Conciliators need to demonstrate to both parties that they do not have any vested interest in the terms of the settlement. Furthermore, conciliators need to make it clear that they are not negotiating on behalf of either party (Dix and Oxenbridge, 2004). While acting out their neutral role, conciliators are required to manage some of the challenges that could arise from explaining the legislation with the parties. Additionally, conciliators need to be calm and composed while considering the standpoint of both parties regarding the issues in their dispute, especially as it relates to the position of the law and its effect on the outcome of the dispute.

This practice seems to be arduous and demanding, especially when the conciliator has to manage the expectations, emotions and attitudes of the disputing parties. In the course of their interactions the conciliator's attitude and approach while carrying out their role tends to influence the opinion of trade unions and management about the fairness and objectivity of the process and results of conciliation. In addition, it informs the view of trade unions and management on how all of the practice inspires the parties to build their trust and confidence in the conciliator's ability to assist them with resolution. Three categorisations of conciliators' role namely: reflective, informative and substantive discussed earlier in Chapter two reveals that conciliators can decide to assume these roles depending on factors such as the nature of the issues in dispute, the characteristics of the parties, the level or stage of the conciliator's intervention in the dispute and its resolution. Empirical evidence regarding the role of the conciliator is presented using conciliators' account and explanations of their role and manner of approach during conciliation. This description is substantiated with the reports obtained from other stakeholder namely: trade unions, management representatives and other

stakeholders concerning their opinion about the role of conciliators during collective conciliation in Nigeria.

While describing the role of the conciliator during dispute resolution one conciliator said:

The role of the conciliator is to facilitate communication between the parties, build rapport with the parties and ensure that his or her neutrality doesn't [become distorted], and assist them in arriving at solutions that are mutually beneficial. So he or she needs to be neutral in the sense that he or she does not have a form of connection with any of the parties and does not have any vested interest in the outcomes (Stakeholder 11, conciliator).

Conciliators are also required to facilitate and expedite the discussions between the parties during negotiations. The intention of the conciliator during this process is to enable the parties to identify their common interest, seek mutually acceptable solutions and sustain their existing relationship. In order to achieve this objective the conciliator needs to be supportive and considerate especially while examining the issues in the dispute from the standpoint of labour law. The aim of this process is to assist the parties to deliberate on the issues in their dispute objectively by bearing in mind the strengths and weaknesses of their case such that at the end of the interactions, the parties are able to arrive at decisions that will take into consideration their mutual interest and relationship. In the course of the interviews, several conciliators emphasised the need for them to be supportive and unbiased while carrying out their responsibilities. As one conciliator said:

the job of the conciliator is to facilitate...he is an independent impartial umpire so he is not expected to take sides; rather he brings both parties together with the sole aim of seeking a solution to their problems...while doing this he leads the discussion and moderates

the actions of the parties so they don't make utterances that infringe on each other....the conciliator also opens a platform allowing them to engage with [one another] (Stakeholder 5, conciliator).

The description establishes the need for conciliators to provide the required platform needed for trade unions and management to engage with each other during negotiations. In the course of these interactions, conciliators are expected to provide assistance to the disputing parties by moderating the actions, attitudes and behaviours of the parties towards each other and the process of collective conciliation. Apart from the conciliator's ability to demonstrate his or her ability to be neutral and impartial during the discussions, conciliators need to outline their role and establish the rules that guide the practice of conciliation to the parties. The aim of the conciliator is to build the trust and confidence of the parties in the process of conciliation and at the same time assist the parties to find their common interest, make concessions, resolve their dispute and ensure a cordial relationship; an explanation of the conciliation process and the conciliator's role is important. This is because it dispels preconceived notions that either of the parties may have about the process of conciliation. It also enables the conciliator to offer detailed information that will allow the parties to get rid of any form of subjective notion which they may have about the conciliator that may possibly affect their behaviour and actions.

Consequently, this has the tendency to influence the process and outcomes of collective conciliation. While confirming this opinion one conciliator said:

First, he needs to establish impartiality and credentials; secondly he needs to explain the role he'll be playing; thirdly he needs to establish ground rules or guidelines before proceedings; and lastly, he needs to meet with them privately. It is in these processes the parties can fully appreciate what his role will be (Stakeholder 8, conciliator).

The importance of the parties' ability to build confidence in the conciliator is further revealed in the course of their discussions. Empirical evidence from the interviews reveal the need for the conciliator to meet the parties privately so as to discuss the issues in more depth and possibly give them the opportunity to disclose sensitive information about their dispute that they do not wish the other party to know about or which they ask the conciliator to obtain their consent before disclosing to the other party. In the course of this private interaction with the parties, conciliators need to listen attentively and be very critical and reasonable in their approach, especially when they are exploring the key issues in the dispute with the parties. In addition, conciliators need to demonstrate their understanding of each party's position and how this understanding conforms to the standpoint of the law and sustains a mutual relationship. The parties take these descriptions into consideration while building their trust and confidence in the conciliator and process of conciliation. One conciliator affirmed the standpoint when he commented:

He would be meeting with them privately in order to get an opportunity for them to open up and disclose the information that he'll have their consent to pass on to the other party. So as the process is on, the party can deduce to what extent he's keeping their confidential information confidential. This is to enable him build confidence and rapport with the parties by listening attentively, stating, summarising, so that parties can feel heard because once people feel they have been heard it has a relieving effect (Stakeholder 2, conciliator).

The conciliators' ability to create an environment conducive to resolution is an essential feature of effective conciliation. Through this, conciliators can demonstrate their level of expertise and proficiency in people management. This tends to assure the parties of the conciliator's level of professionalism, experience and understanding of their role and the process of conciliation. The parties require these activities of the conciliator to shape their insight about the level of assurance

and confidence that they need to place in the conciliator and in the objectivity and fairness of the process and results of conciliation. One conciliator affirmed this view when he remarked:

Usually parties can be grieved so, when they come to conciliation they want to vent their spleen; they need somebody who will listen to them, understand the angle they're coming from, and when you listen to them it has a relieving effect and it also helps them to calm down (Stakeholder 1, conciliator).

Another issue that became evident during the interview was the attitude of the conciliator towards the disputing parties during collective conciliation. The majority of employer respondents criticized conciliators for their prejudiced and unfair approach towards management. Others blamed conciliators for their biased and subjective attitude which according to them tends to betray the aims and intentions of conciliation as well as process and outcomes of collective conciliation. While confirming this standpoint one employer respondent said:

The first challenge is the conciliator who you approach for facilitation. Employers are weary of going to the Federal MOL because ordinarily when reports are made to them they are supposed to give the other party the benefit of the doubt, before they draw a conclusion. Their assumption is that employers are naturally oppressors; this might not necessarily be true. If the union says this is the situation the assumption is that; it must be so, which is considered as biased and opinionated (Stakeholder 18, employer representative).

This opinion demonstrates the mind-set of management regarding their encounter at the MOL. It indicates how the attitude of employers tends to be influenced by either their past experience of conciliation or what they heard and perceived about other employers' experiences of conciliation. An investigation of conciliators'

skills reveals that in order to understand this element of their action there is a need to explore the connections that exist between the conciliator's aim of intervention and their manner of approach, especially when they are working with the disputing parties. This investigation demonstrates the way that conciliators' application of their skills influences their perception about their role and impacts on their actions. Empirical evidence reveals that in actual practice, conciliators can make different types of interventions that draw on a wide range of their competences and capabilities, influenced by factors such as the circumstances of the case, the characteristics of the parties involved in the dispute and the attitude of the conciliator, all cited in Chapter Two. While affirming the perspective on conciliators' intervention during negotiations, one conciliator said:

It depends on the personality of the conciliator...a good conciliator must show empathy by connecting with the pains of the party. S/he needs to be largely persuasive, be able to look at the character of the parties and tell how to deal with such character, unlike the court (Stakeholder 6, conciliator).

This quote demonstrates the significance of conciliators' interventions. In addition it indicates how the personality of a conciliator acts as an essential element in the success of conciliation. It has however become evident from the interview extracts that the key aspects of the behaviour of conciliators cannot be understood without considering, for example, how they show empathy and connect with the discomfort of the parties and how this influences the process and end results of conciliation. An HR Manager that has experienced collective conciliation corroborated this point of view when he expressed admiration at the approach of the conciliator towards the parties and the way this creates a relaxed and comfortable condition for the parties to discuss the issues in their dispute amicably. According to him:

I think they are very attentive and they are given to views [willing to listen to the opinions of trade unions and management] because it was my first time of being there and at first I felt it was going to be

intimidating. They ask each party to talk and place their issue and the labour officer later discovered that it was an issue we could have resolved ourselves instead of stressing ourselves. At the end the discussion was friendly and fruitful. Again, it could be as a result of the individual sitting at the desk because I had some colleagues of mine who told me that they had a nasty and unpleasant experience at the MOL. But that wasn't our experience; honestly ours was a friendly nice and warm atmosphere and we were given a listening ear. So it was a pleasant experience after all (Stakeholder 23, employer representative).

The observations support the standpoint of others (Dix *et al.*, 2008; Dix, 2000) who argue that conciliators need to be attentive and give both parties the opportunity to present their case without interruptions. The intention of the conciliator during this process is to enable the parties to explain their standpoint on the case so as to assist them to consider alternatives that will promote their common interest and sustain their mutual relationship. In addition, these studies affirm that conciliators need to have a good knowledge of industrial relations and must clearly state their intentions to the parties at the start of the discussion. The aim of the declaration of intent by conciliators is to dismiss any form of misconception or misinterpretation regarding their actions or suggestions presented by them during discussions with the parties.

5.3.1.1: Perceptions of other stakeholders about the role of conciliators

The perception of other actors about the role and skills of the conciliator during collective conciliation is also important to the outcomes of conciliation. This is because there is a tendency to shape the mind-set of these actors towards the fairness, integrity and even-handedness of the process and its result. Some key elements that came out from the interviews about the skills of the conciliator are their communication and interpersonal skills. According to one management respondent:

You must have good communication skills, you must be able to understand the conflicts, have a good analytical skill ...you must have good interpersonal and public relation skills to be able to bring people together (Stakeholder 21, employer representative).

Another respondent commented on the significance of conciliators' analytical skills and the importance of the application of these. Furthermore this respondent argued that irrespective of the uniqueness of each dispute an understanding of its main cause(s) has the tendency to influence the conciliator's attitude, actions and methods that will be selected for resolution. According to this conciliator:

one should be looking at being able to understand and do good analysis of conflict; one should be able to get the root cause of a particular problem because if you don't get the root cause you might just be tackling the symptoms....By the time you get the root cause of a problem it gives you a platform to understand the problem and how to handle it...and remember, no conflicts are the same, we don't have two similar conflicts because they play out differently but their dialectics are the same, that is their processes and methodology are almost the same (Stakeholder 9, conciliator).

The account affirms extant research (Dix, 2000; Kolb, 1983) which argues that conciliators understanding of the cause(s) of dispute as well as their analytical and investigative skills are essential to assist the parties examine critical concerns of their case. Conciliators are required to consider the parties arguments and opinions as well as the defence during conciliation. These studies further affirm that conciliators ability to consider the issues and circumstances that surround the dispute tends to influence their choice of methods and actions especially during their interactions with the disputing parties. Others assert that in some cases, deficiencies in the abilities of conciliators may perhaps make considerable difference to the success or failure of conciliation process and outcomes. The majority of employers' representatives argued that conciliator's deficient

knowledge of what the real-life situation is, in some organisations such as those in the private sector, makes them incompetent to provide the needed assistance during collective conciliation. One HR Manager in the manufacturing sector expressed his displeasure and frustration at the lack of the conciliator's awareness of his industry, nature and process of the job as well as the health and safety implications of the decisions that were arrived at during a collective conciliation case that was held in Lagos, Nigeria. He commented:

Of course the point is this. The unions are asking for an extension in their retirement age but I am saying: by the time an employee is on that job at 55 years he is most useless. A situation whereby you have to contend with fire on a daily basis, where you have an open furnace with high temperature beyond 1500°c heat level and you want to extend the retirement age. We told them that it can't be done, considering them working at that fragile age under such unhealthy conditions. But the conciliator was persuasive so we extended it for them. Frankly speaking you cannot compare the ministry with factory work; they are two different things. These are areas where they have actually missed the link and this can be ascribed to their limited familiarity with the various individual industries (Stakeholder 17, employer representative).

The findings suggest that in order for conciliators to effectively gain the trust and confidence of private sector employers, there is a need for them to engage more actively with the private sector organisations. This is not without its challenges; however, it might be done, according to respondents, through industry exchange programmes, familiarity and acquaintance. It is anticipated that this process will create an opportunity for conciliators to have a more reflective and realistic view about the processes of production, likely health and safety hazards and the implications for employment relations. It is this understanding that will place the conciliator in a position of information and knowledge that will be valued and appreciated by both parties during collective conciliation. When asked about the

methods of interactions that take place between conciliators and the private sector in general, other employer representatives confirmed that private sector experience was lacking. According to one employer respondent:

The MOL needs to do more of interactions with the private sector. For instance as civil servants their orientation on emolument is not linked to productivity or any revenue. They believe that if they are on grade 14 it means they have spent 3 years and must move to grade 15 because their revenue and emoluments are coming from another place; that is the public sector (Stakeholder 18, employer representative).

The citation demonstrates the need for conciliators to be knowledgeable and well informed about the context where disputes arise, as well as the characteristics of the individuals that operate within the sector. In addition it shows the need for conciliators to recognise the idiosyncrasies of public or private sector operation and how it impacts on the attitude and actions of the parties, especially during negotiations. Yet another employer respondent commented:

They must understand that the private sector emoluments and welfare are linked to productivity and they must also know that once institutions are so scary and dry [going through difficult situations] some established rules could be circumvented. Probably, if we have a collective agreement to negotiate every two years but only for us to find ourselves in situation that we never anticipated so they must interact and know where to source for funds to enable them pay their staffs. They must also know about our budget in the private sector; because budget is a mere guide, especially the expenses aspect. It is not compulsory in the private sector that we must actualise what we have provided for a particular end; effort and emphasis is to reduce more expenses and increase more revenue....So therefore the

orientation is totally different (Stakeholder 19, employer representative).

The account indicates that conciliator's need to be informed about the operations, processes and activities of the sectors where they carry out their duties. This is because it will put conciliators in a position of influence especially while connecting with the positions of the parties and identifying with their diverse interests. Another important element that emerged in the course of the interviews was the conciliator's ability to ensure that their approach towards the parties does not betray the aims and intentions of the process and results of collective conciliation. One employer respondent argued that based on his experience it had become evident to him that conciliators have the tendency to exhibit some form of opinionated and narrow-minded attitude during conciliation. According to this respondent it is the cited attitude that tends to betray the trust and confidence that the parties ought to have in the ability of the conciliator to carry out his or her responsibilities during negotiations. Connecting the standpoint to the interview excerpts discussed in this section, it indicates that employers see conciliators as individuals that are partial and highly biased during negotiations. It also demonstrates how an employer's attitude and behaviour towards the process and consequence of conciliation is shaped by being based on their opinion about the conciliator:

Many times you discover that before you get to the MOL to attend a sitting or hearing they have already made up their minds with regards to the position they want to take; this does not help the case for alternative dispute resolution. It makes one lose confidence and [feel] uncertain about the outcome of the situation – this is not good enough (Stakeholder 14, employer representative).

This point indicates that employer representatives seem to have preconceived notions about the attitude of conciliators as well as the process and effect of conciliation even before they approach the ministry for conciliatory assistance.

Consequently, it is this fixed mind-set that employers embrace during their interactions with conciliators and trade unions. It is also this stance that characterises their behaviour and demeanour especially during their interactions. In addition this outlook influences the perception of employers about the collective forms of interaction that take place during negotiations and how it influences the process and outcome of collective conciliation in practice. Given this explanation, it is vital to state that in order to accomplish the stated objective, conciliators need to identify the approaches and attitudes that are seen to be suitable and most satisfactory and suggest its application to both parties. More importantly, conciliators need to explain their role and emphasise the neutrality and impartiality of their position to both parties especially at the beginning of the discussion. The aim is to avoid any form of doubt and suspicion among the parties during conciliation. One main element that tends to impact on employers' perception of the role of the conciliator is their approach and attitude towards the disputing parties. One employer representative said:

Tactically they are always hesitant in condemning or ruling against the unions. When it is against the unions they will want us to dialogue further. Instead of expecting a pronouncement from them, the pronouncement won't come; rather they will say: go and continue with your discussions and give us a feedback. This is time-consuming because if dialogue and discussion had worked in the first place we won't be at the ministry so the best thing is to escalate it to the next level i.e. arbitration which you are trying to avoid at the initial stage (Stakeholder 21, employer representative).

In the course of the interviews, another management respondent expressed disappointment at the conciliator's reluctance to present a firm ruling on their case despite the fact that they had presented enough proofs and evidence against the trade unions:

A different aspect which is related is the outcome of such engagement. When you approach the Ministry for instance you present the fact, backing it up with evidence, proofs, tendering some document and approaching it from the point of view of labour law [and so] you will expect a firm and point-blank ruling. However what we discover is that most times the position they are supposed to take will likely be against the unions rather than say it as it is – they will not (Stakeholder 22, employer representative).

The key issue that can be inferred from this account is that based on their perception, employer representatives tend to assume that the conciliation process and its effects are characterised by prejudice, partiality, unfairness and inequity. Furthermore employers' understanding of how conciliation operates indicate that they expect the conciliator to make a pronouncement or ruling at the end of conciliation; when this is not feasible they tend to become agitated and dismayed and as such they escalate the dispute and proceed to arbitration. This description provides an understanding of the way the parties, reason based on their opinion about their expectations and anticipations, especially at the end of conciliation. The account indicates that in a situation whereby the actualisation of the parties' expectations at conciliation is not feasible, it has the tendency to shape their attitude and influence their behaviour towards each other. Furthermore, it mirrors the way all of these descriptions shape the approach and actions of the parties and at the same time influences their perception regarding the process and results of collective conciliation.

5.3.2: Role of trade union representatives and the perception of other actors about this role

The role of trade unions as employee's organisations within the workplace is to represent the interest of their members by protecting and improving their pay and conditions of employment. In addition, trade unions carry out a campaign for laws and policies which they consider will benefit their members and the working people

in general. During collective conciliation it has become evident that during negotiations, trade unions tend to place an emphasis on the protection and safeguarding of the interests of their members. Some of the points that came out from the interviews concerning how conciliators and management representatives perceive the role of trade unions during collective conciliation were their attitude and lack of proper training, that becomes manifest during their interaction.

According to one employer representative:

The challenge we have now is that the unions are not properly educated and trained. Most people have the perception that to become a union leader you have to be erratic, aggressive and always ready to fight; which is not good trade union ethics. A good trade unionist organises her members with the readiness and willingness to listen first to what the employers have to say. But if they aren't satisfied with the position of the employer, there are rules and regulations, channels of dispute resolution. So instead of fighting, why not take the course of dispute resolution (Stakeholder 15, employer representative).

In the Nigerian context, with the prevailing state-led regime towards employment relations that tends to support management interests, trade unions are often the weaker party in the employment relationship. According to one respondent, the present economic situation and imbalance in employment relations has crippled the activities of trade unions more generally. This respondent said:

The trade unions present today are seasoned but I must say the economy is not helping them. There is unequal bargaining power between the unions versus the management. Most of the workers are at the receiving end due to the economic situation of the nation. Another thing is that some of them want to adopt a militancy approach especially when they are confronted with the management that has no listening ear (Stakeholder 12, conciliator)

Under such circumstances the ability of unions to exert their influence on the actions and decisions of other stakeholders during negotiations is limited. This situation is worsened by the attitudes and demeanour of other actors and the environment where they operate, especially during negotiations. One conciliator remarked:

For instance there was this company, the ministry has been mediating on their issues severally; they have their head-quarters outside Nigeria. The management was adamant and unwilling to listen to advice, they only hold firm on their positions. They always insist that whatsoever they hear will be subject to the approval of their home state but we told them that if they are doing business here in Nigeria they must be subject to our own laws. Each time an agreement or a deadlock is to be recorded they won't sign and they were the ones who brought the disputes to the ministry at the first instance (Stakeholder 2, conciliator).

The quotation demonstrates how trade union's perception regarding the behaviour and demeanour of management has the tendency to affect their reaction during negotiations. The description indicates that if the attitude of the management is positive then trade unions are likely to respond more reasonably and confidently. This explanation provides a good insight into the mind-set of trade unions and management and the manner in which the collective forms of interaction during conciliation influences their perception and approach about each other as well as the process and results of collective conciliation. In addition it demonstrates how the application of key elements of the social process of conciliation such as state legislation regulates the environment where the actors operate and determines the way the actors engage with each other in negotiations with a view to resolving their dispute and sustaining their relationship. In the course of the interviews, the majority of conciliators noted that the process of conciliation affords a welcome platform and an opportunity for the parties to consider the key issues in their dispute, especially as it affect the expectations of their respective constituencies.

However, citations from the interviews indicate that conciliators and management respondents often – perhaps wrongly – accuse trade unions representatives of being single-minded in their approach:

On the part of the union self-interest should not be allowed. A number of them are self-centred, fighting for their pockets and what they will benefit from it. The interest of the employees is not paramount on their mind but individual interest. If you have a good interest, this is a platform and also an opportunity for them to prove the welfare of their members (Stakeholder 11, conciliator).

Unions, on the other hand, argued that they are only concerned about protecting the interests of their members. While commenting on their attitude during negotiations, the majority of union respondents mentioned that it is usually influenced by their perception of management's lack of interest in union welfare:

We are bothered about the interest of our members....Most times; management ignores and pretends as if nobody was talking, this could be frustrating at times on the union side. Despite everything that has been put in place, management still remains adamant. We don't want to put the masses under untold hardship. It is very usual here that anytime the union embarks on an industrial action we get condemned by the masses. It is as a result of frustration after every avenue for reconciliation has been exhausted. This forces us to use our language either go by way of picketing or disengaging our members by telling them to down tools (Tata 3, trade union representative).

Linking the descriptions to the earlier discussion in Chapter Two indicates the importance of information-sharing and communication as well as the union-management relationship. One management respondent argued that trade unions believe that management is not interested in their welfare. According to this

management respondent, it is this mind-set that inspires trade unions' unwavering and unrealistic attitude, particularly when they approach management for negotiations. This management respondent stated:

The union has always believed that employers are uninterested about their welfare. That is the perception of the union and that is the reason they want to be adamant and as much as possible convince the employer to be interested in their welfare regardless of the economy trend or movement in the country. In other words, their own goal is to maximise the benefit from employers (Stakeholder 18, employer representative).

The quote shows how parties' perceptions of their obligations to meet the expectations of their respective constituents shape their relationship and influences their actions during negotiations. It is this mind-set that determines the opinion of the parties regarding the process and outcome of conciliation. It indicates how the standpoint of management towards trade unions and vice versa influences the behaviour of the parties, especially during negotiations. Linking the explanations to our discussions on the social process of collective conciliation it reveals how the collective forms of interaction that take place among the parties enhances our understanding about the attitude of the parties concerning each other, as well as their opinion regarding the ability of the process and results of conciliation to take into consideration the collective interest of the parties and promote their existing relationship. A conciliator confirmed this view when he said:

Some trade unions can be very rigid and insisting; that is, either they get it or not. This can take a while and at times we stay overnight trying to make them see reason. If you succeed, fine, but if you see the atmosphere is getting tensed, you might decide to have a time out and meet with either party separately. Try and make them see reason: the union should know that they are union members because they were gainfully employed; and have a separate meeting

with the management, let them know their mistakes and way forward (Stakeholder 6, conciliator).

The trade unions, on the other hand, argued that their decision to either consent or maintain their position during negotiation was aimed at defending the interests of their members and most importantly, to obtain a more favourable response from management. According to one trade union respondent:

we are concerned about the interest of our members, we want to get more for them....we don't just come in and sign the agreement...we negotiate and see if management will shift some ground, but once we see that the management is exhausted and can't do more you call management and decide to sign (Vono 3, trade union representative).

This extract echoes the mind-set and attitude of trade unions and shows how it impacts on their behaviour towards management during negotiations. In addition, it reflects the importance of information-sharing and the nature of union-management relations to outcomes of conciliation. It also highlights the manner in which the conciliator is able to explain to the parties the significance of their role and relationship and how this impacts on the process of collective conciliation. In addition to this way of thinking, some management representatives placed emphasis on the union-management relationship and effective communication as the factors that enable them to build the trust and confidence of trade unions during collective conciliation. Other respondents during the interviews cited how the parties monitor each other's activities. They also highlighted the way in which the parties ensure that in the course of their interactions with each other and with the conciliator there is an emphasis on identifying and preserving their common interest and at the same time, on sustaining their existing relationship during the dispute resolution. While confirming this stance a trade union respondent said:

There are tendencies for management to go excessive in their approach but they are being held back by the union not to go in that

direction because the union, no matter how you interpret their intervention, don't want the business to fail. There are instances where their demands are beyond our capability but in the course of dialoguing we have been able to resolve it. So far good....communication has been one of the vital tools that we use (Stakeholder 10, trade union representative).

One Management respondent also established the viewpoint in his explanation:

We have done a lot of formal interaction. We call and plead with them especially the key members and relate things with them. We make them understand things from our standpoint....Yes, ...we remind ourselves of the peculiarity of the industry and that is what they have come to understand, and that is why we also have a lot of behind the screen interaction, explaining our situation to them and they [unions] have shown a lot of understanding (Stakeholder 16, management representative).

This account reveals the standpoints of others (Broughton and Cox, 2012; Heery and Nash, 2011; Bond, 2011) who claim that effective communication of relevant information between the parties has the tendency to promote the improvement of industrial relations. According to these studies, this process reveals how information shapes the perception of the parties and influences their relationship and effects of collective conciliation. It also explains how the process impacts on the willingness of the parties to resolve the dispute amicably and implement its end result.

5.3.3: Role of employer representatives and perception of other actors about this role

Representatives of employers or management representatives are tasked with the responsibility of creating organisational systems that integrate efficient and satisfactory operations. In order to accomplish this undertaking the task of management representatives can be considered as planning, organising, staffing and leading, controlling and motivating the workforce towards accomplishing their goals. This explanation infers that the ability of management representatives to conduct their activities in an amicable manner during their interactions with employees and trade unions tends to encourage partnership and co-operation and promote productivity. Nevertheless, the recognition of conflict within the employment relationship cannot be over-emphasised. During conflict situations, the main goal of management representatives is to minimise loss and continue with the production of goods and services so as to guarantee the achievement of profitability and growth. During the interviews, a key issue that emerged was the role and action of management during negotiations. Trade union respondents and conciliators mentioned the reluctance of management to engage with trade unions in negotiations. It also cited management's unwillingness to approach the MOL and conciliator for any form of conciliatory assistance during dispute situations.

One female conciliator confirmed this view:

often times the employers look for one excuse or the other not to participate....they try to renege or shy away from issues that emerge (Stakeholder 1, conciliator).

Management representatives on the other hand argued that their attitude is influenced by their perception regarding the process and possible reaction of conciliation. According to one management respondent:

Going into conciliation doesn't assure you of certainty in one way or the other...you are not certain what the outcome will be at the

end of the day the matter might not be resolved. It is time consuming, it is cumbersome and you are not certain if the matter would be resolve. The conciliator pushes the responsibility of resolving the dispute to both parties (Stakeholder 16, management representative).

The citation illustrates management's hesitance to engage with trade unions in negotiations especially during dispute situations. This observation links with the analysis that was presented earlier in this chapter regarding the ability of conciliators to build trust and confidence of the disputing parties in the process and outcome of conciliation. As mentioned earlier in this chapter, empirical evidence has revealed management's lack of trust and confidence in the neutrality and impartiality of the conciliator as well as in the process and results of collective conciliation. This view echoes the result of earlier empirical investigations in this chapter that indicates the opinion of management about the attitude and approach of MOL towards the parties in dispute. This exploration reflects how conciliators lack of professionalism and industry experience impacts on the ability of the parties to build their confidence in the ability of the conciliator and MOL to assist with the promotion of dispute resolution. It describes the manner in which the parties have confidence in the ability of the conciliator to assist with the improvement of fair and impartial results that takes into consideration, the collective interest of the parties and sustain their existing relationship. One conciliator affirmed this view while commenting on the attitude and approach of management towards trade unions as well as the process of collective conciliation when he said:

There are some well-informed management who know from the onset that conciliation is a process. We have management that has paternalistic approach; some have unitary form of reference. The one with unitary form of reference view the other party bringing them for conciliation as if they were taking them to court. In our settings today when you take someone to court you loss the tie of friendship with the person that is the one I tag as unitary form of

reference. But there are some management that are well versed in industrial relations. Some have good industrial relation practitioner when it comes to conciliation they accept it as normal process of dispute settlement. In most cases the willingness to settle is there and they appreciate the role conciliators play (Stakeholder 3, conciliator).

Unions on the other hand argued that management tends to perceive trade unions as coming into the organization to establish parallel arrangement that will provoke workers to make demands that could create instability and disruption to production. According to this union respondent:

Most organizations see the union as a body that is coming to increase wage load. They see the union as a body that is coming to ferment troubles and they also see them as a body that comes in as a counter or parallel management. There is no symbiotic or mutual relationship between management and the union if there was proper orientation that notion wouldn't be there it will have been erased totally (Stakeholder 10, trade union representative).

Empirical evidence presented in the quote demonstrates that management's level of understanding of industrial relations tends to impact on their opinion and actions during negotiations with trade unions. It indicates how this reflection shapes the opinion of other stakeholders about the role of management and the way management representatives are willing to relate with them especially during dispute situations. While supporting this point of view a trade union respondent let out his frustration at the insincerity of management during collective conciliation when he said:

The management are not sincere; they have never being sincere in negotiations. And I'm saying this based on empirical facts; because if they are sincere in negotiations why do they renege in agreements earlier reached? Looking at the time wasted to enter into an

agreement and knowing fully well that if you renege in that agreement it will affect manpower what will be the debate when the issue is brought to the round table? The best way to prevent crisis is to be proactive; so if the management is sincere from the initial they would have been proactive. But for the mere fact that they are not proactive it therefore raises a stance that they have ulterior motives in their discussion and agreement...some will say no that this agreement was agreed and signed under duress (NUPENG 3, trade union representative).

During the interviews the majority of management respondents claim that the attitude of conciliators regarding trade unions tend to influence their actions. This is because; as management representatives, they need to be thoughtful and very cautious during negotiations so as not to be coaxed by conciliators into making erroneous decisions that will have undesirable effects for their organisation.

According to this employer respondent:

The MOL sometimes can be very crafty and if you don't take time they can commit you by the time they commit you; you are in trouble. That they are MOL doesn't mean they know it all just that they have authority which you don't have. When they invite you over they will want to have sympathy on the work force and try to convince you in other to make you feel that something needs to be done for the workers. They want to play the role of a good man and a gentle negotiator; they try to convince the employer to do this and that for the workers. But if you allow them cajole you into such; you will be in serious trouble (Stakeholder 18, employer representative).

The finding gives clear descriptions about the way in which the attitude, approach and trustworthiness of management influence the opinions of trade unions about the behaviour of management during negotiations. It demonstrates that it is the lack of confidence in management's attitude by trade unions that informs their lack of

trust and confidence in management's behaviour. The attitude of management within the context of conciliation can be linked to the earlier remarks made by management respondents in this chapter. A summation of the extract indicates management's lack of confidence in the attitude and mind-set of the MOL and conciliators towards them. In the opinion of management during this interview it is the attitude of conciliators and trade unions that informs their behaviour especially during dispute situations. In accordance with the analysis a conciliator resonated the disconnect that exist among the parties. This conciliator mentioned the motive for management's lack of trust in the conciliator, process and outcome of conciliation. According to this conciliator:

Yes the level of trust is hardly established. Like I said management has a mind-set about ministry official they feel they always come to reprimand and find faults. So naturally you will be apprehensive they believe the union is coming to harass them. The management thinks since they are the ones running the business and yet the government comes to tell them they are wrong and the union also are imposing a lot on them, nobody cares about them so they see themselves as been victimized. There is disconnect between all the parties involved...trust and confidence needs to be built before conciliation can work (Stakeholder 4, conciliator).

Management on the other hand argue that their attitude is usually influenced by the actions of conciliators during negotiations. While confirming this view one management respondent said:

Conciliators always have this persuasive power on employers all the time...we employers see this system working only in the interest of the employees and trade unions...when our interest is on ground their{conciliators} persuasive power evaporates (Stakeholder 19, employer representative).

A common trend as identified in the course of this investigation is the lack of trust, anxiety and unwillingness of management representatives to discuss with other stakeholders during collective conciliation. It reveals that failure of conciliators to build the trust and confidence of both parties on their independence, objective and neutral position has a serious implication for the process and outcome of collective conciliation. This has the tendency to influence how trade unions and management perceive the process of conciliation and its end results. It demonstrates the mind-set of management that conciliation is commonly used as a platform by trade unions and conciliators to intimidate and oppress management. The explanation shows reasons for management's apprehension during collective conciliation and reveals how these impacts on their reluctance to attain settlement then default on the execution of the end results arrive at conciliation. According to management respondents during the interview, the result of settlement at conciliation does not usually reflect their interest neither does it take into consideration the expectations of their constituents. While considering management's willingness to implement the outcomes of conciliation, a conciliator affirmed that some foreign management representatives adhere to the results of collective conciliation because of the pressure from their trade unions or out of fear of apprehension or arrest. According to him:

There are some management that we are informed have majority of expatriates, the Europeans not the Asians. When they see the point of the law they are ready to comply or abide by it. You can imagine when you start hearing from an employer stating he brought his money from abroad and investing it here gives you employment and food as if that person is not giving in return his own service; some employers fall into this category. Generally, once employers discover they are on the wrong side of the law they are ready to make amends; while some prove difficult: they only succumb due to pressure and power mounted on them by the workers...or fears of industrial arrest this compels them to toe the line (Stakeholder 2, conciliator).

Trade unions on the other hand argue that management's insincerity during negotiations becomes manifest with their unwillingness to implement the effect of negotiations. According to one trade union respondent:

Management is never sincere in negotiations...they default when it comes to implementing the agreement (Stakeholder 10, trade union representative).

The description establishes some of the reasons for management's apprehension during collective conciliation. It reveals how this reluctance impacts on the decision of management to reach settlement at conciliation but then defect on the implementation. A trade union respondent described this attitude of management by explaining the principles and ideologies that inform their attitude and actions during their interaction with unions during conciliation. According to this trade union respondent:

The first principle is that management has a responsibility for decisions that lead to the achievement of corporate goals and they don't want to compromise this. Secondly, they want to be seen to make rational decisions that would optimise corporate resources in the most efficient manner. Thirdly, growth and desire of corporate profitability are paramount in their mind (Stakeholder 10, trade union representative).

Conciliators on the other hand argue that the attitude of some management towards trade union representatives during negotiation is offensive and derogatory. According to this conciliator:

Some management belittle the union representative during negotiations because of their rank and status, so we tell them it shouldn't be so, because once you are at the negotiation table you have equal strength and right to negotiate on the issue, so we make

them discuss in good faith and build trust in each other (Stakeholder 6, conciliator).

This account demonstrates the need for the parties to identify and understand their responsibilities as well as the role and duties of other stakeholders involved in the processes and outcomes of collective conciliation. It is this understanding that enables each of the parties to appreciate the standpoint of the other parties during negotiations. It also enables the parties to consider the issues in dispute from the standpoint of the other party such that during negotiations the parties are able to identify the key issues in dispute as well as the areas of common interest. The intention of this process is to enable the conciliator and the parties in dispute to consider the main issues in a logical manner by taking into consideration the critical elements required for the success of conciliation which cannot be understood without taking into consideration the elements that inform the collective forms of interactions mentioned in Chapter Two, namely: information-sharing and communication, trade union and management relationship, state legislation and regulations. This study uses these descriptions to increase our understanding of the social process of collective conciliation.

5.4: Conclusion

In conclusion, the major themes that inform the analysis presented in this chapter are the role of the actors that have a role to play in collective conciliation in Nigeria namely: the state/conciliator, trade unions and management representatives. In addition, the account of other stakeholders regarding their opinion concerning the roles of these actors and its impact on their actions during conciliation is presented. Empirical evidence presented in this chapter show how the state plays a crucial role in conciliation processes and outcomes. Empirical evidence demonstrates that the elitist and conservative attitude of the state can be attributed to lack of review of obsolete labour legislation, and this gives trade unions and management the impression that the attitude of the Nigerian state towards labour and management relations has had a negative effect on the promotion of good industrial relations and sustenance of the nation's economy. The conciliator's role during negotiation tends

to influence the opinion of trade unions and management about the fairness and objectivity of the process and end result of conciliation. These factors tend to impact on the disposition of the parties to build their trust and confidence in the process; or to consider how the result of resolution will sustain their existing relationship and increase their collective interest. A conciliator's lack of industry experience and knowledge of how the different sectors operate in practice appear to be the main elements that the majority of employer respondents emphasised during the interview. It became obvious from the interviews that the majority of employer representatives expressed disapproval, condemnation and anger at the outcomes of some conciliators' dearth of industry experience and how it impacts on the suggestions and recommendations that they make during collective conciliation. This mind-set gives employer representatives the impression that rather than the neutrality and impartiality they expect from the conciliator, the latter's approach tends to be biased and prejudiced, particularly when the issue in dispute is in favour of the trade unions.

Given these explanations, the majority of employer respondents indicated that they found it difficult to build trust and confidence in the process and effect of collective conciliation. According to these respondents, their reliance on the process of conciliation needs to be informed by their perception of the impartiality and objectivity of the role and actions of the conciliator. The insight from these interviews reveals that employers do not feel they have enough evidence to assure them of the ability of conciliation to present an end result that is unbiased and equitable in its outlook. According to these employer respondents, they are suspicious and doubtful that the result of conciliation will increase their mutual benefits and sustain their existing relationship with trade unions. This is the view of management representatives that influences their actions and interactions with other actors, particularly during negotiations. All of these become manifest in the descriptions presented in this chapter on other stakeholders' perceptions of the role of each of the actors, and vice-versa, during collective conciliation.

As a final point, this account expresses the actions of management representatives during negotiations. It establishes that management and trade union interactions during conciliation are characterised by lack of trust and confidence, as well as by fear and anxiety. It shows the way in which management either expresses unwillingness and hesitance in approaching conciliators for assistance, or indicates their willingness to implement the result of negotiation at the end of conciliation. The interview citations presented in this chapter demonstrate that the attitude of management can be attributed to their perception of the demeanour of trade unions and conciliators during negotiation. This establishes the link that exists between the mind-set and approaches of the actors and its connection to their actions and behaviour during their interactions. It also indicates how all of the above-mentioned factors impact on their relationship and influence the process and outcomes of collective conciliation in practice.

CHAPTER SIX
UNDERSTANDING THE SOCIAL PROCESS OF COLLECTIVE
CONCILIATION IN NIGERIA: INTERVIEW EVIDENCE ON THE
PROCESS AND OUTCOMES

6.1: Introduction

In this chapter the factors that shape the process and results of collective conciliation are examined, drawing on the evidence of unions, management, conciliators and other stakeholders that have a role to play in collective conciliation in Nigeria. The previous chapter has considered the importance of the key elements of the conciliation process by looking at the role of the state and the key actors involved in collective conciliation, namely: trade unions, management and conciliators. Chapter Six demonstrates the importance of the role of the state in relation to collective conciliation and in its role in setting regulations and legislation, its influence on key institutions involved in conciliation and its actions in facilitating or constraining the collective conciliation process. It reveals how the attitude of the state towards trade union and management issues shapes the approach and perception of the stakeholders towards each other as well as towards the end result of conciliation. The chapter also illustrates the importance of information-sharing in collective conciliation and the role of each key actor (unions, management and conciliators) in the information-sharing process. Building on the above explanations, this chapter examines the factors that inform the procedures and influence the effects of collective conciliation as presented by trade unions, management, conciliators and other stakeholders that have a role to play in collective conciliation. It considers the importance of the perception of trade unions about management and vice versa and shows how the attitude and approach of the various parties shape their actions and determine their willingness to compromise and find a mutual resolution to their dispute. Interview excerpts presented in this chapter demonstrate that in instances where either of the parties reluctantly comes to an agreement on the outcome of conciliation, there is the possibility that such results may not be implemented.

Using the analysis presented in Chapter Five as underpinning, this present chapter takes a step further by presenting our understanding of the process and outcomes of collective conciliation in Nigeria. This account is the outcomes of interviews conducted among twenty-three stakeholders that have a role to play in collective conciliation in Nigeria. The descriptions presented by these respondents reveal the way they understand the procedures of conciliation and in particular their role as actors during negotiations. It demonstrates how the interactions among the stakeholders during negotiations are influenced by their perceptions and actions as well as the effectiveness and end result of collective conciliation in practice. All of these explanations are used by this study in order to deepen our understanding of the social process of collective conciliation in Nigeria.

Connecting the discussions in this chapter to the earlier exploration presented in Chapters Two, Three and Five, the present chapter considers within the Nigerian context the manner in which the key elements of the social process of collective conciliation, namely: information-sharing and communication, trade-union and management relationship, state legislation and regulations, enhance our understanding of the way the process of conciliation influences the collective forms of interaction that take place and determine the outcomes of resolution. For instance, it considers how the actions and attitude of the actors towards the non-implementation of the result of negotiation undermines the opinion of other stakeholders concerning the success and effectiveness of the process and outcome of conciliation. Within the above-mentioned outline, this chapter places an emphasis on the experience of conciliators, employer and trade union representatives and other stakeholders interviewed on their experience during collective conciliation in Nigeria.

6.2: Procedures and outcomes of collective conciliation in Nigeria

6.2.1: The process of collective conciliation

Some elements of the collective conciliation process are simply about basic interaction and relationship-building between the parties. The parties need to be introduced to each other to aid physical recognition and establish basic details about the standpoint, character and personalities of each group of entities that will be interacting with each other during negotiations. Although this initial process of introduction and relationship-building among the disputing parties seem to be the same in the three case studies presented in Chapter seven of this thesis; some differences have been identified. For instance, trade unions and management seem not to have any problem identifying the issues in Vono and Conoco Phillips/Pilgrims Africa dispute at conciliation but in the case of Tata, AUTOBATE/SEWUN and Tata management seem to show serious disagreement on the issues in the dispute such that the conciliator had to wade in to make suggestions on the way forward regarding this dispute hence, Tata management's subsequent actions and unwillingness to proceed with the process of conciliation. Empirical evidence from Conoco Phillips/Pilgrims Africa and Tata disputes reveal that NUPENG, AUTOBATE/SEWUN representatives appear to take advantage of their team negotiating skills and abilities to intimidate management's solo representative in the person of the HRM; the HRM at Vono on the other hand can be said to have enjoyed SEWUN's assurance and tranquil relationship but unfortunately, Vono management did not take advantage of this during the resolution of the dispute prior to conciliation.

Another difference that has been identified in the three case studies is the willingness of the parties to engage in negotiations and its impact on the duration of conciliation outcomes. Empirical evidence from the case studies reveal that within fifteen months, six conciliation meetings were held regarding Vono dispute and four meeting were held over a period of five months to resolve Conoco Phillips/Pilgrims Africa and NUPENG dispute while in the case of Tata a total of twelve meetings were fixed and in ten of the meetings both AUTOBATE/SEWUN and Tata management representatives were in attendance in the dispute that lasted

seventy-two months. The above cited analysis reveals the extent which the willingness of the actors to engage in negotiations tends to demonstrate the characteristic features of the individuals that make up trade unions and management in the three case studies. In addition, this description shows how the composition of trade unions and management tends to impact on their ability to influence each other's position and influence the perceptions and actions of the actors regarding the process and outcomes of conciliation in the three case studies.

The conciliator plays a key role here with their knowledge of the individuals and their positions often providing the platform needed to consider the level of involvement and experience that each representative possesses. These basic elements, whilst often taken for granted, are important because they provide the groundwork required by both parties to promote resolution and sustain their existing relationship. In the course of the interview, a conciliator was asked to describe the procedures and practice of collective conciliation from experience and she remarked:

We start with an opening prayer, which is followed by a general introduction of all the people present. If it is the union that reported the issue you ask them to state their case. They go through their point in dispute and elaborate, you allow one or two people from their side to state their case, after which you ask the other party to react to the issue so stated. Then while listening you will take note of, the issues they are not able to resolve, or meet half way. You try and involve them towards seeing each other's view (Stakeholder 6, conciliator).

This quotation demonstrates how the conciliator gives the disputing parties the opportunity to introduce themselves and present their case in a calm atmosphere so as to elaborate on the issues in dispute based on their own standpoint. Conciliators also need to explain the rights and obligations of the parties to them within the

context of employment relationship and in particular, during collective conciliation:

There are some disputes on [employee] rights and privileges, especially with the union. You make them understand that management has a prerogative to decide, as far as this issue is concerned, and in management deciding they don't make decisions that will have an adverse effect on their work force. Some can be very rigid and insisting; that is, either they get it or not. This can take a while..., trying to make them see reason....if you see the atmosphere is getting tense, you might decide to have a time out and meet with either party separately and then you come back to discuss the way forward (Stakeholder 11, conciliator).

This suggests that ideology and the attitudes of the parties about the employment relationship as regards collective conciliation are important to the process. Conciliators can play a key role here in echoing the rights and privileges of the parties to them especially in relation to the standpoint of state legislation and regulations. Regulations can also empower or constrain the activities of the parties within the Nigerian context. The readiness of the parties to engage in negotiations and their willingness to abide by to the process of conciliation is a key factor that shapes the process and outcomes of conciliation. For instance, some conciliation cases are resolved within one hour or a day while others take seven days or less. However, on the average the majority of conciliation cases in Nigeria last between one to three months with other cases running into years while some cases get abandoned by the parties. Hence, the role of the conciliator can either be to create or destroy the platform needed by the disputing parties to address any form of challenges that may arise in the course of their interactions during negotiations. One conciliator said:

In most cases you are not able to finish that very day because tempers are still very high; parties are not ready to make a shift, and it can be adjourned for another date. We can advise both parties to

go and meet on their own since the third party has intervened and pointed out the weak areas and see if they can resolve the issue. At times the management can come and ask if we can allow them go back and resolve on their own but they will be given a time frame. Within this period they go and meet, [and] whether they disagree or not they have to report back and let us have a memorandum of understanding. So in such a case the issue is closed if they are able to agree, but when they are not able to agree in all the cases we try to see how we can make them agree (Stakeholder 5, conciliator).

Thus conciliators may be able to act as a go-between in the exchange of information and ideas (see also Goodman, 2000; Dix, 2000). As a go-between, the process of collective conciliation typically requires keeping the parties communicating, clarifying issues, identifying areas of agreement and disagreement, establishing common grounds, identifying barriers to progress and advancement and eroding unrealistic expectations and anticipations (Dix, 2000). Empirical evidence from the interviews confirms that the process of conciliation also requires the conciliator to convey suggestions and if possible proposals to the parties without making any of the formal commitments that direct negotiations involve. Indeed, it is at this stage in the discussion where the conciliator makes an effort to build the confidence of the parties in the ability of the process of conciliation to assist with resolution.

While affirming this view, one conciliator said:

Trust can only be built in a dispute when parties are willing to trust themselves. But there are certain things that happened over the years which have eroded that confidence, like not bargaining in good faith. When conciliating, you must make them know that the best way to build confidence is bargaining in good faith; encourage them to show commitment to the process (Stakeholder 11, conciliator).

Yet, beyond the agency of the conciliator, another critical factor in the process of conciliation is the authority and mandate of trade union and management representatives to make binding decisions. According to one conciliator:

Mandate is another issue entirely...both unions and management do it deliberately...they know that the person does not have the mandate to commit but still they ask the person to come (Stakeholder 8, conciliator).

Respondents noted with disappointment the idiosyncratic features of collective conciliation whereby most organisations' management give the HR manager sole responsibility for the process and result of conciliation from the management side.

While affirming this perspective, one conciliator mentioned:

they are part of top management and they will be held responsible for the outcome of such meetings so they must have gotten the consent from their Director that whatever is agreed at the meeting must be abided by them (Stakeholder 7, conciliator).

Trade unions, on the other hand, could not understand why the HR manager cannot brainstorm with members of his team that are present at the negotiation table. The majority of union respondents condemned this solitary and unshared approach to negotiations because it tends to put unnecessary tension and stress on the HR manager who then becomes extremely hesitant and unwilling to shift grounds and make compromises. One trade union respondent cited a case that he attended on conciliation:

A case where we have about four people representing the management, the most senior person being the HR manager. He alone is mandated to talk, while the rest representatives, probably will write down or listen; none will contribute their own quota....At times when I go with my chairman for a meeting, definitely he will be the one talking but I do make contributions...it is a collective effort (NUPENG 2, trade union representative).

Several conciliators and union respondents mentioned the importance of the role of HR managers during negotiations. They stated that HR managers' awareness of their enormous responsibilities to their management during conciliation tends to influence their behaviour and impact on their attitude and actions, particularly in the course of their interactions and negotiations with other actors. While affirming this point of view a different conciliator noted:

How much can the HR manager do? Their job is big enough to accommodate more responsibilities, especially when you look at the process of conciliation (Stakeholder 3, conciliator).

While commenting on the importance of their role during negotiations, one HR Manager confirmed the standpoint on the enormity of his task when he described his responsibilities to his employer. According to this HR manager:

It is my responsibility to make decisions that will lead to the achievement of corporate goals and I don't want to compromise this...I want to be seen to make rational decisions that would optimise corporate resources in the most efficient manner....corporate profitability is paramount in our mind. In other words, the goal is to maximise the benefit for employers (Stakeholder 17, employer representative).

This quote reveals the mind-set of HR managers during conciliation. It also advocates the need for HR managers to network with the heads of other departments within the organisation (such as finance, production, sales and marketing) so as to obtain the facts and figures needed in order to support their argument during negotiations and to make decisions that will take into consideration the expectations and anticipations of management while at the same time sustaining their existing relationship with trade unions. Related to this is the significance of the advisory role of the conciliator and, through this, the responsibility of the MOL to ensure that representatives that appear at conciliation

have the mandate required to engage in negotiations and make decisions on behalf of their constituencies. One conciliator commented:

as an organ of government whose responsibility is to ensure industrial peace and harmony and to advise each party to endeavour to implement decisions... before you embark on a process of good conciliation you have to confirm from both parties whether the people there have the mandate to commit either the management or workers to whatever decision...is reached at the meeting (Stakeholder 11, conciliator).

Another conciliator expressed his annoyance at what he perceived to be a premeditated attitude of disputing parties to send individuals that do not have a mandate to conciliation meeting. This was seen to be a waste of the time and efforts of the other party and the conciliators to move towards resolution, as this conciliator remarked:

Mandate is another issue entirely. Most times people do it deliberately, maybe the government/employer or union. They may know such person does not have a mandate.... [Yet] they ask the person to come. What we are doing in the ministry now, especially the current minister who has made it open, that whoever is coming for conciliation {HR or Trade unions} must have the mandate to implement whatever the outcome of such meeting will be. So the issues of mandate have been a problem in the past but we will address [them] (Stakeholder 8, conciliator).

Some measures have been put in place by the MOL to ensure that parties have a mandate to make decisions. Invitation letters sent to the parties now specify that those taking part in the discussions must have a mandate to take decisions. In addition, the letter informs the individuals coming for conciliation that they are

required to abide by whatever is agreed at the meeting, hence imposing a mandate on those that attend conciliation:

Now when we call people for conciliation it will be stated in the invitation letter that those permitted to attend must be the top management, who will be held responsible for the outcome of such meetings. In the case of a representative, even before they come for the meeting they must have gotten the consent from their boss or director that whatever is agreed at that meeting must be abided by them (Stakeholder 7, conciliator).

These accounts all demonstrate the importance of having a mandate and the need for authorisation to be conferred on the parties' representatives during collective conciliation. It is anticipated that this decision by the ministry will make both parties more inquisitive and interested in understanding what the process of conciliation entails and how the implications of its outcomes will affect them. It shows how each representative's mandate determines the level of confidence that their constituencies entrust in them.

Another key issue concerns the experience of each party in the conciliation process. While addressing this question, a management respondent expressed his disappointment at the uncertainties and burdensome nature of the procedures of conciliation. This may explain why some management representatives are reluctant or hesitant to approach the MOL for conciliatory services. Some of the issues here may reflect the particular nature of collective conciliation in Nigeria, with some respondents arguing that the process of collective conciliation in the country has not attained a level that will enable management in particular to describe the process and its effects as fast or prompt. This tends to lead management to discouragement and makes them consider other ADR mechanisms such as arbitration, which in their own opinion is more predictable when compared to conciliation. According to one management respondent:

Conciliation is not certain... [Going into conciliation doesn't assure you of certainty in one way or the other, unlike arbitration [where] you are sure whether positive or negative you are going to get something out of the intervention. But when you have a conciliation case you are not certain what the outcome will be. At the end of the day the matter might not be resolved. Secondly it is cumbersome and time consuming, and this is why I said you are not certain if the matter would be resolved. When you approach the court and the court finds you guilty, definitely you are and that is final. But the conciliator always wants to push the responsibility of resolving the dispute onto both parties (Stakeholder 16, employer representative)

The quote reflects the mind-set of management about their doubts concerning the procedure and highly demanding nature of the process and practice of conciliation that may influence their actions and impact on their willingness to negotiate with trade unions and conciliators during conciliation. This standpoint become manifest particularly when the parties come to the realisation that it is their responsibility and not that of the conciliator to make the final decision regarding their dispute. Another aspect of the experience of conciliation to be considered is the active or passive role of the conciliator. Some management respondents highlighted the reluctance of conciliators to make a firm ruling on the cases presented before them. According to this respondent, this attitude of conciliators tends to influence their approach and increases management's suspicions about the fairness and even-handedness of the process and outcomes of conciliation:

Another aspect which is related is the outcome of such engagement. When you approach the Ministry you present the fact, backing it up with evidence, proofs. Tendering some document and approaching it from the point of view of labour law you will expect a firm and point-blank ruling. However, what we discover is that most times the position they take is to persuade and encourage both parties to settle amicably (Stakeholder 21, employer representative).

This quotation reveals much about the expectations of management towards conciliation that may not be reasonable in reality. It shows that management have a tendency to approach conciliation with the mind-set that they are going to present their case before a judge who will make a ruling regarding their case based on the facts and evidence presented. This account demonstrates how the supposed understanding of the parties about the process of conciliation influences their approach and behaviour, and this becomes noticeable during their interactions. Other respondents, particularly those from the trade unions, highlighted the importance of the nature and unique circumstances of the dispute and the contextual features of the industry or sector where the dispute occurred, as one trade union respondent said:

When we talk about industrial relations and dispute settlement we say it is a process because the system may differ and you discover that each problem comes with their own uniqueness...you have to align yourself based on the issues on the ground and at the same time you discover that some status of the industry is more volatile than others (Vono Union 3, trade union representative).

This extract confirms the unique nature of each conciliation case and the need for the parties to consider the particular issues in their dispute objectively. It also reflects the need for the conciliator to know the historical background and antecedents of both parties that operate within the various sectors of the economy. It is this investigation that will be used by the conciliator to examine the level of rapport and relationship that exists among the parties. This will be used by conciliators to identify common interests and promote resolutions that will reflect the relationship that exists among the parties. One Human Resource Manager highlighted:

I must confess in our industry we have had ups and down. As much as they have defended the right of their members they also have shown a reasonable understanding during conciliation...they have

avoided blocking the road and calling their members out on strike (Stakeholder 23, employer representative).

The failure of parties to understand the distinctive features of conciliation, when compared to arbitration and the industrial court, tends to confound their expectations of the result of conciliation. When disputing parties approach the process of conciliation their attitude is usually informed by a lack of awareness about the procedures of conciliation. Hence, the hopes and anticipations of the parties are dashed and they become doubtful about the effectiveness of conciliation. This is particularly the case when they realise that the responsibility of resolving the issues in their dispute and making decisions on their case is bestowed on them and not the conciliator. Consequently, the parties' power struggle and win-lose or 'zero sum game' mind-set that becomes manifest during collective bargaining may need to be de-emphasised when conciliation is being approached. The ability of the parties to approach conciliation with an open and objective mind-set is a vital part of the social process of collective conciliation. Some management respondents claimed that some sectors are more volatile than others because of the nature and type of job involved and the characteristics of the people who work in the sector, as well as the environment where the job is carried out. According to this management respondent:

For example, due to the environment in which the construction industry operates, their unions are usually very volatile. You don't expect somebody attending to trucks on the highway during road construction, or constructing an edifice of 30-40 floors to talk in an amiable manner like somebody in the bank or hotel. Their environment has sharpened them a lot so they are usually very aggressive...the oil industry is also very aggressive and political. Like I said earlier, the unionism and industrial relations in the banking sector is almost in a comatose state: most of the banks have succeeded to induce the employees to see nothing good in unionism (Stakeholder 19, employer representative).

Apart from the volatility that exists within the industry and sector, many other respondents mentioned the relationship that exists between trade unions and management prior to the dispute, how this influences their interactions and its impact on their willingness to implement the outcome of conciliation and sustain their relationship. One employer respondent commented:

All employers don't see it from the same point of view. Some have limited understanding of the union and so they see the enemy in them, while some have a deeper and richer understanding of the union so they see the friends in them; it depends on which angle you are looking at it from. From my own perspective and for a large number of colleagues that I have in the industry they see the union as supportive, a partnership project; they also see the parameter for resolving crisis as sufficient at least to the extent to which we have tried it. So we have what I call a relatively useful relationship (Stakeholder 14, employer representative).

Confirming this account, another employer representative asserted that from his own point of view trade unions and management are social partners in the employment relationship and under such circumstances, even though these are not universal, effective communication and clarifications of misconceptions may be more straightforward.

We have had reasons to disagree but ... at the end of the day we sit round the table to discuss our issues because the union, no matter how you interpret their intervention, don't want the business to fail. So we see them as partners in this business. There are instances where their demands are beyond our capability, but in the course of dialoguing we have been able to resolve it. So far so good, communication has been one of the vital tools we use (Stakeholder 18, employer representative).

Divergent interests and opinions do of course exist among the parties at conciliation. Yet under some circumstances parties may be able to manage their conflicting views while promoting union-management relationship and co-operation. Effective communication with each other, regardless of their divergent interests, may help parties reach points of shared interest. In summary then, meaningful interaction between the parties is essential to the process of conciliation, particularly when they are clarifying the key issues in dispute and when they are considering their common interest as well as areas of agreement and disagreement. Under some circumstances this will enable the parties to establish common grounds and consider possible barriers that may hinder their progress. It will also make it easy for the conciliator to assist the parties to withdraw any form of impracticable anticipations that they have concerning the process and end results of conciliation.

The attitudes of the individuals that represent trade unions and management during negotiations is also important. It indicates the importance of mandate during negotiations and the significant role of HR managers in representing management interests during conciliation in Nigeria. The parties' lack of in-depth understanding and appreciation of the role of the conciliator and the process of conciliation prior to their discussions have a tendency to frustrate them because they become aware in the course of the discussion that unlike arbitration, conciliation requires both parties to willingly engage each other in discussions with the intention of analysing the issues in their dispute. It is this process that is expected to enable them to identify their common interest and find amicable solutions that will improve the outcomes of their dispute. Conciliators' understanding of the unique and distinct nature of each dispute and the uncertainties that exist within each sector and industry will thus empower them to identify the approaches and procedures that will promote mutual trust, relationship and promote dispute resolution.

6.3: Perception of actors about the process and outcomes of collective conciliation

An understanding of the parties' standpoints and their level of awareness about the method of conciliation is also very important in understanding the process and results of collective conciliation in Nigeria. It can shed light on how seriously the disputing parties want to resolve their dispute and sustain the existing relationship. It indicates the parties' choice of approach and attitudes that becomes more obvious through their actions and interactions with each other. A first key element to consider is perceptions of the cost of conciliation. One conciliator remarked:

It is cost-effective to seek conciliation as an alternative means of resolving disputes. It fosters a smooth employer-employee relationship after the dispute has been resolved and productive time is saved (Stakeholder 4, conciliator)

This citation presents a new insight into the parties' perception concerning the cost-effectiveness and rapid procedures of conciliation. This awareness tends to influence the approach of the parties as well as their behaviour towards the effectiveness of the process and end results of conciliation, in practice. A second key factor to consider is the notion of 'good faith' and the willingness of the parties to negotiate the issues in their dispute in this spirit. It is the ability of the parties to adopt this mind-set that will expedite the process of conciliation and the implementation of its result.

A conciliator noted:

It is effective to the extent that parties in dispute are willing to come in good faith, willing to be open and abide by the terms of settlement. We should also have a conciliator that focuses on assisting the parties to resolve their differences and not impose his/her opinion on the parties, because parties come not fully understanding the process and expect the conciliator to decide for them. However, if

you can get parties to reconcile, they will feel much fulfilled [satisfied] (Stakeholder 9, conciliator).

The descriptions echo the viewpoint of others (Dawe and Neathey, 2008; Hiltrop, 1985) who argue that the settlement and satisfaction rate of collective conciliation tends to influence the perception of the actors about the process and final outcome of conciliation. According to these studies, customer satisfaction is particularly high in disputes where most of the key issues were resolved or when some progress was made towards resolution. It also validates the position of Brett *et al.* (1989) on the need for the parties to understand and be willing to reflect impartially on the standpoint of the other part, as this tends to influence negotiation outcomes positively.

A third factor to consider here is the perception about the duration of conciliation and the role of the actors in extending or shortening this time. Management appeared to be generally discontented about the weak attitudes and overall disposition of conciliators during negotiations that seemed to lengthen conciliation. Conciliators, according to management, favoured trade unions during negotiations, thus forming an outlook considered to be biased and unfair towards management. According to a management respondent:

They are always hesitant in ruling against the unions; they will say go and continue with your discussions...this is time-consuming because if dialogue and discussion had worked in the first place we wouldn't be at the ministry (Stakeholder 16, employer representative).

However, in contrast, the majority of trade union respondents interviewed saw the process of conciliation as fast and cost-effective in the long run when compared to other ADR mechanisms in Nigeria such as arbitration and NICN. According to one trade union respondent:

It is fast and cost-effective. By the time you subject every dispute to litigation, when you start to count your cost at the end of the day you discover that either one or the other of the parties wouldn't have benefited (Stakeholder 10, trade union representative).

Throughout, the actual behaviour of each party is of course important to understanding perceptions of the process. The majority of trade union respondents felt that the failure of conciliation in this regard can be attributed to the behaviour and attitude of management during negotiations. According to these respondents, management's attitude during conciliation tends to frustrate the process and outcomes of resolution because it is characterised by management's unwillingness and lack of enthusiasm to negotiate with trade unions and conciliators and implement the results of resolution. At variance with this perspective, management respondents confirm that the trade unions' adamant and unwavering attitude during negotiation informs their behaviour and impacts on their hesitance to implement the outcome of resolution. In contrast to the above excerpt presented on the duration of conciliation, another trade union respondent maintained that due to the time-wasting nature of conciliation there are instances where the parties may decide not to honour the end results of conciliation, due to frustration. One trade union respondent remarked:

It is always what I would like to describe as a mere academic exercise, because they will not honour the outcome of conciliation....you find out that they will frustrate the process, they will want to waste your time. So to unions, the process is mere time-wasting (Stakeholder 10, trade union representative).

A management respondent on the other hand described the impact and effectiveness of the process of conciliation in the hotel industry where he operates when he said:

I see conciliation as a very vital instrument in industrial relations. At least more than 70% of conciliatory outcomes have always worked; I can say that from my industry (Stakeholder 18, employer representative).

The point that can be inferred from the description is that conciliation is an evolving process of ADR in Nigeria. Notwithstanding its numerous challenges, it has in some circumstances promoted settlement and encouraged employer-employee relationship. The social forms of interaction among the actors during negotiation influences their behaviour and actions towards each other and towards the process and end results of conciliation. The above quotation shows the importance of conciliation as a dynamic tool for industrial relations. It demonstrates the key elements that are critical to the success of conciliation and reveals the fact that the process of conciliation cannot be understood without taking into considering the collective forms of interaction that take place between trade unions and management during negotiations.

In summary, then, this section has highlighted a number of significant elements that are important in understanding collective conciliation in Nigeria. It has considered the influence of essential features such as information-sharing and communication, the trade union-management relationship and state regulations and legislation on the collective forms of interaction that take place among the actors during negotiations. It reflects on how these elements impact on the perception and actions of the actors and at the same time influence the process and end results of conciliation. For instance, it examines the way in which the parties' perception of their attitude towards each other and the process of conciliation inspire them to build mutual trust, confidence and relationship. It also considers how the attitude of the parties influences their approaches and opinions regarding the usefulness and practicality of the process as well as the implications of the effects of conciliation.

The explorations presented in this section have highlighted the attitude of the parties regarding the fairness and neutrality of the process of conciliation. It also

deliberated on how serious the parties were about engaging with each other in negotiations and conforming to the implementations of the results of conciliation. Given the above reflections, empirical evidence presented in this chapter has demonstrated the importance of the collective forms of interaction that take place during conciliation. For instance, it considered the way that the key elements in the success of conciliation mentioned earlier in the chapter shape the attitude and demeanour of the parties influence their actions and determine the end results of collective conciliation in practice.

The discussions in this chapter have revealed how the perceptions of the parties about the process and outcome of conciliation shape the actual experience of conciliation. It is imperative to mention that from the excerpts in the interviews there are instances when one or other of the parties expresses disdain towards the efforts and tenacity put into the process of conciliation by other actors. For example, this attitude becomes evident when the parties send individuals without a mandate to represent their interests at conciliation. The awareness of this attitude by other stakeholders during negotiations could result in anger and apathy, which in turn could bring about suspicion and doubts, consequently decreasing the possibility of the parties engaging more with each other in communicating, building rapport and sustaining their existing relationships. The implication of this attitude for the process and effect of collective conciliation is that it undermines the efforts put into the process by willing parties. It gives an impression that creates frustration and discourages the parties in relation to the capability of the process of conciliation to assist both parties with the resolution of their dispute. It also makes the parties wonder how the conciliator can assist them to identify their common interest and sustain their mutual relationship during negotiations. Linking these accounts to the discussion on conciliation reveals how the perception of the actors influences their actions and impacts on their willingness to comply with and implement the end results of conciliation.

6.4: Sanctions

Sanctions or penalties can be described as forms of punishment or reprimand enforced on an individual or group of individuals for breaking a regulation, agreement or contract. In the collective conciliation process in Nigeria, the possibility of sanctions is not included in the regulations or legislation. This aspect was a regular theme that emerged in interviews. When asked to describe how parties that default on the outcomes of conciliation are reprimanded, the majority of the conciliators emphasised their persuasive stance and their lack of statutory authority to enforce the outcomes of conciliation or punish offenders. According to a conciliator:

We are like a toothless dog with no power. We just persuade them, insisting they do things right, but as for legal powers, we don't have [any] (Stakeholder 4, conciliator).

This extract explains the boundaries ascribed to the position of conciliators. It indicates not only their persuasive role but also their lack of enforcing power. This in turn may influence the perception of the parties about their ability to impose the end result on them. In reality, under the current system and regulatory framework for collective conciliation in Nigeria, the parties can decide not to comply with the outcome of conciliation, since there is no legal form of enforcement or sanction. However, the fact that the decision at conciliation is binding in honour indicates that it is the integrity of the parties that needs to be considered during negotiations. While describing the decisions and agreement of the parties at conciliation, one conciliator commented:

[The] National Joint Industrial Council sees such agreement as a 'gentleman's agreement' which is binding only in honour (Stakeholder 4, conciliator).

Another issue that arose during the interviews was the inability of the MOL to enforce the end results of conciliation. Extracts from interviews reveal how this lack of ability of the ministry tends to influence the perception and actions of parties, mainly their unwillingness to implement the results of resolution, particularly when it does not favour the interests of one of the parties. A conciliator mentioned how unimplemented conciliation outcomes are referred to IAP or NICN because these institutions have the power to enforce the parties to implement the outcomes of resolution unlike conciliation. According to this respondent, cases of non-implementation of the end results of conciliation are usually transferred to the next stage in the settlement process when necessary.

Enforcement is a major challenge the ministry has. Some of them think we bite but we don't. Luckily for us, though, the industrial courts are there for us, so when it comes to enforcement we move it over to the National Industrial Court. If an agreement is reached and it's not being implemented we simply move on by maybe taking the case to arbitration and then later to the Industrial Court; but we don't have the power of enforcement (Stakeholder 6, conciliator).

ADR institutions, then, have limited authority to enforce compliance with the results of conciliation that may tend to influence the opinion of the parties and inform their attitude towards the effectiveness of these institutions when compared to conciliation. This does lead to uncertainties in the conciliation process. The attitude of management (sometimes reluctant and unwilling) to approach conciliation during dispute situations, and in particular to conform to the end results of conciliation, may be shaped by their insights into enforcement mechanisms. An employer respondent expressed annoyance at the lack of the MOL's authority to impose the outcomes of conciliation on both parties.

The MOL has no power to sanction, only the court can do so; and that is the problem. The ministry wouldn't want a situation whereby you are negotiating under duress; probably your factory is closed

and nothing is happening, then what are you negotiating...so you must have a state of free mind in order for you to get a good bargaining. So therefore the MOL will not be in support of any worker being outside without working while negotiation is on-going; they will always want work to go on; this will pave the way for a cordial relationship (Stakeholder 18, employer representative).

Many conciliators echoed the fact that the process of conciliation is unique and exceptional. According to these conciliators, the exclusiveness of this process is evident in the fact that the parties are willing to negotiate, find common interests and make concessions that will lead to agreement. The aim typically is to increase mutual benefits and sustain the existing relationship. It can be argued that if the parties are objective, realistic and truthful with each other during conciliation then the end result should not be imposed on them, because it was based on their mutual agreement. Hence, the outcome of collective conciliation is said to be binding in honour, thereby putting the integrity and truthfulness of the parties in dispute into consideration as one conciliator commented:

Such agreements are binding only in honour. At the level of conciliation, if there is a breach of that agreement you may not be able to implement [it] but if the matter should go to IAP they are able to make a pronouncement and if there is any objection from any party the matter goes to the NICN where the final ruling or verdict is made (Stakeholder 2, conciliator).

While confirming the above view, another conciliator remarked:

In all the conciliation agreements the issue of the implementation of the agreement is already implied because it is an agreement; the ones who will honour will honour and those who will dishonour will dishonour (Stakeholder 3, conciliator).

This description mirrors the point of view of Odoziobodo (2015) who argue that lack of compliance with the outcomes of conciliation can be described as an indication of disregard and contempt for the process. Linking this explanation to the earlier discussion presented in this section confirms that the parties need to approach conciliation with the mind-set that the results will be implemented even though it is binding in honour only. One of the ways in which this view can be made effective is to provide more information and create awareness for the parties about the importance of conciliation. The importance of information exchange confirms the standpoint of previous studies (Adair et al., 2007; Adair and Brett, 2005; Adair and Brett, 2004) revealing that negotiation processes are influenced by information exchange between the parties. The parties need to be aware of the significance of their role during negotiations and the implication of their relationship towards each other during negotiations. It is the parties' understanding of these descriptions that would build their confidence and transform their opinions concerning the fairness and neutrality of the process of conciliation and its end results. On the other hand, some respondents explained that there are instances when the attitude of the trade union compels the management to reach an agreement. According to them, management may decide to express their disapproval of the outcome of conciliation by being hesitant to conform its outcomes, as mentioned earlier in this chapter. One respondent used the example of the Academic Staff Union of Universities (ASUU) and the Federal Government of Nigeria dispute as an illustration:

A situation was the ASUU strike that lasted for six months...they later reached an agreement which today there is a problem behind it. In conciliation, before parties meet to discuss ordinarily one should expect they maintain the status quo. But in the ASUU case, the strike was still on when they came for conciliation. Government only succumbed to the agreement, because they wanted them to go back to class. Of course one could make an inference that the agreement was coercively extracted under undue influence and the

result of such case is the non-implementation of the agreement by the other party (Stakeholder 7, conciliator).

This quote shows the way the opinions of the parties have a tendency to influence their willingness to conform to the results of conciliation. It confirms that in instances when either of the parties have the impression that the final results attained at conciliation are reached through coercion and intimidation, the implementation of such an effect is usually not obeyed by the aggrieved party. Accordingly, empirical evidence from the interviews demonstrates the way the attitude of the parties influences their attitude towards the implementation of unfavourable outcomes. It confirms that since the result of conciliation is binding in honour only, the aggrieved party can decide to reluctantly engage with other stakeholders in negotiations but then choose to default on the execution phase; more so since there is no sanction attached to non-conformity and no penalty for offenders. While confirming the above perspective on the lack of sanctions, a conciliator echoed the need for the MOL to put in place monitoring mechanisms that will address the foremost problem of non-implementation of the end results of negotiations and the extent to which it undermines the process and outcomes of conciliation. According to this conciliator:

“There is no sanction...we want to do a kind of monitoring of the implementation of collective conciliation agreements Once we put a kind of monitoring mechanism in place we should be able to follow up and able to achieve a certain percentage of compliance within a time frame” (Stakeholder 1, conciliator).

The main issue that can be inferred from the above explanation is the attitude of the parties towards each other and the process of conciliation. It reveals exactly how the refusal of either party to maintain the status quo during negotiations creates tension and builds unnecessary pressure on other stakeholders during conciliatory meetings. It also indicates that pressure or stress could impact on the decision of the distressed party to reach an agreement with other stakeholders so that the

dispute is resolved and the situation reverts to normal. Excerpts from the interviews, however, establish that even though both parties sign the final result of conciliation at the end of negotiations, there are instances when the aggrieved party claims that they were constrained to sign or that they appended their signature under duress. Based on this assertion, the aggrieved party indicates that they renege on the implementation of the agreement reached at conciliation.

The explanation provides insight into the mind-set of the parties and demonstrates that parties that decide to renege on the outcome of conciliation can undermine the procedure of negotiations, time and efforts that other stakeholders have put into the process. It indicates how the situation impacts on the critical features required for the success of conciliation. It demonstrate the way that our understanding of the essential features required for the success of conciliation cannot be attained without exploring the key elements of collective conciliation, namely: information-sharing and communication, trade union and management relationship, state regulations and legislation. While considering the argument for non-implementation of the outcomes of conciliation by aggrieved parties, other stakeholder respondents affirmed that irrespective of the aggrieved parties' defence or justification for their non-compliance, sanctions should be imposed on them whenever they fail to implement an agreement at conciliation. The purpose of this would be to increase the efficiency of the process, improve other stakeholders' perceptions regarding the fairness of the result of conciliation and discourage other potential actors from defaulting in future. According to some respondents, the penalty for such an offence might take a range of forms.

Another conciliator who supported this stance commented:

If you say they should make a payment or dues there are some unions and employers that will pay the money with a wave of the hand. We can innovate ways of sanctioning such organisations: maybe if it is a trade union you can suspend their licence or certificate for some time; if it is a company the Government can take some measures that

will really hurt them. This will actually empower the ministry, so that they will have more respect for us (Stakeholder 4, conciliator).

This account demonstrates the need for the disputing parties to have regard for the established ADR institutions and procedures made available by the state for the resolution of workplace-related disputes, particularly through the activities of the MOL and the conciliator. Yet these obligations impose little in the way of sanctions on parties. Accordingly, the parties should be enlightened that failure to abide by the above-mentioned rules could hinder the process or frustrate the implementation of the outcomes of conciliation. The parties need to be encouraged to be honest and sincere with each other during conciliation as this will foster the conducive and peaceful environment required to inspire the objective and unbiased negotiations needed to help find common interests and increase their mutual benefit and relationship.

6.5: Conclusion

In conclusion, this chapter has revealed how the ideology and attitude of the actors about employment relations influence the procedure and outcome of conciliation. It indicates that the readiness of trade unions and management to engage in negotiation and consider the issues in their dispute objectively is a key factor that shapes the process and determines the end results of conciliation. Empirical evidence confirms the importance of the role of the conciliator during collective conciliation, and presents a link between the conciliator's role and characteristics. It demonstrates how these factors shape the perception of other actors about the outcomes of collective conciliation. Although this account affirms the position of Dix (2000) and Kolb (1983), both of whom maintain that the responsibility of the conciliator is to assist the parties to examine in detail the critical concerns of their case, it also presents new insights by providing an exploration of the way in which key features of social process mentioned in Chapter Two (namely: information-sharing and communication, trade union-management relationship and state regulations and legislation) influence the collective forms of interaction that take place between conciliators and other actors during conciliation. Findings from this

chapter affirm the significance of the role of trade unions and management during negotiations. The chapter presents a reflection on how well the actors understand their responsibilities and considers how this understanding impacts on their demeanour towards each other, specifically during negotiations. It illustrates the manner in which the parties build their trust and confidence in the ability of the process of conciliation to uphold trust, sustain their relationship and encourage mutual benefit.

Interview excerpts indicate that the attitude of trade unions can be influenced by the approaches of other actors and the environment (industrial sector, bargaining history and culture) where they operate. It shows how the trade unions' perception about management behaviour may possibly affect their reaction towards suggestions made by such management during negotiations. It also indicates that if the attitude of management is positive, trade unions are likely to respond more reasonably and confidently during discussions. It establishes how the attitude of trade unions towards management impact on the process and outcome of conciliation. These findings demonstrate that the trade unions' adamant and unwilling attitude to act reasonably and realistically during negotiations with management tends to influence management's response to reluctantly agree to dispute resolution on the terms and conditions of the trade unions but then default on implementation. The final result of this study demonstrates that management representatives tend to express their lack of trust and their unwillingness to have discussions with other stakeholders during collective conciliation. This perception of management can be attributed to their impression that both trade unions and conciliators use the tool of collective conciliation as a platform to intimidate and possibly pressurise them into agreeing on the outcome of negotiations.

Given the above mind-set of management and their perception about the seemingly intimidating nature of their discussions, especially with trade unions assuming adamant and unyielding positions during negotiations, it has become obvious to the majority of management respondents that in order to allow the process of production to continue, management needs to conform to the end results of their

discussions with trade unions by signing the agreement for normalcy to return and for production to recommence. Nevertheless, interview records presented in this chapter show that given the realities on the ground, management is usually hesitant to implement the outcomes of resolution. This attitude of management tends to undermine the efforts of the other stakeholders and the process of collective conciliation. Nonetheless, this study has emphasised the importance of the union-management relationship and the impact of effective communication as the factors that build the trust and confidence of the parties during collective conciliation. This account confirms the position of several authors (Broughton and Cox, 2012; Heery and Nash, 2011; Bond, 2011) that effective communication of relevant information between the parties has the tendency to promote the improvement of industrial relations, then shape the perception of the parties and influence their relationship and the results of collective conciliation.

This study demonstrates the significance of the key features of the collective forms of interaction and success of conciliation, namely: information-sharing and communication, trade-union and management relationship, state legislation and regulations. The chapter maintains that these features cannot be understood without considering how the social forms of interaction that take place among the actors during negotiations influence the attitude and behaviour of the parties and have an impact on the outcomes of collective conciliation. Within the context of ADR, and in particular collective conciliation, the discussions in this chapter point towards the significance of the role of the actors involved in conciliation, namely: state and conciliator, trade union and management representatives. It presents a reflection on the way these actors understand the key features that influence their perceptions as well as their attitude and actions, and at that time impact on the process and outcome of collective conciliation in practice.

Lastly, the results of this study confirm the position of previous scholars such as Goodman (2000) and Dix (2000) regarding the role of conciliators. However, this study presents new insights by taking a step further to present an exploration of the manner in which the key features of the social process of collective conciliation

influence the collective forms of interaction that take place among the actors. It considers the impact on the perceptions and actions of the actors and the way these interactions determine the process and outcome of resolution. This study uses these explanations to further our understanding of the social process of collective conciliation in practice. It is a more concrete empirical investigation of the reality of the social process of collective conciliation, as seen through the eyes of those who have experienced it in the Vono Plc, Tata Africa and ConocoPhillips disputes, to which this study now turns

CHAPTER SEVEN
AN EMPIRICAL INVESTIGATION OF THE SOCIAL PROCESS OF
COLLECTIVE CONCILIATION IN NIGERIA: CASE STUDY
EVIDENCE

7.1: Introduction

The chapter looks at the social process of conciliation and the themes that emerge from Chapters Five and Six through a detailed case study investigation of three collective conciliation disputes within the Nigerian context from 2010-2016. The case studies were arrived at through the elimination criteria described in Chapter Four. At the end of the process, three disputes that focus on redundancy benefits, non-payment of gratuities and non-introduction of an employee hand-book were selected. The industries and organisations in focus are: manufacturing (Vono Plc), oil and gas (ConocoPhillips/ Pilgrims Africa) and automobile (Tata Africa). The central idea of this chapter will be developed by situating the reality of the collective forms of social interaction during collective conciliation within the broader contextual and environmental factors that influence the dispute: the history of trade union and management relationships within the organisation, the actors' perceptions of one other, and the end results of conciliation. Consistent with the argument made in Chapters Five and Six, the social process of conciliation cannot be understood in a vacuum; rather, our understanding of the internal structures and practices and the history of trade unions and management within organisations among other factors needs to be considered. The vital elements of collective conciliation mentioned in Chapters Five and Six, namely: information-sharing and communication, trade union and management relationships and state legislation and regulations, are all important elements to be reflected on in the three cases presented in this chapter.

The data for the present chapter was gathered in Nigeria between January and March 2016 and twenty-two interviews were conducted across the selected case studies. The discussions with the actors involved in each case study were conducted after conciliation. The intention of the investigation in this chapter is not to depict

the case study evidence as reflecting a broader generalisable representation of the social process of collective conciliation in Nigeria but rather to document the uniqueness of each case study and to demonstrate the experiences of the actors in the process of conciliation. In addition, the aim of this chapter is to unravel how the factors influencing the actions of the actors emerge from their discussions during negotiation. It presents an exploration of the effects of the opinions of the actors and considers how these effects shape the process and consequences of collective conciliation.

The chapter considers each dispute in chronological order. It starts with the discussion on Vono Plc dispute, then moves on to consider the ConocoPhillips/Pilgrims Africa dispute and lastly explores the Tata Africa Services Nigeria dispute. The discussion presented in each of the case studies highlights a number of factors including the contextual and environmental issues that influenced the dispute. For instance, it presents a reflection on how circumstantial factors within the Nigerian context contributed to the occurrence of the dispute in focus and influenced the actions and attitude of the actors during negotiations. Additionally, it considers how the collective dimension of trade union and management relationships manifests itself and the way it impacts on the behaviour of the actors, hence presenting an account of the actors' views regarding the end results of conciliation. The explanations gathered from the analysis of the three case studies provide fresh information that increases our understanding of the social process of collective conciliation as seen through the eyes of those who have experienced it in Nigeria.

7.2: Case study one: Vono Plc and the Steel and Engineering Workers Union of Nigeria (SEWUN) dispute of 2011-2012

The starting point for the Vono and SEWUN dispute can be traced back to July 4, 2011 when SEWUN registered a trade dispute with the management of Vono Plc. The main issue in this dispute, according to SEWUN, was management's non-compliance with the existing employee gratuity agreement for redundancy payments to some SEWUN members who had been laid off. SEWUN pointed out that the Vono management were reneging on their obligation to pay the gratuity because Vono was experiencing financial challenges. However, instead of addressing the key issue in this dispute (employee gratuity) the management of Vono compounded the matter by informing SEWUN that it wanted to opt out of the existing gratuity agreement with its existing employees. According to Vono, this decision was informed by the economic situation in the country and most importantly because the company was undergoing serious financial pressure.

The management of Vono stated that the organisation had had to go to the stock exchange to raise funds, yet it still could not meet its financial expectations. At the stock exchange market Vono foam shares bought by one of its competitors, Vitafoam, making the latter a major shareholder with a total of 45% investment in Vono. As a result of the buy-over (Nigerian equivalent of 'buy-out' but not required to be over 50% of the shares) of Vono in June 2011 the management of Vitafoam transferred many of its ideas and practices, as well as its culture, to Vono and one of the results was redundancy. This dispute is unique to Vono because it is the first dispute that arose after the buy-over of Vono by Vitafoam. It demonstrates how thoroughly Vitafoam's ideas and values were incorporated into Vono and the way this process was perceived by SEWUN. In addition, it indicates how SEWUN's experience with the new Vono management was perceived and the way their opinions influenced their relationships and impacted on the process and outcomes of conciliation.

The issue of employee gratuity, which is an agreed sum of money that the employer is required to pay an employee at the end of the employee's engagement with the organisation, is commonplace in Nigerian workplaces: the Pension Reform Act 2004 recognises gratuity and stipulates guidelines for its treatment and management. A gratuity is usually agreed upon through collective bargaining between the trade unions and employers and is paid in accordance with the terms and conditions agreed by both parties (Aborisade, 2008; Adegbayi, 2005). A key point to take into consideration from the account of the Vono dispute is the fact that Vono Plc was experiencing serious financial problems and had been bought out by Vitafoam. The financial involvement of Vitafoam led to the composition of a new management team and the introduction of new ideas and practices that resulted in employee redundancy. The trade union (SEWUN) argued that it was not against the management decision to make employees redundant; however, Vono was expected to conform to the legally recognised procedure stipulated for compensating the affected employees, whereas Vono management had justified its unwillingness to pay by saying it was because of lack of funds. According to SEWUN, it was the reluctant and unresponsive attitude of Vono management that gave rise to this dispute.

The initial description of this case raises some interesting questions regarding the behaviour and attitude of SEWUN and Vono management towards each other during negotiations, thus building on the insights presented in Chapters Five and Six. It reveals the attitude of Vono Management towards the implementation of the existing gratuity agreement and demonstrates to what extent management understood the significance of collective bargaining and the importance of collective agreement in relation to its existing relationship with SEWUN. It also indicates that before either trade unions or management can alter or modify an existing collective agreement the consent of the other party in the negotiation is required. The back-tracking attitude of Vono management during this dispute reveals specifically how they understood and interpreted state legislation and regulations regarding gratuity. The Ministry of Labour invited both parties for a conciliatory meeting on August 19, 2011 following their failure to resolve the

dispute. At the meeting with the MOL, the management of Vono presented their case, through their HR Manager, by citing the unfavourable economic situation and general insecurity in part of the country as factors responsible for their decision to make some employees redundant and also to renege on the payment of the gratuity. According to the management, Vono did not have the money to fulfil its gratuity obligation to the affected employees.

From reading the minutes of this conciliatory meeting and other correspondence between the parties, it becomes clear to the researcher that the conciliators in charge of this case continually explained and clarified, to both SEWUN and Vono management, the legal position on payment of the gratuity. The conciliators also advised the Vono management on the need to comply with the existing gratuity arrangement and engage SEWUN in negotiations on its proposition to re-calculate and introduce an annualised pension and gratuity scheme that would replace the existing scheme in Vono. Conciliation meetings regarding Vono dispute were attended by the HR Manager representing Vono management, five SEWUN representatives and two conciliators. This composition of representation in this dispute reveals previous studies (Thompson *et al.*, 1996; Bazerman *et al.*, 1987) viewpoint regarding solo versus team negotiations. A total of six conciliatory meetings were held to discuss the issues in this dispute and on October 8, 2012 an agreement was reached and a memorandum of understanding was signed by SEWUN and Vono management in the presence of the conciliators. The agreement states that Vono would set up a gratuity payment plan in agreement with SEWUN for the employees who were made redundant. In addition, it was also agreed that SEWUN and Vono would have another meeting with a view to discussing the proposed annualised gratuity scheme and report back to the Ministry of Labour on the final decision and agreement and how the new proposal would be implemented if accepted by SEWUN.

7.2. 1: Context of Vono management and SEWUN dispute

The excerpts that emerged from the interviews indicate the distinctive economic and environmental difficulties prevalent in Nigeria at that time. The discussion in this section demonstrates how recent bombings, violence and general insecurity in the northern part of Nigeria had impacted on the economic and financial activities of Vono and influenced the trajectory of the dispute, as described by the HR manager:

The issue about the dispute was mainly as a result of the economic situation and insecurity. The company was undergoing serious financial stress; some employees had to be laid off due to re-organisation but they were yet to be paid their gratuity because the company did not have the money (Vono HR Manager).

Broader contextual factors such as violence and insecurity tend to demonstrate how the attitude of the Nigerian state impacted on the SEWUN and Vono management dispute. This description confirms the viewpoint of Ridley Duff and Bennett (2011) regarding the importance of the role of the state to oversee trade union and management activities and to guarantee the promotion of industrial peace and harmony. The present study affirms that the financial circumstances of Vono and the takeover process by Vitafoam were central to the employee redundancy dispute. The management's presentation to SEWUN of their standpoint regarding the issues in dispute reveals management's opinion regarding their collective bargaining power and strategy, hence reflecting the points of view of Chamberlain and Kuhn (1965) and Walton and McKersie (1965) regarding the parties' collective bargaining behaviour and their willingness to consider diverse interests and engage in a problem-solving approach to address the issues in dispute. Vono management's bargaining actions and behaviour during this dispute suggest a distributive stance that did not support interest-based bargaining or sustain their relationship with SEWUN.

The majority of trade union respondents interviewed for the present study mentioned their awareness of the economic situation and sympathised with management:

During that period, the company was financially down and we knew it...we brought them {management} to the round table and asked them to make a promise to pay but they refused...we said a debtor who promises to pay in the nearest future cannot be killed (Vono Union 1).

The attitude of the individuals who made up the SEWUN negotiating team reflects Chamberlain and Kuhn (1965) and Walton and McKersie's (1965) viewpoint on co-operative or integrative behaviour of the parties during collective bargaining and negotiations. Chamberlain and Kuhn (1965) and Walton and McKersie (1965) assert that parties that support integrative bargaining tend to develop trust in each other as they consider and understand the viewpoint and interests of the other party during negotiations. Furthermore, disputing parties that apply integrative bargaining have the tendency to apply problem-solving techniques while addressing the issues in dispute because their intention is to achieve a win-win outcome at the end of resolution. In the case of Vono, the SEWUN representatives demonstrated their willingness to engage in negotiations and make compromises on behalf of their affected members, depending on the readiness of Vono management to make a commitment.

Another issue that arose during the interviews for this study was 'mandate'. As mentioned in Chapter Five, the importance of mandate to the implementation of the results of conciliation cannot be overemphasised. It determines the level of confidence that each constituency has in their representatives and the manner in which this impacts on their actions and attitudes during negotiations. Quotations from the interviews confirm earlier findings presented in Chapter Five on the reluctance of management to engage in negotiations and the way this influences the actions of trade unions in particular.

According to one SEWUN respondent:

After writing a series of letters to the management in order to seek an audience and have a discussion proved abortive, we decided to declare a trade dispute and involve a third party to intervene (Vono Union 5).

The role of the HR manager, on the other hand, reveals the need to sustain management's argument and position while negotiating with SEWUN, because any decision to alter this position could undermine and weaken the expectations of the larger management team and create suspicion and mistrust concerning HR manager's capability and proficiency to meet management expectations regarding the dispute.

At a point, I had to walk out of the meeting because I was furious, although that anger that I explored was a fabricated one, and I told them to be considerate and understand our own plight too and see from our own angle as management (Vono HR Manager).

This quote reveals how the actions of the actors during conciliation impact on the outcomes of resolution, hence reflecting research questions two and three of this study. It indicates how the Vono HR manager's action and expression of anger tended to shape SEWUN's viewpoint and encourage them to understand the standpoint of the other party during integrative bargaining. In addition, the Vono HR manager's demand for SEWUN to understand the plight of management and consider the issues in dispute from management's point of view reflects Walton and McKersie's (1965) attitudinal structuring. In Vono, the perception of the HR manager during negotiation tended to shape the behaviour of SEWUN and influenced their relationship and the outcomes of the resolution.

7.2. 2: SEWUN and management relationships in Vono

As mentioned in the literature review and in Chapters Five and Six, the importance of information-sharing and communication during collective conciliation cannot be overstressed. It shapes the actions of the actors, influences their opinion about each other and impacts on the effects of collective conciliation. Excerpts from the interviews demonstrate that the majority of SEWUN respondents mentioned the failure of Vono management to engage in communication or any form of information-sharing regarding the financial situation of the organisation. According to one SEWUN respondent:

They {management} don't share information with us [SEWUN]. As far as we are concerned we did not stop production and distribution of our products so there are no way they will say they don't have money to pay off our members (Vono Union 3).

The absence of information-sharing and communication between SEWUN and Vono management, which influenced the opinion of SEWUN in relation to the financial position of the organisation, resulted in a lack of trust and confidence. This indicates that when parties demonstrate a lack of confidence in each other there is a tendency for such attitude to impact on their mind-set and determines their behaviour and approach, especially during negotiations. As far as SEWUN was concerned, the continuous production and distribution of products by Vono was synonymous with productivity and profitability. Consequently, the Vono management's argument about lack of funds was perceived by SEWUN as irrational and unreasonable. While confirming the point, the HRM manager stated:

They [trade unions] felt the company was making much profit due to non-stop production; meanwhile the company was making very little profit and had a lot of debt to pay....I was able to gradually disseminate the information to them during one of our meetings outside conciliation and made them understand the situation of things in the organisation (Vono HR Manager).

The quote reveals how the Vono HR manager's ability to provide information to SEWUN representatives regarding the financial position of the organisation shaped the opinion and attitude of SEWUN about Vono's financial position and eliminated SEWUN's suspicions towards Vono management. This reflects the standpoint of Chamberlain and Kuhn (1965) and Walton and McKersie (1965) on the ability of co-operative and integrative bargaining to build trust and relationships between the parties, especially when the parties are clarifying the issues in their dispute. Moreover, connecting the quote to the explanations presented in Chapters Five and Six reveals how the changes in the perception of SEWUN about the attitude of the new management in Vono influenced their actions and their relationship and impacted on the process and results of this dispute. An important element in the Vono conciliation process was information-sharing and communication, because it served as a means through which management and SEWUN expressed their thoughts. The HR manager presented the reason for this:

I think the major cause of the problem was communication breakdown and relationships building. When I came back from that conciliation meeting they were all impressed at the way I handled the issue, and pledged their support. They complained of management not living up to expectations and I assured them that things will take a new dimension from now, henceforth...So communication is actually very important; you let people know what is coming to them and out of them and so they will feel much better about it (Vono HR Manager).

The excerpt shows how communication and relationship building between SEWUN and Vono management changed during the conciliatory meetings, thus confirming Chamberlain and Kuhn (1965) and Walton and McKersie (1965)'s viewpoint, referred to earlier, on the importance of co-operative or integrative bargaining in this context. In addition, the quotation affirms Fells's (2012) position on how the interwoven link between the parties' relationships and actions during

negotiation leads to satisfied outcomes following conciliation. An interesting finding that comes out from the interviews is SEWUN's opinion of the Vono management's attitude towards engaging in negotiations prior to conciliation. In the course of the interviews, several SEWUN respondents expressed their frustration and displeasure regarding how this attitude of management influenced SEWUN's actions during negotiations. According to one SEWUN respondent:

The management was not willing to negotiate....they come up with excuses and postpone meetings. For me this attitude on the part of the management is enough to declare a dispute or probably ask the workers to down tools...unions don't ferment problems but the management see us as trouble shooters....management has the mind-set that unions are problematic" (Vono Union 5).

Thus it seems that prior to conciliation, management were reluctant to engage in negotiations with SEWUN. This management approach has a tendency to influence their behaviour concerning the attitude of trade unions and the way management perceive trade unions as 'a problematic group of individuals that are difficult to relate to and unenthusiastic about making compromises and finding middle ground during negotiations' referred to in Chapter Six. This study affirms that Vono management's mind-set about SEWUN influenced their behaviour and resulted in unsatisfactory outcomes for SEWUN after negotiations and their request for conciliation. While affirming the perspective, the HR Manager remarked:

At that particular time I perceived the unions as angered people. Some of their members were retrenched and they were not happy about the situation; you don't expect them to be happy (Vono HR Manager).

Although in theory Vono management recognised SEWUN as a trade union and one of the stakeholders in the organisation, in practice their action seems to have been the opposite, as they expressed an unwillingness to interact with SEWUN, yet

in conciliation the interaction and communication between both parties is guaranteed.

Another thing is that you have to recognize them as a body. It is not all about you trying to play to the gallery or trying to appease them because they are one of the stakeholders of the organisation. You have to give them that recognition (Vono Union 2).

This extract reflects the importance of the account presented in Chapters Two and Three on the nature of influence and relationships that exist between the parties. It indicates the seriousness of the Vono management's failure to consider SEWUN's request for negotiations and how this impacted on the collective forms of interactions that influenced the relationships between the parties and determined the after-effect of negotiations. Furthermore, this exploration echoes the end results of the investigation presented in Chapters Five and Six and supports the assertion that given the realities on the ground during dispute situations, the management in most organisations in Nigeria have a tendency to express their unwillingness to engage in negotiations with trade unions. The attitude of the Vono management during this dispute undermined the efforts put into the process of negotiation by SEWUN representatives, hence resulting in frustration and anger, and the emergence of a dispute requiring conciliation.

This study argues that all of the above explanations can be linked to the structure of representation among trade unions and management which seem to be uneven and which tends to impact on the perception of the individual representatives and in particular, Vono HRM's opinion regarding the responsibilities and demands placed on him by his constituency. In this Vono dispute it has become obvious that the HRM is left with the responsibility of facing five SEWUN representatives during negotiations and given the imbalance in the composition it is commonplace that the HRM did not enjoy the luxury of combining his skills, knowledge and understanding of the dispute and its impact on negotiation outcomes with any other management representative during this meeting. Hence demonstrating Vono

HRM's ability to feel less powerful and under more pressure during negotiations thereby influencing their opinion and actions during resolution.

7.2.3: Perception of the parties regarding the process and outcomes of resolution

As mentioned earlier in this chapter, the respondents were interviewed after their disputes had been resolved, so the interview citations echo their general assessment of the process based on their opinions regarding the actions of other actors before and during conciliation meetings and the end results of their case at the conciliation stage. In the Vono dispute it was agreed by both SEWUN and Vono management that given the financial situation in Vono, the management would set up a gratuity payment plan for the employees who had been made redundant. SEWUN and Vono management also agreed to have another meeting where the proposed annualised gratuity scheme would be considered comprehensively and in more detail, and the outcome of the meeting would be communicated to the Ministry of Labour.

One notable finding that emerges from the interview data is the significance of the role and attitude of the Ministry of Labour and its conciliator. The discussion presented in this section reflects the explanations presented in Chapter Five on the mind-set of the parties, regarding their encounter at the MOL. It indicates how the parties' understanding of the conciliator's approach impacted on their opinion about the latter's impartiality and objectivity. In addition, it points out the way in which SEWUN and Vono management built trust and confidence in the role of the conciliator, the process and the aftereffect of conciliation. Vono management's and SEWUN's experience provides an understanding into how their view of conciliation and conciliators affected their behaviour and determined the end results of the dispute. The HR manager noted:

At times she [the conciliator] will call me and tell me this is how it should have been done and all that and she will also call the union and do likewise, though she was trying to bring us together in order

to resolve the dispute amicably...despite all the words coming out of their mouths we still have to calm down, answer their questions and also hear them out (Vono HR Manager).

This quote confirms the explanation presented in Chapter Five about the role of the conciliator as an essential element, while considering the collective form of interaction that takes place during conciliation. It indicates how the experience of Vono management during their interactions with conciliators influenced their perception and opinion regarding the demeanour of the conciliator. The conciliator's ability to assist both parties to understand the issues in their dispute influenced how the key features of the interactions between Vono management and SEWUN emerged during conciliation. This explanation mirrors the results of previous studies such as those by Hiltrop (1985), ACAS Annual reports (2013/14) and Dickens (1979), which claim that conciliators need to provide information regarding the dispute in relation to state regulations and legislation. In addition, these studies assert the need for conciliators to have a good knowledge and experience of industrial relations because this enables them to understand the difficulties that the parties are faced with during the process. While confirming this viewpoint, one SEWUN respondent said:

Experience has a lot to do with handling an industrial relations case, especially when it involves losing jobs. This type of crucial case can't be handled by a beginner who is fresh in the Ministry. Such cases need to be handled by conciliators that are capable and well experienced. In the MOL today we have quite a number of experienced and able officers, and in our case, the dispute was assigned to a lawyer who was able to interpret the law (Vono Union 2).

The quote shows the importance of the conciliator's experience in industrial relations and their ability to explain the issues in dispute, in relation to state legislation, to the disputing parties during conciliation. This account asserts the

point of view of *Ott et al.* (2016), *Greenhalgh et al.* (1985) and *Dickens* (1979) regarding how the experience and behaviour of negotiators tends to promote satisfactory results. While carrying out their responsibilities during negotiations, conciliators are required to act as ‘go-betweens’ without making any formal commitment to the parties, but instead proposing suggestions about possible solutions that will take into consideration the need for the parties to build confidence in the process and outcome of conciliation. One of the conciliators said:

Our role is basically advisory. It is a slow process but systematic and we are getting results because most of the times when the parties come to conciliation they are left with no choice but to relate with each other. Management makes the unions understand their positions and the unions do the same, so at the end they reach a compromise and resolve the dispute (Vono Conciliator 2).

The quote reveals that the process of conciliation makes it mandatory for disputing parties to relate with each other and share information regarding the issues in their dispute. The intent of information-sharing is to present an understanding of the standpoint of the parties and, as in the case of Vono management and SEWUN, to shape their attitude and behaviour during conciliation. Consequently this influenced the mind-set of Vono management and SEWUN towards applying their problem-solving approach to clarifying the issues in dispute, promoting relationships and achieving a resolution at the end of conciliation. This account mirrors *Walton and McKersie’s* (1965) viewpoint regarding how the parties’ attitudinal structuring abilities tend to influence the perception of the other party and encourage both parties to view the issues objectively, which encourages trust and co-operation and promotes satisfactory resolution outcomes. Another issue that emerged during the interviews was the HR manager’s perception regarding the decision that was arrived at through conciliation. The HR manager noted:

management made the unions understand that they don’t have the cash at present but assured them that the gratuity will be paid in

batches.....we made them understand that in as much as they agree that we pay it in batches [over] 8 months it doesn't matter who comes first or last (Vono HR Manager).

The quote reflects the Vono management's capacity to provide information regarding the financial inability to pay the affected employees at the same time but demonstrating the commitment to pay in batches. This explanation reveals how information-sharing during conciliation shaped the attitude of SEWUN and encouraged its representatives to view payment from the management standpoint, hence encouraging a joint problem-solving approach which reflects Walton and McKersie's (1965) viewpoint on integrative bargaining and attitudinal structuring. This explanation reveals how the diversity of interests needed to promote Walton and McKersie's (1965) intraorganisational bargaining, aimed at influencing the mind-set of SEWUN constituents and promoting resolution at the end of conciliation.

The importance of the choice of words during communication and information-sharing has become apparent from the interviews. While clarifying the key issues in the dispute, conciliators pointed out how this act created the warm and pleasant atmosphere needed by the parties in order to analyse the strengths and weaknesses and identify their common interests so as to increase their willingness to make concessions that would enable them to resolve their dispute and promote cordial SEWUN and Vono relationships. This account supports the analysis presented by Ott *et al.* (2016), Fells (2016) Imai and Gelfand (2010) and Thompson (1991) on the need for the parties to provide and seek information, as sharing and updating information during negotiations has a significant impact on the process and end results of negotiations. According to one of the conciliators, the major factor that expedited the resolution of this dispute was her ability to grant both parties audience and assist them in analysing the issues in their dispute.

Some of them, just by granting them audience and listening to their complaint alone, they are happy...so in the end we reached an

agreement which was favourable to both SEWUN and Vono management. We had several meetings and at the end they finally reached an agreement and the dispute was resolved (Vono Conciliator 1).

The quote reveals how the process of reaching agreement by Vono management and SEWUN at the end of conciliation reflects the model presented in Figure 2.3 in Chapter Two of this study. It shows how the parties' willingness to engage in conciliation and consider each other's interest and standpoint promoted communication and built relationships and trust during co-operative or integrative bargaining. Moreover, the ability of both Vono management and SEWUN to clarify the issues in their dispute and use problem-solving techniques to attain satisfactory outcomes at the end of conciliation echoes how the bargaining behaviour of the parties influenced their attitudinal structuring and intraorganisational negotiating. Thus, combining Chamberlain and Kuhn's (1965) and Walton and McKersie's (1965) points of view on collective bargaining and negotiation and linking the above description to collective conciliation reveals how in addition to Chamberlain and Kuhn's (1965) and Walton and McKersie's (1965) standpoint, information-sharing and trade union and management relationship building encourage satisfactory outcomes at the end of conciliation. Furthermore, excerpts presented above reflects the opinions presented in Chapter Five regarding the conciliator's ability to listen to the parties and clarify the details of their case while passing on factual information to them. This indicates that conciliators need to make sure that both parties are aware of the legislative dimensions of their case, especially while exploring the strengths and weaknesses of the case. Consequently echoing the investigation presented by previous studies such as those by Dix (2000), Pruitt and Carnevale (1993), Kressel and Pruitt (1989, 1985) and Hiltrop (1985) who claim that in the course of their interactions with the parties, conciliators need to assess where the disputing parties' interests lie, and consider what they are likely to accomplish within the limits of the law, particularly while encouraging them about the need to achieve resolution.

In summary, the Vono and SEWUN dispute on the non-implementation of employee gratuity lasted for 1 year and 3 months. Excerpts from the interviews reveal that the major issues were management's attitude to trade unions and towards their relationships and communication. The account presented by SEWUN and the HR Manager reveal exactly how their interactions and experience during conciliation informed the emergence of their perceptions about their roles and attitudes, and how their attitude impacts on their actions and on the after-effect of resolution. The willingness of parties to negotiate and make compromises have a tendency to impact on the after-effect of resolution, as seen with the Vono management indicating its readiness to set up a gratuity payment plan for the affected employees. The decision by both SEWUN and Vono management to meet at a convenient time later to consider the proposed annualised gratuity scheme and report back to the Ministry of Labour shows the willingness of the parties to sustain the confidence and relationships that were established during this dispute.

The account presented by respondents in this case study demonstrate how their collective forms of interaction influenced the way they shared information and related with each other while examining the issues in their dispute, particularly from the standpoint of labour legislation. The willingness of both parties to make compromises that would promote resolution and sustain cordial SEWUN and Vono management relationships was therefore essential to the outcome of this dispute. However, the solo versus team representation by management and trade unions respectively illustrate the position of previous studies (Thompson *et al.*, 1996; Bazerman *et al.*, 1987) on negotiations and the effects on the perceptions and actions of the actors during the resolution of this dispute.

7.3: ConocoPhillips / Pilgrims Africa and Nigeria Union of Petroleum and Natural Gas (NUPENG) Workers Dispute 2013-2014

ConocoPhillips/ Pilgrims Africa and NUPENG dispute came into being on August 7, 2013 when the management of ConocoPhillips Nigeria Limited sent a letter to Pilgrims Africa, their labour contractor, informing them that 11 subcontracted employees (mainly stewards and drivers) stationed at ConocoPhillips would be made redundant and so should be withdrawn with effect from August 10, 2013. The request was carried out by Pilgrims Africa but on January 17, 2014 the union representing the redundant employees (the Nigeria Union of Petroleum and Natural Gas – NUPENG) wrote a letter to the management of both organisations and copied in the Ministry of Labour. In this letter NUPENG expressed its displeasure that despite all its efforts to persuade the management of ConocoPhillips/ Pilgrims Africa, the redundant employees had not been paid their redundancy benefits. According to NUPENG, the delay in payment was attributed to the inability of the principal employer (ConocoPhillips) and labour contractor (Pilgrims Africa) to agree on the contractual terms for the affected employees in relation to their redundancy payment. In response to the letter, the management of Pilgrims Africa confirmed that eleven of their employees stationed at ConocoPhillips had been made redundant. However, they argued that the affected employees were on the payroll of Pilgrims Africa even though they worked at ConocoPhillips (whose operation is in the oil and gas sector) and accordingly their redundancy payment would be handled by Pilgrims Africa. They added that given that the business objectives of Pilgrims Africa were not related to the oil and gas sector, the proposal submitted by NUPENG demanding that the redundant employees be paid benefits obtainable within the oil and gas industry was not accepted. The Pilgrims Africa management did, however, signify their willingness to compensate the affected employees in accordance with the policy that was in operation within Pilgrims Africa. This implied that the affected employees would be paid three months gross salary, having taken into consideration the period that they had worked before the termination of their contract.

It therefore became clear to NUPENG that the management of both organisations were not willing to comply with the legal regulations guiding the payment of redundancy benefits of the affected employees which should have resulted in ConocoPhillips making payments obtainable in the oil and gas sector. According to the NUPENG representatives, ConocoPhillips as the principal employer was responsible for the payment but since the company did not want to accept this responsibility the dispute was referred to MOL for conciliation. The researcher's understanding of Nigeria's Labour Act 2004 is that payment of redundancy benefit is the responsibility of the employer, with any sectoral collective agreement. This Act specifies the need for employers to notify trade unions of management's intention to make employee redundant and both trade unions and management are required by the Act to make efforts to negotiate redundancy payment for affected employees irrespective of whether or not they are union members (Labour Act 2004).

The initial attitude and actions of ConocoPhillips/ Pilgrims Africa regarding the process of redundancy raises some thought-provoking queries regarding how much knowledge and understanding of state legislation and regulations the management had and in what ways this impacted on their perceptions and commitments during negotiations. Similarly, the way information was shared between NUPENG and ConocoPhillips/ Pilgrims Africa and the way this interaction affected their relationships and opinions. The uniqueness of this dispute is displayed through its connection with Figure 2.3, presented in Chapter Two of this thesis. The explanations by both the trade union and management reveal their collective bargaining and negotiating behaviour, and these explanations are linked to the discussion on how information-sharing and union-management relationships impact on the perceptions of the actors and their opinions regarding settlement. In addition, it can be seen how the experiences of the actors shape their perceptions, influence the way their roles emerge, and inform the end result of resolution at the end of the conciliation process.

As presented in Chapters Five and Six, conciliation meetings offer the required framework for the parties to come together to discuss the key issues in their dispute and proffer mutually acceptable solutions. In the course of the resolution of this dispute at the MOL four conciliation meetings were held among the HR Manager of Pilgrims Africa-representing the management of Conoco Phillips; three trade unions representatives from NUPENG and two conciliators. This layout of representation indicates that the HRM is required to present the argument of management alone without any form of team allocation of tasks and responsibilities. Also the HRM as a sole negotiator seem to be deficient in his ability to take advantage of diverse skills, knowledge, understanding and information-sharing with other management representatives regarding the issues in this dispute as well as the impaction of management's action on the process and outcomes of resolution. An agreement was reached by the parties and a Memorandum of Agreement was signed by both parties on January 27, 2014, five months after the dispute had started states that the affected employees would be paid their redundancy benefit as obtainable in the oil and gas sector in Nigeria. However, the management of ConocoPhillips insisted that the payment would be executed on its behalf by Pilgrims Africa, its labour contractor. Hence, the interpretation of the law relating to employee redundancy was upheld by both parties following conciliation.

7.3.1: Context of the Conoco Phillips / Pilgrims Africa and NUPENG dispute

A key determining factor that becomes visible from the interviews is that of the economic issues surrounding the actions by Conoco Phillips / Pilgrims Africa and NUPENG. This account is similar to the explanations presented on the effects of the economic issues that surrounded the Vono dispute mentioned earlier in this chapter. The way in which the economic conditions within the Nigerian state at that time influenced the activities of management and trade unions seems to depict their frustration and disappointment at the insensitive and unresponsive attitude of the state, as mentioned in Chapter Five. In the case of Conoco Phillips, the management decided to leave the Nigerian business environment due to the

prevailing economic situation, and consequently this action resulted in the discontinuation of the existing contract with their subcontracted employees.

While affirming this standpoint, one NUPENG respondent stated:

They [management] announced officially that ConocoPhillips was going away from Nigeria and that Pilgrims will not be able to continue with the contract any longer so they intend to pay them [redundant employees] off (NUPENG 1).

The citation illustrates Chamberlain and Kuhn's (1965) and Walton and McKersie's (1965) conjunctive or distributive bargaining stance on collective bargaining power and strategy. It seems that relations between trade union and management were not cordial and management was not willing to sustain these at the time of the announcement mentioned in the above quote. In addition, the excerpt presents a reflection on the attitude of the Nigerian state regarding the closure of companies and loss of jobs and how this perception seems to have influenced the opinions of NUPENG and Conoco Phillips / Pilgrims Africa and impacted on their behaviour during this dispute. How actors understand the key issues in their dispute tends to inform their demeanour and approach while negotiating with each other during the dispute.

An important finding that emerges from the interview is that prior to this dispute, NUPENG had presented its proposal to the management of Conoco Phillips / Pilgrims Africa for negotiations. According to NUPENG, the intention of the proposal was to come up with a standard Collective Bargaining Agreement (CBA) for their members. This indicates that at the time when the redundancies were announced by Conoco Phillips / Pilgrims Africa there was no existing collective agreement with NUPENG, as stated by one NUPENG respondent:

When Pilgrims took over, we pushed in our proposal again for negotiations to have a standard CBA for the workers. So on the verge of this negotiation, instead of them kicking off with it, they announced officially that ConocoPhillips will be going and that Pilgrims will not be able to continue with the contract any longer, so they intend to pay them off (NUPENG 2).

The quotation illustrates the standpoint of management regarding their authority and their opinion about the role of trade unions activities in employment relations, hence reflecting the observations of Ridley Duff and Bennett (2011), Chamberlain and Kuhn (1965) and Walton and McKersie (1965) on the bargaining behaviour of disputing parties during negotiations. In addition, Nigeria's Labour Act 2004 requires the Conoco Phillip/ Pilgrims Africa management to notify NUPENG of their intention to make some employees redundant and then engage NUPENG representatives in negotiations on redundancy payment. While confirming this view, one NUPENG respondent remarked:

We have no standard CBA for the workers and so we were saying to them....they can't let anybody go until they conclude the CBA then the CBA can be used to pay their workers (NUPENG 2).

The above extract reveals NUPENG's opinion about ConocoPhillips/Pilgrims Africa's understanding of the importance of Collective Bargaining Agreements (CBA) and how it could promote trade unions and management relationships and enhance the process of redundancy. The HR manager said:

honestly speaking I think management was inconsiderate...they were employing various strategies to avoid confrontation...this led to frustration and agitation....to a large extent management was insensitive in that regard (Pilgrims Africa HR Manager).

The quotation indicates how conjunctive or distributive bargaining behaviour by the parties tends to discourage communication and the ability of each party to consider the views of the other party in the dispute, and as such the parties focus on their differences and promote the win-lose mind-set referred to by Chamberlain and Kuhn (1965) and Walton and McKersie (1965), cited in Chapter Two of this study. In this dispute, the Conoco Phillips / Pilgrims Africa management expressed their unwillingness to engage in negotiations with NUPENG. While confirming this standpoint, one NUPENG respondent said:

We tried to engage management in phone conversation and it failed, so we wrote a letter to them indicating our areas of interest, but they ignored us (NUPENG 2).

Both citations reflect how conjunctive or distributive bargaining behaviour by the parties, as discussed by Chamberlain and Kuhn (1965) and Walton and McKersie (1965) in their studies on collective bargaining and negotiations, discourage the parties from being willing to engage in communication or co-operate with each other with a view to promoting communication, trust and good relations, which are needed in order to clarify the issues in dispute and attain resolution by using problem-solving techniques. The failure of conjunctive or distributive bargaining to attain satisfactory outcomes is what has led to conciliation. This explanation also echoes the description presented in Chapter Five concerning management's reluctance and lack of enthusiasm with regard to engaging trade unions in any form of negotiations. It confirms how management's approach tends to influence their behaviour concerning the attitude and activities of the trade unions during negotiations and the impact of management's attitude on the outcomes of resolution.

7.3.2: NUPENG and ConocoPhillips / Pilgrims Africa relationships

An important point that emerges from the interviews is the relationship between management and the trade unions in ConocoPhillips/Pilgrims Africa. The account presented by NUPENG on trade union and management relationships in the oil and gas sector gives the impression that their conjunctive and distributive behaviours tend to result in destructive actions that do not promote or sustain such relationships. In relation to this point of view, another NUPENG respondent remarked:

right from inception, union-management organisation used to be very tough and serious...then was the era when union executives go to the negotiating table with charms tied round their waist...while management will have pistols hidden in their socks...discussion was synonymous with banging and turning of tables and exchange of abusive words...unions and management engaged in physical combat (NUPENG 1).

The extract mirrors how the trade unions' and management's views of employment relations, power and authority influence their actions and the outcomes of negotiations, thus confirming the views of Ridley Duff and Bennett (2011), Chamberlain and Kuhn (1965) and Walton and McKersie (1965) on the impact of the parties' opinions on the results ADR and CB and N. In this dispute, NUPENG's lack of trust and confidence in the Conoco Phillips and Pilgrims Africa management influenced their behaviour and impacted on how they related and shared information regarding the issues in their dispute and also how they built relationships during negotiations. Another important outcome that emerged during the interviews for this study is the relationships that existed between NUPENG and the management of ConocoPhillips/ Pilgrims Africa. What is demonstrated is how the attitude of ConocoPhillips/ Pilgrims Africa, regarding their willingness to engage in negotiations, influenced NUPENG's opinions and actions. This description echoes the results presented earlier in Chapter Five on the requirement

for the parties to participate in negotiations and make compromises that would promote the resolution of their dispute and sustain mutual relationships. While confirming this point of view, one NUPENG respondent said:

It is not far-fetched and can be likened to a scenario of 'the cat and the rat'. Most organisations see the union as a body that is coming to increase the wage load. They see the union as a body that is coming to ferment troubles and they also see them as a body that comes in as a counter or parallel management. There is no symbiotic or mutual relationship between management and the union. If there was proper orientation that notion wouldn't be there; it would have been erased totally (NUPENG 3).

NUPENG's description of management's notion about trade unions tended to affect their attitude and influence how their actions emerged during this dispute. It confirms the findings presented in Chapter Five on the disposition of the parties and the influence of such disposition on their ability to build trust and sustain their relationships. It also demonstrates how NUPENG's and ConocoPhillips/Pilgrims Africa's interactions influenced the process of conciliation and determined the consequences of resolution referred to in Chapters Five and Six. Another finding that comes out of the interviews is the behaviour of the parties and the manner in which this impacted on the demeanour of NUPENG and the ConocoPhillips / Pilgrims Africa management. Illustrating this view, one NUPENG respondent said:

By the time the union sees itself as having good and cordial relationships with management; it will seem as if something is fishy (NUPENG 2).

The excerpt reflects how the mind-set of the parties about employment relations and about their authority and bargaining power tends to mirror their opinions about communication and the willingness to promote relationships and address the issues in dispute by co-operating and using problem-solving techniques that take into

consideration the standpoints and interests of both parties during collective bargaining and negotiation, as mentioned in Chapter Two. In the case of the ConocoPhillips / Pilgrims Africa and NUPENG dispute the extract gives a clear account of the mind-set and approach of NUPENG and its impact on the demeanour and character of its representatives during negotiations. NUPENG's viewpoint regarding negotiation seems to be more distributive than integrative in its approach.

Given the explanation presented in Chapter Two, the above descriptions reveal that NUPENG seem not to be interested in building or sustaining its relationships with management and as such its behaviour seems to influence the actions and interactions of its representatives during this dispute. Given the unwilling attitude of the ConocoPhillips / Pilgrims Africa management to engage in negotiations and NUPENG's distributive attitude and behaviour it can be argued that this dispute is lacking in information-sharing and communication as well as union-management relationships. While describing the relationship with NUPENG during this dispute the HR Manager said:

The relationship between union and management is not cordial....I would say we pretend to be friendly with each other but in actual fact I don't think we are (Pilgrims Africa HR Manager).

This quotation reveals how management's opinion about employment relations, and in particular, their relationship with NUPENG, tends to influence their actions and end results of negotiations prior to conciliation. The position of parties in dispute, regarding their collective bargaining power and strategy, particularly while playing out their distributive or conjunctive stance, reflects each one's willingness to consider the view of the other party and consider the issues in dispute objectively. In addition, the parties' level of experience and their understanding of the key issues in their dispute and knowledge of statutory procedures for resolution tend to enhance their perception, improve their opinion and reassure them of the need to make compromises and sustain their relationships at the end of conciliation.

According to one NUPENG respondent:

In every stage in the union-management organisation it is always a show of power, and yes, we know that you [management] can fire and hire, but when you do that, there should be procedures...so the quality of your presentation on the table actually determines the resolution of that dispute. If there is any perception on either side that one party is winning a discussion, the other party that is assumed to be losing may definitely pave the way for settlement (NUPENG 2).

The quote mirrors Chamberlain and Kuhn's (1965) and Walton and McKersie's (1965) standpoint on the win-lose outcomes of conjunctive or distributive bargaining and its impact on the parties' satisfaction at the end of negotiations. In this dispute, it is the parties' opinions and the influence of those opinions on their actions and behaviour that tend to determine the process and results of negotiations. NUPENG's opinion regarding this dispute reveals their focus on their differences and the weakness of the management's presentation. This mind-set tends not to promote the use of problem-solving techniques because at the end of negotiations one party is perceived to be the winner and the other, the loser. While considering how information was shared between NUPENG and management prior to conciliation, the HR Manager said:

The union reaction gradually degenerated into local dispute....information is not expected to be shared because they will disagree. So we agreed to invite a third party, which is the conciliator, to intervene (Pilgrims Africa HRM).

The quote indicates that it was the failure of the parties to come to an agreement at the end of negotiation that led to their request for conciliation. Additionally, the analysis of the quotations presented by NUPENG 2 and the HRM of Pilgrims Africa reveals the importance of negotiating in teams and its impact on the process

and outcomes of this dispute. It becomes obvious from NUPENG standpoint that the trade union seems to perceive itself as more powerful and sees the members of its team as feeling less competitive and pressured when compared to the HRM. In addition, NUPENG team appear to be more confident and certain of their position probably because the team of negotiators have been able to use the period of considering the issues in the dispute to take advantage to diverse opinions and information which enable NUPENG to allocate task and identify opportunities for unifying solutions hence; illustrating the stand point of previous studies on the significance of negotiating in teams (Thompson *et al.*, 1996; Bazerman *et al.*, 1987).

Linking the above descriptions to the discussion presented in Chapter Two on Figure 2.3 demonstrates how information-sharing tends to promote trust, good relations and resolution at the end of negotiations. It also indicates that in the ConocoPhillips/ Pilgrims Africa dispute, information-sharing and communication seemed to have broken down, and as such, trade union-management relationships appeared to be unfriendly because of the conjunctive and distributive stance of both parties, which tended to focus on their differences instead of identifying the issues in dispute and resolving them objectively. In addition, the parties showed unwillingness to consider each other's point of view and identify their common interest with a view to reaching a compromise that would promote resolution and a good relationship.

7.3.3: Perception of NUPENG, Conoco Phillips / Pilgrims Africa towards the process and outcomes of conciliation

One vital element that comes out from the interview is NUPENG's perception of the attitude of Conoco Phillips / Pilgrims Africa's management, and vice-versa. The majority of NUPENG respondents expressed their displeasure and anger at the management's disregard and total disrespect for them as trade union representatives and for their role and responsibilities during negotiations. One NUPENG respondent established the standpoint:

Management ignores and pretends as if nobody was talking. This could be annoying at times on the union side. Despite everything that has been said and put in place, management still remain adamant...at some point we sensed that management was not willing to bend to the demand of our union (NUPENG 3).

The account illustrates how ConocoPhillips / Pilgrims Africa's attitude shaped the opinion and behaviour of NUPENG and influenced the way they interacted during negotiations. It also reflects how NUPENG's inability to meet the expectations of its constituency prior to conciliation resulted in frustration and annoyance towards the ConocoPhillips / Pilgrims Africa management. Another significant result that comes out from the interview citation is the perception of NUPENG representatives regarding the attitude and approach by the HR department during this dispute. According to another NUPENG respondent:

In the majority of these companies their industrial relations department or HR are the major cause of the problems ...most of these HR managers don't have human sympathy. If there is peace in the system, the HR or IR department will be jobless, so when there is problem and there is a strike that is when you see them move from one office to the other...that is the period they have a job to do (NUPENG 1).

This description reveals NUPENG's opinion of the role HR and Industrial Relations (IR) department and the way their actions provoke the unions to engage in dispute with the management. Given this mind-set, it can be argued that union-management relations and information-sharing seem to be a problematic issue in the oil and gas sector and were so during this dispute in particular. Consequently, this study suggests that a conciliatory meeting creates the favourable conditions and circumstances needed for both parties to identify their common interest and consider the issues in their dispute. While confirming the stance on the role of the IR and HR department, another NUPENG respondent remarked:

The HR and IR department wants to be seen as being hard working: they want to belong and feel important and impress management. So most times they will definitely create crisis in the organisation...and again they make money through this process because propaganda is involved....they bring in the media, and influence the police force and security personnel to come and intimidate the workers. So a whole lot of money is involved in this process and they are always happy carrying out such exercise (NUPENG 2).

The account gives an impression of the role and attitude of the state regarding the politicisation of trade union and management related matters and disputes in the oil and gas sector in Nigeria. It confirms how economic and political issues contribute to the rise of conciliation and influences the perception of trade unions and management about the outcomes of resolution. Another vital finding from the interview citations is NUPENG's opinion regarding management's mandate, and the fact that only the IR and HR manager has the responsibility to speak during conciliatory meetings. According to this respondent:

The industrial relations manager alone is mandated to talk while the rest [of the] representatives probably will write down or listen; none of them will contribute to the discussion (NUPENG 1).

The account is consistent with the findings presented in Chapters Five and Six on the significance of the mandate during negotiations and how it demonstrates the level of confidence and trust that the constituents have in the ability of their representatives to succeed, particularly in the actualisation of their expectations at the end of negotiations. It confirms earlier explorations on management's selection of HR Managers as sole negotiators during conciliation, as mentioned in Chapter Five. The HR Manager on the other hand described the attitude of NUPENG during this dispute as insensitive when he said:

The unions need to be sensitive to the plight of the employers too. They always believe that we [employers] are indifferent about them; that is the reason they want to be adamant, regardless of the economy trend in the country...their own goal is to maximise their benefit from the employer (Pilgrims Africa HR Manager).

The excerpt demonstrates how Conoco Phillips / Pilgrims Africa management's opinion, regarding NUPENG's indifferent attitude to their challenging circumstances, tended to influence how willing they were to share information and relate with NUPENG and the conciliators during negotiations. While describing the behaviour of the trade union during this dispute, one of the conciliators affirmed that NUPENG's actions were rather forceful and opinionated:

The trade unions were violent; they missed the larger picture of the fact that they are actually trying to resolve issues that are supposed to cover the interest, protection and welfare of their members. It took half of the conciliation process for me, because I had to counsel both parties and calm the union representatives (Conoco Phillips/Pilgrims Africa Conciliator 2).

The quotation reveals the conciliator's opinion of NUPENG's behaviour and actions during conciliation. It also reveals NUPENG's view of employment relations and their choice of conjunctive and distributive bargaining disposition

about bargaining power and strategy, thus echoing Chamberlain and Kuhn's (1965) and Walton and McKersie's (1965) view on how the choice of conjunctive and distributive bargaining positions by the parties tends to make them focus on their differences and makes them reluctant to consider other views, so the parties place more emphasis on either winning or losing the dispute, with likely destructive actions and unsatisfactory outcomes. In addition, conciliator's ability to influence the perception of NUPENG during conciliatory meetings is used by the researcher to present an application of Walton and McKersie (1965)'s attitudinal structuring. Although the conciliator mentioned that the attitudinal structuring process is time-consuming, it seems to be a necessary feature of negotiation, because it encourages the parties to understand opposing views, share information, build trust and sustain relationships, in order to consider the issues in dispute accurately and obtain a resolution at the end of conciliation.

Another conciliator describes the attitude of the ConocoPhillips / Pilgrims Africa management:

The management was not entirely aware of the industrial relations processes and again they are faced with the fear of being attacked in the Ministry by the unions and ministry officials. So far we haven't been able to get that kind of relationship that makes the management feel comfortable enough to know that whatever outcome they get from the Ministry is the best decision taken. They are uncertain and not relaxed and all these affect the conciliation process (Conoco Phillips/Pilgrims Africa Conciliator 1).

The quote indicates how management's lack of knowledge and understanding of labour legislation influences their actions and interactions with NUPENG and results in dispute. Management's lack of trust and confidence in the process of conciliation can be attributed to their mind-set about the attitude of trade unions and conciliators towards management representatives during conciliation. In addition, ConocoPhillips / Pilgrims Africa management's opinion about the

fairness and objectivity of the process of conciliation tended to influence their behaviour and impact on their actions, thereby confirming the results presented in Chapters Five and Six. While considering the role of the conciliators during this dispute, the majority of NUPENG respondents mentioned that the conciliator provided advice and explanations during negotiations. According to one NUPENG respondent:

He [the conciliator] was taking notes and getting down points, and at times, they referred to the documents we submitted, and the conciliator advised each party by telling them their faults and the way forward (NUPENG 2).

This explains the need for conciliators to understand the key issues in the dispute; the positions of the parties and the circumstances that influence these positions; and how these in turn influence the attitude and actions of the actors during negotiations. The conciliator is duty-bound to clarify the key issues in the dispute with the actors, explain their responsibilities and oversights in the case (in relation to labour legislation), and offer assistance as to what the actors can do to achieve resolution. The HR Manager, on the other hand, described the role of the conciliator during this dispute as follows:

They are abreast with the law; they explain the law and provide advice, but from management point of view one was tempted to believe that the union has gone ahead to meet with the conciliators which look more favourable to the union. The union have more companies to take to the conciliator, so in most cases, they tend to be more frequent than the management, and due to familiarity, rubbing of hands, and the rate they visit the place, they[conciliators] tend to favour them (Pilgrims Africa HR Manager).

This account illustrates how the conciliator's understanding of labour legislation would have tended to build the trust and confidence of NUPENG as well as the ConocoPhillips /Pilgrims Africa management in the role of the conciliator. In this dispute, the opinion of the ConocoPhillips / Pilgrims Africa management concerning the behaviour of the conciliators towards NUPENG gives the impression that the conciliators were biased and seemed to be unfair in their approach. Consequently, this study argues that a conciliator's unnecessary familiarity and friendliness towards one party compared to the other could create doubt regarding their impartiality and fairness, especially when the decision at the end of conciliation does not favour the party that the conciliator is less friendly with. Moreover, the conciliator's familiarity with one party could influence the behaviour of the supposed deprived party, influencing their attitude and willingness to share information. This study affirms that given the above explanation, the conciliator's manner of building a rapport and relationship with the parties during negotiation is important, because it influences the opinion of the disputing parties regarding the conciliator's impartiality, the objectivity of the process and the results of conciliation, as discussed in Chapters Five and Six.

7.4: Case study three: Tata Africa Services Nigeria Limited and Automobile, Boatyards, Transport, Equipment and Allied Senior Staff Association (AUTOBATE) / Steel and Engineering Workers Union of Nigeria (SEWUN) dispute 2010-2016

The Tata Africa Service dispute started in 2010, when the management of Tata received a letter of complaint from the branch union of the AUTOBATE trade union for senior staff. In this letter, the union expressed frustration at management's unwillingness to introduce an employee's handbook since the inception of the organisation in Nigeria in 2006. An investigation into this dispute confirms that there was no document to indicate management's response or reaction to the union's letter. The dispute lingered on till 2013 when the national leadership of AUTOBATE decided to take over the dispute from its branch officials. On July 17, 2013, AUTOBATE's national office wrote a letter to the management of Tata, highlighting the importance of the staff handbook and the implications of management's action on union activities within the organisation. AUTOBATE also made a suggestion to the management that a union-management meeting should be held on August 16, 2013. According to AUTOBATE, the meeting did not take place because management was reluctant to engage in any form of negotiation.

On March 31, 2014 the Junior Staff Association in Tata (SEWUN) joined AUTOBATE to formally request an employee handbook for their members from management. When Tata management received this joint demand, an emergency meeting was held between the then outgoing Executive Director of Tata and both unions. A review of the minutes of this meeting, also held on March 31, 2014 reveal that the key issue that was to be deliberated upon was the conditions of service / staff handbook. However, in the course of this deliberation the management of Tata did not say anything about the employee handbook, and instead, another pending issue, which was on employee conditions of service / gratuity, was raised at the meeting by Tata management. This strategy of raising the earlier unresolved employee gratuity issue with AUTOBATE/SEWUN instead of the matter of the employee handbook influenced the attitude of the trade unions at the meeting,

particularly when Tata management informed the trade unions of its intention not to accept the proposed gratuity scheme presented by AUTOBATE/SEWUN representatives.

Thus although this pre-conciliation meeting was clearly supposed to be on the employee handbook, management decided to discuss the employee gratuity scheme, and the meeting ended in disagreement. Immediately after that meeting, AUTOBATE and SEWUN declared trade disputes against the management of Tata and submitted a copy to the Ministry of Labour. Upon receiving the request for conciliation from AUTOBATE and SEWUN, the MOL appointed a conciliator to handle the dispute, and on July 24, 2014 Tata and AUTOBATE/SEWUN were invited for their first conciliatory meeting at the Ministry of Labour. This meeting ended in disagreement because the parties did not agree on the key issues in dispute: AUTOBATE/SEWUN said that the key issue was the employee handbook, while Tata management insisted that the issue was the gratuity scheme. The conciliator suggested that in order to proceed with the conciliation the dispute on employee handbook should be considered first and subsequently the dispute relating to employee gratuity would be discussed. After this first meeting, however, subsequent conciliation meetings between Tata management and AUTOBATE/SEWUN at the MOL did not take place, because Tata management refused to attend or sent individuals that did not have the management's mandate to attend the meetings, thereby provoking anger and frustration among the AUTOBATE/SEWUN representatives.

As a result of Tata management's unwillingness to continue with conciliation and resolve the issues of the employee handbook, AUTOBATE/SEWUN informed Tata management of their intention to embark on strike action on February 18-19, 2015. Upon receiving this notice, another emergency meeting was scheduled between AUTOBATE/SEWUN and Tata management for February 13, 2015. At the end of this meeting, it was jointly agreed that the trade unions would give management more time to introduce their demands into the company's budget plan for the new financial year that was starting in April, 2015. Tata used the opportunity

of the meeting to plead with both unions that the proposed strike action should be cancelled and the unions agreed because it seems that AUTOBATE/SEWUN used the threat of strike action as a strategy to attract the attention of Tata management and compel them to engage in negotiation. This illustrates Chamberlain and Kuhn's (1965) and Walton and McKersie (1965)'s viewpoint on how trade unions that assume a conjunctive or distributive bargaining stance, like AUTOBATE/SEWUN, use their trade union power and strategy to influence the actions of management. However, in the Tata dispute both trade unions declared that several months after the 2015 financial year had started, Tata management had still not mentioned anything about their demands, so they approached management for information.

According to the trade unions, the management of Tata remained silent on providing them with information on their demand for an employee handbook. Instead, the management continued to express their unwillingness to engage in negotiations regarding the unions' demand or to attend conciliatory meetings at the MOL. After a series of unsuccessful attempts to engage management in negotiations, AUTOBATE/SEWUN's representatives apparently insisted that Tata management should go back to the MOL to continue with the conciliation process that had been earlier disregarded. Upon approaching conciliation for the second time on this dispute, the conciliator used to opportunity to restate to Tata management their obligations during conciliation and the need for them to indicate their willingness to negotiate with other actors. A total of twelve conciliatory meetings were held among the HR Manager of Tata, five AUTOBATE/SEWUN representatives and two conciliators. The summary of trade union and management representation during Tata dispute reveals how management's solo representation arrangement does not take into consideration the importance of team negotiations and the need to take advantage of the combined efforts of the members of a team, utilise their diverse skills, knowledge and understanding of the dispute and its impact on negotiation outcomes. In addition, it shows how trade unions ability to negotiate as a team tends to boost the morale of their members by making them feel less competitive and pressured and by creating the allocation of tasks and new

opportunities that inspire more discussions, encourages information sharing and promotes unified dispute resolution (Thompson *et al.*, 1996; Bazerman *et al.*, 1987).

An analysis of documents regarding this dispute reveals that the management of Tata refused to attend one of the conciliation meetings and did not inform the MOL prior to the scheduled date. Also, at another agreed date for meeting at MOL, Tata management sent an individual without mandate to attend hence nullifying the decisions arrive at the end of this meeting. This account shows that the parties involved in Tata dispute were available for negotiation in ten meetings after which an agreement was reached on 21st January 2016. The Memorandum of Agreement that was signed by Tata management and AUTOBATE/SEWUN shows that a comprehensive employee handbook was presented to the conciliator by Tata in agreement with AUTOBATE/SEWUN. Furthermore, the position of AUTOBATE/SEWUN regarding employee gratuity was considered at conciliation and the result was incorporated into the employee handbook submitted to the MOL by Tata management. It is however, imperative to mention that Tata management insisted on a change of nomenclature and agreed that their employees would be paid an end-of-service allowance and not a gratuity, which was agreed by AUTOBATE/SEWUN. The Tata dispute, on the failure of management to produce an employee handbook, is considered in this thesis because the extracts from the relevant interviews allow for the analysis of the social process of collective conciliation and mirrors the model presented in Figure 2.3 of Chapter Two of this thesis.

Tata management's behaviour during this dispute gives the impression that management's silence regarding the employee handbook tends to hinder how information is shared and the way this impact on the perception of AUTOBATE/SEWUN about Tata management. The reaction of Tata management to AUTOBATE/SEWUN's intention to embark on strike action demonstrates their conjunctive or distributive behaviour, which reveals their lack of trust and lack of commitment during pre-conciliation negotiations. This account confirms

Chamberlain and Kuhn (1965) and Walton and McKersie (1965)'s view on how the distributive stance of the parties during collective bargaining or negotiation reflects their view regarding their bargaining power and strategy. In Tata, AUTOBATE/SEWUN expressed their power and strategy through their intention to embark on strike action and Tata management on the other hand applied their strategy of persuasion and lack of commitment during pre-conciliatory negotiations.

7.4.1: Context of Tata management and AUTOBATE/SEWUN dispute

One interesting finding that emerges from the interview quotations by respondents concerning this dispute is the financial situation that seems to be crippling economic activities in Nigeria. While affirming this situation the HR Manager in Tata said:

In Tata our major problem now is not the dispute between union and management but it is a multi-failure problem that is facing Nigeria. Even the union problem is aggravated by the economic crisis of the nation...in the last four years the company has not made a single profit. The reason why Tata in Nigeria is still running is based on distribution... the profit that is actualised from all other countries is being distributed...and not based on the profit actualised here in Nigeria alone (Tata HR Manager).

The role of the state and its influence on the economy and trade union-management related issues in particular seem to be the main contextual factors influencing the emergence of the Tata dispute, thus reflecting Ridley Duff and Bennett's (2011) standpoint that it is the role of the state to monitor trade union and management related activities. The extract also confirms the results presented in the case studies of Vono Plc and ConocoPhillips/Pilgrims Africa cited earlier in this chapter. The social process of this dispute, however, reveals the conjunctive or distributive stance by Tata management and AUTOBATE/SEWUN, which tends to emphasise

the parties' bargaining power, strategy and relations, consequently echoing Chamberlain and Kuhn's (1965) and Walton and McKersie's (1965) viewpoint on how this bargaining behaviour tends to focus on the differences between the parties and discourages a problem-solving approach, and thus does not promote relationships or encourage the parties to consider other views or interests during negotiations.

The trade unions, on the other hand, argued that the main issue in the dispute was not gratuity but management's refusal to produce an employee handbook. According to the trade unions, gratuity was one of the issues contained in the employee handbook that management had not negotiated with the trade unions. One AUTOBATE respondent said:

The issue wasn't gratuity as such; the issue was lack of staff conditions of service. Gratuity is just one of those issues within the staff conditions of service. So we have been agitating for a handbook over the years but they [management] refuse. Gratuity is one of the issue contained in the staff handbook and it hasn't been negotiated (Tata AUTOBATE 1).

One interesting point that comes out from the interview extract is how the process of conciliation emerged from the disagreement between Tata management and AUTOBATE/SEWUN over the employee handbook. One of the conciliators who had handled the dispute said:

Once you know the law and your boundaries, it makes it easier to be impartial during conciliation, and again, you need to be firm and loving and make them understand the position of the law so that at the end of the day we get them to reach a resolution (Tata Conciliator 1).

The quote shows how conciliators' behaviour and the way they share information tend to influence the bargaining stance of the parties and impact on the latter's opinion regarding attitudinal structuring during conciliation. In her description, the Tata HR manager remarked on how the conciliator's approach influenced her perception (thus confirming the quotation above by the conciliator). Her comment was:

Yes, the conciliators were very intellectual and reasonable during the discussions...they explained the issues in relation to the law and that was helpful to us as management (Tata HR Manager).

One of the trade union representatives also described how the process of conciliation emerged during this dispute:

The conciliator constantly drew the attention of both union and management to the law during the discussion. At times they [conciliators] had to calm both parties down and when tempers were rising they adjourned the meeting for another date, but ultimately the issue was resolved (Tata SEWUN 2)

The above quotations reveal how information-sharing between the conciliators and the parties involved in this dispute influenced the attitude of Tata management and shaped AUTOBATE/SEWUN's approach during conciliation, thus confirming Walton and McKersie's (1965) stance regarding how attitudinal structuring tends to influence the parties' perceptions and shape their behaviour during negotiations. Moreover, the conciliators' ability to make the parties engage in communication has a tendency to increase the parties' willingness to consider the issues in dispute from each other's standpoint with the intention of having a better understanding of the issues and building the trust and confidence of the parties in each other. In addition, with the representatives' understanding of each other's position it becomes imperative for representatives and management to clarify and consider the issues with members of their constituents, as in the dispute between

AUTOBATE/SEWUN and Tata management, which demonstrates Walton and McKersie's (1965) explanation of how intra-organisational behaviour tends to encourage the parties to apply problem-solving techniques to consider satisfactory outcomes. It therefore reflects Chamberlain and Kuhn's (1965) and Walton and McKersie's (1965) view on how the cooperative and distributive standpoints of disputing parties tend to promote communication and relationship during conciliation and also support win-win outcomes, hence reflecting the application of the model presented in Figure 2.3 of Chapter Two of this thesis.

7.4.2: Tata and AUTOBATE/SEWUN relationships

One major finding from the interviews concerns the descriptions by respondents on the historical antecedents and activities of trade unions in Tata. In the course of the interviews, the majority of union respondents stated that the trade unions had existed within Tata since the inception of the organisation in Nigeria. While affirming this view, the HR Manager remarked:

unions have been in existence in Tata from the first day... if we had known we wouldn't have allowed the emergence of unions (Tata HR Manager).

This narrative gives the impression that the existence and recognition of trade unions within an organisation does not influence the opinion and attitude of management regarding their mind-set and perception about trade unions and their activities within the workplace. This explanation mirrors the trade unions' argument regarding management's mind-set and lack of interest in union welfare, consequently echoing AUTOBATE/SEWUN's view regarding Tata management's conjunctive or distributive stance and hence illustrating Chamberlain and Kuhn's (1965) and Walton and McKersie (1965) point of view concerning how this behaviour of the parties tends to discourage their willingness to understand each other's standpoint and interest or relationships, as presented in Figure 2.3 of Chapter Two of this thesis. Management, on the other hand, perceive trade unions

as problematic groups of individuals that are difficult to relate with, and apathetic about making compromises and concessions during pre-conciliation negotiations. Tata management's opinion about the attitude of AUTOBATE/SEWUN during this dispute gives the impression that the trade unions' behaviour prior to conciliation tended towards conjunctive or distributive bargaining, which does not promote communication, trust and good relations, hence the parties' request for conciliation.

While considering the relationships that existed between Tata management and ATUOBATE/SEWUN during this dispute, an important outcome that emerged shows the importance of the parties' ability to share information and engage in communication and how this shaped their attitude and influenced their actions particularly during negotiations. According to one AUTOBATE respondent:

They [management] have this apprehension against the union: we are supposed to be confident to take and carry along with information, but where there is a lack of communication as we see in Tata... trust becomes a problem (Tata AUTOBATE 2).

The quotation indicates the importance of information-sharing and communication and the influence of low trust on trade union-management relationships. It demonstrates the parties' ability to engage in communication, influence their behaviour and determine their attitudes and actions during negotiations. It demonstrates that conciliators need to transform the mind-set of the parties during negotiations so as to build their trust and confidence in the ability of the process of conciliation to uphold trust and sustain relationships aimed at encouraging mutual benefit, as mentioned in Chapters Five and Six. In contrast to the point of view presented by the AUTOBATE respondent on the way information is shared during this dispute, the HR Manager in Tata asserted that it was the attitude of both unions that discouraged them from sharing information or engaging in communication during this dispute. asserting this standpoint, the HRM remarked:

How do you expect us to share information with people who are not ready to listen? They are the problem, never wanting to make concessions or shift ground. Union members are not educated; they bring out this hooliganism in them during negotiations (Tata HRM).

The account reveals how AUTOBATE/SEWUN's behaviour tended to influence management's perception and impact on their attitude and actions during negotiations. It echoes the exploration presented by management respondents in Chapter Five regarding the trade unions' adamant and unwilling attitude to act reasonably and realistically during negotiations. This study argues that the above account by the HRM may have also been influenced by the composition of management representation when compared to trade unions (AUTOBATE/SEWUN). As mentioned earlier in this section, the HR Manager of Tata had to present her case (on behalf of Tata management) before five AUTOBATE/SEWUN representatives and two conciliators. It is imperative to mention that the above cited imbalance in Trade union/management structure during conciliation there is the tendency that at some point in the negotiations, Tata HRM may feel less prevailing and influential, less secured and under undue pressure from management. It has also become evident that the absence of any other management representative during this meeting indicates that Tata HRM did not have the chance to integrate or incorporate her own skills, knowledge and understanding of the dispute with alternative viewpoint of another Tata management representative. This put forward the idea that Tata HRM was unable to harmonise diverse opinions and ideas regarding the issues in dispute, the process and outcomes team negotiations. Furthermore, it reveals the implications of all of the above cited on trade union-management relationship within Tata.

One major finding that emerged from the discussion was the issue of mandates. The majority of trade union respondents expressed disappointment at the attitude of Tata management when individuals without a mandate were sent to attend conciliation meetings at the MOL. Expressing his annoyance and displeasure, one AUTOBATE respondent commented:

They sent someone who they know doesn't have the mandate or power, so anything agreed on is 'null and void' because it can be subject to change. The man told us that he will report back....but there is no way you can report back once you have agreed, so he dragged us down (Tata AUTOBATE 1).

The explanation regarding the attitude of Tata management gives an impression that Tata did not have regard for the process of conciliation in Nigeria or was not aware of the importance of a mandate and the implications of sending individuals without a management mandate for conciliation. Tata management's attitude during this dispute tended to influence the experiences of AUTOBATE/SEWUN and impact on how they perceived their role and that of the Tata management. It reveals how the opinion and behaviour of AUTOBATE/SEWUN emerged during negotiations and the way it influenced the process and consequences of conciliation.

7.4.3: Perception of Tata Management, AUTOBATE/ SEWUN towards each other and towards the process and outcomes of conciliation

One important result that becomes visible from the interview extracts is the perception of the actors during this dispute. As mentioned earlier in this section, the actors' perceptions of each other have a tendency to influence their actions and impact on their approach, attitude and behaviour towards each other during negotiations. Confirming this viewpoint, the HRM in Tata remarked:

Frankly speaking, based on my investigation and what I gathered, unions have a long way to go in Nigeria; they see such discussion as a platform to misbehave at the work place. Unions are biased and bullies and they are self-centred and don't aim at the growth of the company. This is the reason lots of companies are against trade unions, especially when it's a multinational company (Tata HR Manager).

The above description establishes the analysis presented in Chapter Five regarding management's opinion that trade unions demonstrate a self-centred and egoistic approach during negotiations. In the case of Tata, the management's action seems to have been influenced by the behaviour and demeanour of the trade unions during negotiations. While considering the opinion of trade unions regarding the attitude of Tata management, the majority of AUTOBATE/ SEWUN respondents claimed that Tata management's behaviour indicated that the latter seemed to be insecure, uncertain and deceitful during negotiations. According to one SEWUN respondent:

Whenever the management is called upon for a meeting by the Ministry of Labour they keep postponing it...management told us to settle the issue amicably...they said they will implement our request in the next financial year, so we agreed, but at the end they violated the agreement and deceived us (Tata SEWUN 1).

The account presented by both trade unions regarding Tata management during this dispute reveals that both AUTOBATE/ SEWUN express low trust and lack of confidence in the management of Tata. The failure of Tata management to implement its pledge and agreement to AUTOBATE/ SEWUN impacted on their opinion about management and influenced their actions, communication and relationships during negotiations. Another important finding that emerged from the interviews is the perception of the conciliators regarding the level of awareness and knowledge of employment relations that the management of Tata possessed regarding the issues in this dispute. While considering this matter, one of the conciliators that handled Tata dispute said:

It is unbelievable. We made them understand the main reason for their problems was lack of sound management and ignorance of industrial relations on the side of the department of the HR....How can a company be operating for 5-6 years without a handbook for their staff?...we declared to them that it was a criminal act which contradicts the labour laws of the land (Tata Conciliator 2).

The quote indicates how the conciliator is expected to explain to both parties the position of the labour law as it relates to the issues in dispute. In addition, it demonstrates the ability of the conciliator to encourage the parties to keep communicating with each other, so as to avoid any form of prejudice or partiality that might arise during negotiations. The conciliators' experience during the Tata dispute indicates how their ability to assist the parties to identify their common goals and attain their mutual objectives, facilitated settlement and the sustaining of existing relationships. While considering the actors' perceptions regarding the process and outcomes of conciliation, the majority of respondents cited the role of the state and how the attitude of the state, and in particular the obsolete labour legislation, tended to frustrate labour-management related matters in Nigeria. Affirming this view, the HR Manager in Tata said:

The government is not helping matters not to talk of the labour union; they don't care about the laws. Our laws are not helping us....The labour laws are obsolete: no one is updating or implementing them. The Ministry of Labour is a toothless bulldog who can't enforce or do anything (Tata HR Manager).

The description confirms the conclusion presented in Chapter Five on how Nigerian labour legislation is inadequate for handling the present-day industrial relations atmosphere. This is linked to the Nigerian state's lack of political will and the reluctance of the legislative arm of the state to review and critically analyse the laws that guide employment relations and, in particular, collective conciliation in Nigeria. It illustrates how legal restrictions relating to the position of conciliators and MOL during negotiations tend to influence the behaviour of the parties towards the conciliator and impact on their willingness to conform to or act in accordance with the decisions reached at the end of conciliation.

While considering the attitude of Tata management regarding the activities of the state and the MOL in particular, the majority of AUTOBATE/SEWUN respondents asserted the need for the MOL to be well funded so as to build the capacity required

to carry out its responsibilities during conciliation. One AUTOBATE respondent said:

the Ministry of Labour has to be well-funded by the government because they play a crucial role in employer-employee related matters...also we need a more operational stakeholders' forum to bring us together to exchange experiences and become more knowledgeable about the changes in legislation and regulations that guide the workplace. For conciliators...we need adequate training and global exposure to know the international standards and for capacity-building (Tata AUTOBATE 2).

This extract confirms the inference presented in Chapter Five on the non-economic classification of the Ministry of Labour and how this affects its activities and undertakings, thereby undermining its relevance, importance and reputation among trade unions and management. In addition, it indicates the need for the National Labour Advisory Council (NLAC), also referred to in Chapter Five, to be adequately funded and provided with required highly trained human and material resources such that it can serve as a platform for an ADR framework that will consider critical union-management related matters in Nigeria.

7.5: Cross-analysis of case study disputes

Given the account of the explorations presented so far on the three case studies, a cross-analysis of the disputes and emerging trends, as well as comparisons of the actions and standpoints of the actors regarding the process and end results of conciliation, is important. This gives the researcher the ability to organise and connect how the distinct evolving information produces new knowledge and presents an understanding of the social process of collective conciliation in Nigeria.

One of the key findings that emerge from the analysis of the three case studies is the composition of the individuals that represent trade unions, management and conciliators during collective conciliation in Nigeria. It has become obvious that while trade unions assign three to five representatives to engage with management

in negotiations, the MOL assigns two conciliators to each case while organisation management appoints the HR Manager as the single representative for management. This layout of representation indicates how organisation management in Nigeria tends to obviously and unintentionally put the HR Manager under unnecessary pressure and undue stress; given his responsibility to engage with a team of 3-5 trade union representatives during conciliation in the three case studies. The solo representation arrangement by management does not take into consideration the importance of team negotiations and the need to take advantage of the combined efforts of the members of a team and utilise their diverse skills, knowledge and understanding of the dispute and its impact on negotiation outcomes. Previous studies on team negotiation assert that negotiating in teams is more powerful and members of the team feel less competitive and pressured. Also, members of a team feel more secured and capable when compared to solo negotiators because; negotiating in team creates new opportunities for unifying solutions which leads to joint gains that stimulates task allocation, more discussions and encourages information sharing compared to individual or solo negotiation (Thompson *et al.*, 1996; Bazerman *et al.*, 1987).

The role and approach of the state and its effect on the current economic situation in Nigeria seem to be a common theme in the three case studies. For example, Vono management cited the poor economic situation, violence and insecurity in the northern part of the country as the major cause of their financial crisis. The Conoco Phillips / Pilgrims Africa management also mentioned that the closure of their business in Nigeria was due to the failing economy and its impact on their operations. Tata management talked about the poor financial status of their company in the last four years and linked it to the plunging economic situation and particularly the elitist and unresponsive attitude of the state towards trade union and management related matters. These explanations confirm the evidence presented in Chapters Five and Six of this thesis regarding how the hesitant role of the Nigerian state affects the perceptions and attitude of other stakeholders in collective conciliation.

The Nigerian state's reluctance to review obsolete labour legislation and financially empower statutory established institutions to be responsible for monitoring the operation of legislation such that defaulters are penalised accordingly, can be linked to the situation in Tata. Tata management's refusal to produce an employee handbook despite their operation in Nigeria for over six years reflects the failure or absence of a state-established enforcement unit responsible for monitoring the activities and operations of companies in Nigeria. These explanations give the impression that foreign investors coming into Nigeria may not have a government approved framework providing the necessary steps for them to proceed with registration and start their business operations in Nigeria. This shortcoming again points towards the attitude of the state and in particular how information is disseminated by statutory established state institutions such as the MOL to new investors that indicate their interest in operating within the Nigerian business environment.

In addition, the failure of the parties to share information and communicate during negotiations in the three case studies discussed appears to influence their relationships, with proof of the parties' expression of suspicion and lack of trust during negotiations. Interview evidence shows that trade union and management relationships were not cordial in Vono. The majority of SEWUN representatives accused Vono management of not recognising them as relevant stakeholders and not living up to their anticipations and expectations during negotiations. Hence these findings confirm the results presented in Chapters Five and Six of this thesis.

The point to consider is that the social process of conciliation that emerged during the three case studies reveals that the issues in dispute are interest-based ones and not value-based. In all three of these case studies, the bargaining behaviour of the trade unions and management prior to conciliation was identified as conjunctive or distributive, hence this study asserts that it is the assumed behaviour of the parties that tends to influence their actions and result in the failure of the parties to attain resolution at the end of negotiation, and so they request conciliation. This analysis echoes the explanations presented in Chapter Two regarding how the application

of Chamberlain and Kuhn's (1965) and Walton and McKersie's (1965) conjunctive/distributive or co-operative/integrative bargaining behaviour reveals that disputing parties are more likely to attain high satisfaction when the issues in dispute are related to the allocation of resources, but parties that are involved in value-based disputes are usually satisfied with distributive bargaining outcomes.

Consequently this study argues that given the social process of the nature of the issues in dispute presented in the three case studies, what is suggested is the selection of integrative bargaining behaviour that builds the trust and confidence of the trade unions and management and enables them to build their relationships and promote problem-solving techniques aimed at promoting win-win outcomes. This bargaining behaviour was not assumed by the disputing parties during negotiations and consequently the dispute was referred to conciliation. However, with the assumption of co-operative and integrative bargaining in addition to the parties' intra-organisational and attitudinal structuring stance – thus reflecting the application of the model presented in Figure 2.3 of Chapter Two of this thesis – the issues in the three case studies were resolved at the end of conciliation. In addition, the descriptions presented during the analysis of the three case studies enhanced an understanding of the social process of collective conciliation and addressed the research questions and aim of the study, presented in Chapter One of this thesis.

In the Conoco Phillips / Pilgrims Africa case, the trade union and management relationship was described by one trade union respondent as 'cat and rat', mainly because the trade unions viewed their interface with management as a show of power. Management, on the other hand, described the presence of the trade unions as forming a counter-management, and hence their win-lose bargaining mind-set and behaviour, which reflects Chamberlain and Kuhn's (1965) and Walton and McKersie's (1965) findings on how the parties place emphasis on maximising their individual benefits without taking into consideration their existing relationships. Although both parties gave the impression that they were friendly with each other their attitude and approach during negotiations revealed that they seemed to be pretending. Interview excerpts indicate that during negotiations and prior to

conciliation the parties placed more emphasis on the quality of their presentations than on examining the issues in dispute objectively with a view to understanding each other's point of view and making compromises that would lead to resolution.

The analysis presented in the case studies demonstrates how the parties' bargaining behaviours and perceptions at the beginning of conciliation are shaped through information-sharing and relationship-building. In the course of the parties' negotiations during conciliation, it becomes evident that the parties' change of opinion about employment relations and bargaining power tends to influence their readiness to consider and understand the issues in dispute from the point of view of the other party. This process of modification of the mind-set of the parties during conciliation suggests that the representatives of trade unions and management should use the newly collated information to regulate the viewpoint of their constituency and to promote trust and confidence among members of their constituents. It is the assurance that the parties receive from the members of their constituency that enables them to engage in co-operative and distributive bargaining, which in turn encourages the parties to be willing to compromise while applying joint problem-solving techniques to attain win-win outcomes. This explanation reveals the findings of Chamberlain and Kuhn (1965) and Walton and McKersie (1965) as well as the application of the model presented in Figure 2.3 of Chapter Two of this thesis, and hence presents an understanding of the social process of collective conciliation, which is the aim of this study.

The approach of the SEWUN representatives revealed their understanding of the Vono management's plight, even though the latter did not provide detailed information on the financial situation of the company. SEWUN was willing to make compromises that would take into consideration their relationship with management, but only if management indicated their willingness to negotiate and make a commitment. When SEWUN's efforts to persuade management proved abortive, the union decided to change its approach and actions towards management. This change by SEWUN confirms the findings presented in Chapter

Five about how the initial perceptions of the parties at the start of negotiations are likely to change in the course of their interaction.

The attitude of NUPENG, on the other hand, suggests that they were uninterested in trade union and management relationships. Their approach mirrors their historical philosophy, which is characterised by aggression and force intended to manipulate management during negotiations. It becomes evident from interview citations that NUPENG seemed to be averse to thinking through the issues in dispute or to consider management's standpoint during negotiations. In the case of Tata, the combined efforts put into the dispute by both SEWUN and AUTOBATE attest to the importance of union unity and its effect on management decisions. The attitude of SEWUN/AUTOBATE during negotiations appears to have been similar to NUPENG's approach, as interview evidence shows that they were self-centred and indifferent towards management's dilemma during negotiations.

These evidence substantiates the results presented in Chapters Five and Six of this thesis and confirms the viewpoints of Ott *et al.* (2016), Ridley-Duff and Bennett (2011), Chamberlain and Kuhn (1965) and Walton and McKersie (1965) on the significance of the parties' ideology and behaviour during bargaining and negotiations. The main idea to be considered is that the guiding principles and philosophies of the parties about employment relations and the role of other stakeholders during negotiations tend to influence their attitude and demeanour and impacts on their actions and how they describe the process and end results of conciliation.

The attitude of management across the three case studies reflects their disposition towards trade unions in general and the conciliation process in particular. Vono and the Conoco Phillips / Pilgrims Africa management displayed their unwillingness to share information or negotiate with trade unions because they saw unions as trouble makers that were not considerate in relation to management's plight. It was this mind-set that influenced the Vono management's action of 'playing to the gallery' and trying to pacify the trade unions instead of explaining the current situation and

demonstrating a commitment as to how payment would be made to the affected employees. This study argues that if management had shown willingness to negotiate and provide information to SEWUN, this would have established the trust and confidence needed by Vono management to create favourable negotiations and accomplish positive results. Tata management, on the other hand, seemed to exhibit deceptive behaviour and delaying tactics by postponing meetings with trade unions.

Additionally, interview excerpts show that the management of the three companies did not have a sound knowledge of industrial relations practice or were ignorant about how labour legislation operates in Nigeria. The majority of management representatives refused to shift their ground and were unwilling to engage in negotiations even when the dispute was presented at conciliation; as a result confirming the outcomes presented in Chapters Five and Six of this thesis. The state involvement in the Conoco Phillips / Pilgrims Africa dispute shows the economic importance of the oil and gas sector to Nigeria's economy. The increasing attention paid by the state to trade union and management related issues in this sector gave NUPENG the impression that the state was supporting management, hence the trade union's intolerable attitude towards management during negotiations.

In addition, HR and IR managers in this sector have been indicted by trade unions as the major cause of the problems and volatility that exist within the industry. Interview extracts show that because the activities of HR and IR managers tend to involve the transfer of money for propaganda and bullying of trade unions, management tends to disregard unions' demands on purpose and allow the dispute and relationships between both parties to degenerate. This explanation supports the data that was made available in Chapters Five and Six on factors that influence the volatile nature and experiences in different sectors and industries that operate in Nigeria. The important point to note is that in the three case studies, management's disregarding attitude and neglect of trade unions' demands puts forward the idea that management is not interested in trade union related matters, thereby resulting

in trade unions' expression of anger and disappointment towards management during negotiations as also cited in Chapters Five and Six of this thesis.

The lack of funds and inability of the MOL to carry out its statutory responsibilities and remain relevant among other stakeholders during conciliation seem to be noticeable in the three case studies. For instance, the MOL was described by one stakeholder as a "toothless bulldog that cannot do anything to defaulters". Others mentioned the need for the MOL to take up its responsibilities of enforcing and administering the implementation of existing legislation, such as ensuring management makes provision for an employee handbook during registration, to avoid dispute situations like that of Tata in future. The MOL has also been challenged by other stakeholders to notify the disputing parties of the importance of a mandate and punish those that default on the implementation of the decisions reached through conciliation. The importance of an operational stakeholder forum, which would allow relevant stakeholders to exchange experiences and keep abreast with changes in legislation on the Nigerian workplace, was mentioned during the interviews. It was suggested by respondents that this forum should be supervised and maintained by the MOL, thus confirming the points of view expressed by other stakeholders with a role to play in conciliation (referred to in the first element of the analysis in Chapters Five and Six of this thesis).

The significance of the conciliators' familiarity with legislation and their ability to provide suggestions from the standpoint of management and trade unions during negotiations seem to influence the perception of the parties towards the impartiality and neutrality of the conciliator and outcomes of conciliation. The conciliators' ability to listen to the parties, present their case and take notes makes it easy for them to give the parties detailed information on the legislation relating to their dispute. This explanation tends to build the trust and confidence of the parties in the ability of the conciliator to assist them in facilitating a resolution, thereby verifying the point of view of Dix *et al.* (2008) Dix (2000) and Kolb (1983) on how conciliators' behaviour enables the parties to consider the issues in their case objectively, identify their weaknesses and faults and make compromises that will

promote resolution. Insights from the interview citations show that the conciliators' ability to take into consideration management's fears and uncertainty about the process and end results of conciliation tends to provide the assurance needed by management in order to erase the perception that conciliators are friendlier with trade unions and more responsive to them during negotiations than they are to management.

Conciliators' ability to build a rapport and establish good relations during negotiations tends to make the majority of management in the case studies more comfortable about accepting that the end results of conciliation have been attained in their best interest. Management's opinion about the end results of conciliation supports Chamberlain and Kuhn, 1965 and Walton and McKersie's 1965 cooperative and integrative bargaining findings that promote communication and relationship among the parties. In addition, the parties integrative behavioural stance tends to influence their perception and shape the way they consider and understand the employment relations and the issues in dispute from the standpoint of the other party with the intent to negotiate and clarify wrong impressions and change unrealistic expectations among members of their constituents, therefore demonstrating the application of the model presented in Figure 2.3 of Chapter Two and addressing the research questions presented in Chapter One of this thesis.

Other stakeholders' perceptions regarding a conciliator's lack of industry experience or in-depth understanding of how the private sector functions seem to portray conciliators as individuals that are incompetent at providing the required assistance needed during conciliation. It is imperative to mention that this outlook on conciliators is prevalent among management respondents and seems to influence their attitude and opinion of conciliators at the initial stage of negotiations. This perception, however, seems to change in the course of their interactions with conciliators, particularly when the issues in their dispute are being examined by the conciliator from the standpoint of legislation and their errors pointed out to them during negotiations. Their experience with conciliators during negotiations seems

to influence their frame of mind and to be mirrored in their concluding remarks about the fairness and neutrality of the process and the end results of conciliation.

The outcomes of the three case studies demonstrate the effect of the parties' understanding of their role and procedures of conciliation. The interview excerpts show that resolution was attained when both trade unions and management expressed their readiness to negotiate and examine the issues in their dispute, thus illustrating the point of view of Chamberlain and Kuhn (1965) and Walton and McKersie (1965) as well as the application of the model presented in Figure 2.3 of Chapter Two of this thesis. Consequently the case studies reveal how the behaviour of the parties prior to conciliation was influenced by the use of information-sharing and communication. In addition, they show how the process of conciliation was used to clarify the issues in dispute and to consider the positions of both parties from the standpoint of legislation, thereby building the trust and confidence of the parties and encouraging the promotion of problem-solving techniques that tend to result in the attainment of win-win outcomes at the end of conciliation.

The importance of the parties' knowledge of how conciliation operates and their need to approach the process with integrity and fairness make negotiations less contentious because the parties show a willingness to find middle ground that would enable them to sustain their existing relationship. This account demonstrates the findings of Walton and McKersie (1965) on how the parties' choice of intra-organisational behaviour during conciliation enables them to clarify the issues in dispute and influence the mind-set of members of their constituency with the intention of influencing their bargaining behaviour, correcting wrong impressions and attaining satisfactory outcomes at the end of conciliation.

7.6: Conclusion

In summary, the strongest findings that emerge from the analysis of the three case studies are their ability to demonstrate the applicability of the model presented in Figure 2.3 of Chapter Two of this thesis. The case studies show how the initial distributive stance of trade unions and management at the beginning of conciliation was modified by conciliators through information-sharing. The description demonstrates how the newly assumed integrative bargaining behaviour of trade unions and management during conciliation influenced their attitude and actions towards each other and enabled each party to consider the issues in their dispute and understand the point of view of the other party during conciliation, hence reflecting the findings of Chamberlain and Kuhn (1965) and Walton and McKersie (1965) regarding how the parties' choice of integrative bargaining tends to promote communication and encourage satisfactory resolution results.

In addition, the case studies reveal how the process of conciliation during the disputes promoted trust and relationship between the trade unions and management and enabled representatives of both sides to influence the perceptions of members of their respective constituencies and shape their behaviours and expectations at the end of conciliation, thus reflecting the observation of Walton and McKersie (1965) on the need for trade unions and management representatives to gain the confidence of their constituents because it tends to enhance their willingness to make concessions and encourage problem-solving techniques that promote win-win outcomes at the end of conciliation. Consequently, this description addresses the research questions presented in Chapter One and offers an understanding of the social process of collective conciliation, which is the aim of this study.

Prior to conciliation, the failure of the parties to share information appears to influence their relationships, because both trade unions and management representatives assert their mutual suspicion and lack of trust during negotiations, hence the failure of negotiations and request for conciliation. Moreover, the hesitant attitude of management to communicate with trade unions during negotiations reflects their view about employment relations and bargaining power

and the way in which both management representatives and their constituents focus on the differences in the interest and opinion of trade unions, and hence the inability of both trade unions and management to resolve the issues in dispute during negotiations. This finding supports the results presented in Chapters Five and Six, and confirms the viewpoints of Ridley-Duff and Bennett (2011), Chamberlain and Kuhn (1965) and Walton and McKersie (1965) on the impact of the parties' ideology and behaviour. These studies claim that the parties' willingness to negotiate and share information during negotiations tends to impact on their opinions and their description of the process and end results of conciliation.

Furthermore, the results of this study corroborate the stance of Ott *et al.* (2016) on how the power and personality of negotiators influence their preference and opinions of the end results of negotiations. The hesitant attitude of management reflects their personality and unwilling disposition to negotiate with trade unions or engage in conciliation. This description mirrors their opinion about the fairness and impartiality of conciliation and the ability of the process to take into consideration and reflect their viewpoint at the end of negotiations. As was noticeable in the three case studies, management's perception about the egoistic attitude and trouble-making behaviour of trade unions and their refusal to find the middle ground during negotiations tends to affect management's readiness to engage in negotiations.

The main features of the process of conciliation from the case studies have been identified as information sharing, trade union and management relationship, parties' understanding of the issues in their dispute in relation to legislation, parties' bargaining behaviour and its influence on both parties' intra-organisational and attitudinal structuring, and the impact of this process of conciliation on the end results and parties' satisfaction. The application of these features in the case studies demonstrates the applicability to the model presented in Figure 2.3 of Chapter Two and addressed the research questions presented in Chapter One of this thesis, thus presenting an understanding of the social process of collective conciliation, which is the aim of this study.

The inability of the MOL to carry out its statutory responsibilities and its lack of funds from the state tend to undermine its relevance among other stakeholders, as seen in the three case studies. The MOL needs to be empowered and given authority to monitor the implementation of legislation and penalty on defaulters accordingly, so as to retain its significance and discourage other stakeholders from undermining the procedures and end results of its operations. The need for the MOL to maintain and supervise an operational stakeholder forum was mentioned by respondents, the majority of who claimed that this platform would allow stakeholders to exchange experiences and keep abreast with changes in workplace-related legislation. This account confirms the points of view made available by other stakeholders that have a role to play in conciliation, as referred to in the first element of the analysis in Chapters Five and Six of this thesis.

Conciliators' familiarity with legislation and their ability to provide suggestions from the standpoint of management and trade unions during negotiations tends to influence the perception of the parties regarding the impartiality and neutrality of the conciliator and end results of conciliation. It builds the trust and confidence of the parties in the ability of the conciliator to assist them with facilitating resolution and in so doing verifies the point of view of Dix *et al.* (2008), Dix (2000) and Kolb (1983) on the importance of the conciliator's method of interacting with the parties, especially while considering the issues in dispute and explaining the parties' faults to them during negotiations. The significance of the conciliator's ability to build a rapport and establish relationships also tends to build the confidence of the parties in the fairness of the end results and its implementation. However, a conciliator's lack of industry experience and in-depth understanding of how the private sector functions seems to portray conciliators as individuals that are incompetent at providing the required assistance needed during conciliation. This view appears to change in the course of the parties' interactions with proficient and experienced conciliators, as revealed in their concluding remarks about the fairness and neutrality of the process and end results of conciliation.

The importance of the end results of conciliation and the views of the parties about their role has been alluded to in the three case studies. The parties' knowledge of how conciliation operates and their approach towards this process tends to make their discussions during conciliation less contentious because the social process that influences the mind-set and shapes the behaviour of the parties encourages them to consider and understand the issues in dispute from the standpoint of the other party, with the intention of promoting trust and clarifying the issues in dispute in collaboration with the other party and the conciliator, thus confirming the views of Chamberlain and Kuhn (1965) and Walton and McKersie (1965) regarding how the parties' choice of co-operative and integrative bargaining tends to encourage friendliness, trust and co-operation between the disputing parties.

The behaviour of the parties during conciliation tends to influence the ability of trade unions and management to negotiate with members of their respective constituents and regulate the different views and attitudes that may arise, with the intention of attaining commitment within their constituencies and clarifying wrong impressions among members of their constituencies thereby promoting the communication and relationship required to support the parties' choice of problem-solving techniques, which tends to facilitate the attainment of win-win results of the end of conciliation, thereby echoing the point of view of Chamberlain and Kuhn (1965) regarding how the parties' choice of attitudinal structuring and intra-organisational bargaining enables them to build assurance and commitment among their constituents and influence the results of conciliation, which is used by this study to address the research questions and present an understanding of the social process of collective conciliation, which is the aim of this thesis.

Given the above analysis on Vono Plc, ConocoPhillips / Pilgrims Africa and Tata Africa, this chapter has produced a different understanding of the social process of collective conciliation. It demonstrates how the key elements of collective conciliation mentioned in Chapters Five and Six – information-sharing and communication, trade union and management relationships and state legislation and regulations – emerge from the descriptions presented by respondents in the

three case studies. It shows that regardless of the distinctive nature of the issues and characteristics of the parties involved in negotiations, the interconnections that exist between these elements and the way they shape the behaviours and actions of the actors enhances our understanding of the social process of collective conciliation in Nigeria in a nuanced way.

CHAPTER EIGHT

SUMMARY OF FINDINGS AND CONCLUSION

8.1: Introduction

This thesis has presented an examination of the social process of conciliation. Studies of collective conciliation and ADR more generally have tended to focus on the formal roles of key institutions and actors, notably trade unions, management and the state. Much less attention has centred on the forms of interaction that take place between trade unions and management during the resolution of collective employment disputes, and how the behavioural and attitudinal positions of the parties towards each other shape conciliation processes and end results. In looking at a wider set of relational factors this thesis has provided a more nuanced, detailed account of the process of collective conciliation. In particular, the thesis has explored information-sharing and communication between the parties; regulations, legislation and the politically contingent actions of state actors; and trade union and management relationships. It has used multiple case studies from Nigeria to show how these factors impact upon the collective conciliation process and its outcomes. Hence, the main contribution of the thesis has been to advance an understanding of the social process of collective conciliation, through an empirical study of the Nigerian context.

The main contention of this study is that an analysis of information sharing and communication, regulations and the politically contingent actions of the state, and trade union and management relations is vital to understand the social process. This investigation has been achieved through semi-structured qualitative interviews where trade union and management representatives as well as conciliators and other stakeholders that have a role to play in collective conciliation were asked to describe and reflect on the process, using their own words. By probing into the unique nature and issues in dispute and the characteristics of the parties involved in negotiations the perceptions of the actors about each other and the process of conciliation emerge, thus providing a new and valuable understanding of how the series of actions involved impact on the results of conciliation. A key argument in this thesis is that the social process of conciliation should be understood by

considering how our insight into the factors used to examine the social process of ADR, CB and N influence the actions of the actors and shape the process and outcomes of conciliation. In outline, this chapter is divided into seven sections. After this introductory section, Section 8.2 presents the overall findings of the study and section 8.3 explains its conceptual and theoretical contributions. Sections 8.4 and 8.5 give detail descriptions of the empirical and methodological contributions of this study respectively. Section 8.6 identifies areas for future research and Section 8.7 puts forward the final concluding remarks.

8.2: Overall findings of the study

This thesis has shown how our understanding of the social process of collective conciliation has been advanced through case studies of collective conciliation in Nigeria. One of the most significant results that emerge is what appears to be an elitist and insincere attitude of the state in Nigeria towards trade unions and management related matters. The state's apparent lack of political will and determination to review obsolete legislation and other issues has been linked to the failing economic situation and closure of companies operating in Nigeria. This description was established with the evidence presented in the three case studies of Vono Plc, Conoco Phillips/Pilgrims Africa and Tata, thus validating the data presented in Chapters Five and Six concerning how the hesitant role of the Nigerian state has affected the perceptions and attitude of other stakeholders in collective conciliation.

Closely linked to the findings on the role of the state is the Ministry of Labour (MOL). Interview evidence shows that the hesitant approach and unwilling behaviour of the state has undermined the effectiveness of the MOL and influenced the way other stakeholders build their trust and confidence in the effectiveness of this institution and its ability to assist during dispute situations. The MOL's lack of funds and enforcement and monitoring mechanisms has been attributed to the renegeing attitude of the parties towards the conciliation process and its outcomes. Similarly, the politicisation of the appointment of the Minister and Permanent Secretary in the MOL tends to influence the opinion of the parties regarding the

neutrality and impartiality of the institution and the results of conciliation especially, when it does not meet their expectations. The importance of an operational stakeholder forum that would allow participants to exchange experiences and keep abreast of the changes in legislation that govern the Nigerian workplace was cited during the case study interviews. It was suggested by respondents that this forum should be supervised and maintained by the MOL, thus confirming the points of view put forward by other stakeholders that have a role to play in conciliation, as referred to in the first element of the analysis that was presented in Chapters Five and Six of this thesis.

The second major finding is the analysis that was presented on the role of the conciliator, which is to assist the progress of conciliation. Trade union and management's responsibility to approach conciliation in 'good faith' and negotiate the issues in their dispute in this spirit has been identified as a key factor that shapes the procedure and end results of conciliation. The conciliator's awareness of the historical background of both parties and understanding of the unique features of the sector and industry enables the conciliator to think through the issues in dispute from the standpoint of both trade unions and management, thereby increasing the level of rapport and relationships needed to promote the trust and confidence of the parties in the conciliator's ability assist with resolution. The conciliator's ability to act as a go-between in the exchange of information and suggestions provides the support desired by the parties to communicate and identify the areas of agreement and disagreement, which is essential in order to establish a common ground and dispel any unrealistic expectations that act as obstacles towards settlement. The evidence presented in Chapter Five of this thesis asserts that a conciliator's lack of industry experience or understanding of private sector operations has a crucial influence on the way employer's representatives in particular build their trust and confidence in the ability of conciliators to assist them with resolution.

This study has found that generally management's attitude and trade unions unwavering approach during negotiations demonstrate how their relationships emerges and the way the parties build their trust and confidence in each other,

particularly when they are communicating and sharing information. This confirms the standpoints of Ott *et al.* (2016), Broughton and Cox (2012), Heery and Nash (2011) and Bond (2011), who assert the importance of communication and information sharing in relation to the promotion and improvement of the parties' relationships and also the results of negotiations. The data presented in this study indicate the impact of the parties' willingness to engage in negotiations and their readiness to conform to the end results of conciliation. It shows that management's unwillingness to engage in negotiations with trade unions during conciliation is linked to their reneging attitude towards implementing the results of conciliation and the result of this on trade unions behaviour is that it creates suspicion, anger and frustration, which undermine the effectiveness of the process and the effects of conciliation.

Another important result of this study is the issue of the parties sending individuals without a mandate to represent them at conciliation. This attitude tends to waste the time and efforts of the other party and the conciliator and weakens the process of conciliation. In addition to the discussion on mandates, empirical evidence shows that only the Human Resources (HR) manager has a mandate from management to represent them and engage in negotiations. The HR manager's awareness of these enormous responsibilities tend to influence their behaviour and impact on their attitude, and as a result, it puts them under unnecessary stress that makes them overly defensive of management actions and unwilling to make any compromise during negotiations. Empirical evidence from this study suggests the need for HR managers to obtain inputs and possibly find representatives from related departments such as finance, production, sales and marketing to attend negotiation meetings as well so that the urgent information and suggestions needed to make decisions and commitment can be made easily accessible. The trade unions' attitude on the other hand has been linked to their emphasis on meeting the interests of their constituents without considering the standpoint of management. This trade unions approach gives management the impression that trade union representatives are bullies and intimidators who lack the appropriate training and discipline to negotiate.

Another interesting finding of this study is the parties' approach to the process of conciliation. It has become obvious that the majority of management and trade union representatives approach conciliation with the mind-set that they are going to present their case before a judge who will make a ruling based on the facts and evidence therein. When this expectation is not realised, the parties express disappointment at the conciliator and in particular the process and outcomes of conciliation. This affirms the position of Dix (2000) and Kolb (1983) on the need for conciliators to explain the process of conciliation and examine the issues in dispute while at the same time reiterating their impartiality and independence to both parties.

The third significant result of this thesis is the attitude of the parties towards the process and end results of conciliation. The interviews indicated the parties' disappointment about the uncertainties that may arise at the end of conciliation. Management respondents referred to conciliators' weak approach and disposition that tend to prolong the process of conciliation. Given this viewpoint about the delay in achieving conciliation, management alluded to it as the reason for their reluctance to request conciliatory assistance, particularly when they were considering other ADR mechanisms such as arbitration. While examining the effectiveness of conciliation, a key factor that becomes evident from the analysis is the notion of 'good faith' and the readiness of the parties to negotiate the issues in their dispute in this spirit. This study affirms that the ability of the parties to adopt this mind-set has the tendency to expedite the process of conciliation and the implementation of its end result. Consequently, this description supports the findings of Dawe and Neathey (2008) and Hiltrop (1985), who assert that the settlement and satisfaction rate of conciliation tends to influence the perception of the actors about the process and final outcome of conciliation. According to these studies, customer satisfaction is particularly high in disputes where most of the key issues were resolved or when some progress was made towards resolution. This account also validates the position of Brett *et al.* (1989) on the need for each party to understand and be willing to reflect impartially on the point of view of the other party, as this tends to influence negotiation outcomes positively.

The most obvious finding to emerge from the analysis of the overall findings of this study is that it offers new insights that present the key features of the 'social process' from the standpoint of the key actors and other stakeholders. This description clarifies their level of understanding about the activities that take place during negotiations and contributes to current views on collective conciliation, such as those of Goodman (2000) and Dix (2000) who affirm the importance of the actors' perceptions regarding the fairness and objectivity of the process and end results of conciliation. This explanation also demonstrates the interconnections that exist between the approaches and opinions of the actors and establishes how such interconnections influence their attitude and relationships during negotiations and impact on the end results of conciliation. Consequently the findings present a reflection on the application of the model presented in Figure 2.3 of Chapter Two of this thesis and enhance an understanding of the social process of collective conciliation by addressing the research questions and aim of the study, presented in Chapter One of this thesis.

8.3: Conceptual and theoretical contribution

A major conceptual contribution of this study to existing research on ADR and collective conciliation is that it places an emphasis on 'social processes'. Chapter Two of this thesis showed that the collective forms of interaction between trade unions, management and conciliators during negotiation is an essential component for determining the outcomes of resolution; this is generally inferred by several studies (Dix and Oxenbridge, 2004; Dix, 2000; Goodman, 2000) but it is hardly explained. The features of these concepts became evident from the data presented by respondents during the data collection, especially when they describe the way they perceive their relationships and share information and communicate while exploring the issues in their dispute. Interview records demonstrate that conciliators and other stakeholders cited the importance of their attitude and the need for them to show willingness to make concessions during negotiations because this tends to stimulate rapport and build the relationships that is needed to attain mutual objectives and promote good relationships.

This thesis presents a graphic analysis of the relationships between ADR, CB and N theories and collective conciliation in Figures 2.1, 2.2 and 2.3. The investigation demonstrates the importance of the role of the state as the highest authority that formulates the laws that govern trade union and management-related activities. It shows how the ability of the state to ensure the parties' conformity to established legislation and compliance with the implementation of the outcomes of negotiations establishes their confidence in the effectiveness of the role of the state and its attitude to issues that relate to the parties. While emphasising the role of the state, Ridley-Duff and Bennett (2011) assert the need for the parties to take into consideration the intentions of the state and its quest for best practice by exploring rational and equitable procedures that accommodate diverse standpoints and promote fair play. This view is supported by Ott et al. (2016), who cites the need for each party to obtain information and understand the history and background characteristics of the other party prior to negotiation. According to these scholars, the parties need to give importance to the procedures involved during negotiations, especially at the preparation state. This is because it helps them each to identify the likely threats that could hinder the opinion of the other party concerning the level of satisfaction that needs to be attained at the end of negotiation. To summarise: the empirical studies conducted in this thesis have shown how the role of the state influences the parties' perception of the state's attitude to trade union and management matters. In addition, it confirms the view of the parties concerning the atmosphere created by the state for negotiation and the opinion of trade unions and management on the impartiality of the process of conciliation and its end results. This thesis has also demonstrated the importance of state legislation and regulations by indicating the need for the conciliator and other parties to consider the key issues in dispute from the standpoint of state legislation and regulations. This the study argues is because it is anticipated that the end results of conciliation ought to be in agreement with the statutory legislation and regulations that guide trade union and management matters.

This thesis has also revealed the importance of the outlook of the parties regarding their willingness to engage in negotiation, as mentioned by Ridley-Duff and Bennett (2011), who affirm that the parties' stance in relation to other stakeholders has a tendency to impact on their point of view about the power and bargaining relationships. This is also cited by collective bargaining studies (Chamberlain and Kuhn, 1965; Walton and McKersie, 1965) that lay emphasis on the need to consider the collective bargaining relationships within the context of characteristic conditions that need an agreement to be reached by the parties, hence the conjunctive and co-operative bargaining position which was later corroborated by negotiation studies that focus on the importance of integrative and distributive bargaining standpoints of the parties to the outcomes of negotiation. The key point to consider from the analysis is that it presents a description showing the importance of a good relationships to the outcomes of ADR, CB and N. Linking this explanation to the empirical chapters of this thesis, the results indicate how the parties' relationships influences their mind-set and stimulates their readiness to accommodate diverse opinions, make compromises and attain resolution that take into consideration the position of state legislation and are reflective of the expectations of their respective constituents. This demonstrates the significance of the trade union and management relationships and point towards the manner in which this connection impacts on the negotiating stance of the parties and their view about finding a middle ground that respects their common interest and relationships.

The willingness of the parties to share information and communicate with each other is closely connected to their bargaining behaviour, as cited by collective bargaining studies and their disposition to build trust and confidence and also manage the anticipations of their constituents with a view to building harmonious relationships. While affirming this point of view, negotiation studies emphasise the importance of information sharing in relation to the promotion and reflection of diverse interests at the end of negotiations. According to these studies, information sharing is linked to the perception of the parties about the role of the state and its attitude to trade unions and management related matters and so the point of view

presented by Ridley-Duff and Bennett (2011) is stressed, that in ADR the parties have the highest authority to influence the results of negotiations although this end result needs to reflect state legislation and regulations. Ott *et al.* (2016) also confirm this position when they give prominence to the importance of information-sharing in relation to the parties' problem-solving abilities and willingness to approach negotiations. According to these studies, the parties' ability to share information tends to discourage break-up behaviours and strengthens the conciliator's persuasive abilities aimed at achieving satisfactory resolution. The account presented in this thesis corroborates the above standpoints as the empirical evidence presented in Chapters Five, Six and Seven demonstrates how information-sharing and communication creates a calm and tranquil atmosphere that enables the parties to build a rapport and consider the issues in dispute with a view to reaching a resolution that sustains their relationships.

To sum up: the insight from the analysis presented on the theories and models used to understand the outcomes of ADR, CB and N is applied by this study to conciliation through case studies in Nigeria. The analysis presented in this thesis demonstrates how the factors applied by previous studies to understand the outcomes of ADR, CB and N emphasise the importance of the key elements described by this study for understanding the social process of collective conciliation, namely: information-sharing and communication, state legislation and regulations, and the trade union-management relationships. This is the first study to examine and empirically demonstrate the importance of the combination of these theories and models and present its application to practical case studies of collective conciliation in Nigeria. The end results of the investigation has offered nuanced ways of applying the themes and providing new insight needed in order to understand the social process of collective conciliation, as seen through the eyes of the actors and other stakeholders and described using their words. Hence, demonstrating the applicability of the model presented in Figure 2.3 of Chapter Two and addressing the research questions and aim of this thesis.

8.4: Empirical contribution

Bearing in mind the relational factors that influence the behaviours and actions of trade unions, management representatives and conciliators during collective conciliation, three conceptual and theoretical issues that relate to our understanding of the social process of collective conciliation arose: how does the social process influence the actions of the actors; how do the actions of the actors during negotiations impact on the process; and how does the process influence the outcomes of conciliation? As mentioned earlier in this study, the majority of ADR studies have focused on power and knowledge without taking into consideration key CB and N features such as the behaviour and approach of the parties towards each other with a view to building trust and confidence. This study adds to a growing body of ADR, CB and N literature, because it applies these factors to conciliation and uses the factors to enhance our understanding of the social processes and end results of collective conciliation within broader relational and contextual framework: Nigeria.

The major empirical contribution of this study is the role and approach of the state and its effect on the current economic conditions in Nigeria. Interview evidence shows that a poor economic situation, violence and insecurity led to the closure of some company operations in Nigeria, thereby revealing how the elitist and unresponsive attitude of the state towards trade union and management related matters affect the perceptions and attitude of other stakeholders, especially during conciliation. The reluctant demeanour of the Nigerian state to review obsolete labour legislation and financially empower statutory established institutions responsible for implementing and monitoring the operation of legislation such that defaulters are penalised accordingly, has been linked to Vono, Conoco Phillips/Pilgrims Africa and Tata Africa disputes. The absence of state-established enforcement units that would be responsible for monitoring the activities and operations of companies in Nigeria gives the impression that foreign investors may not have a government-approved framework on registration and starting business operations in Nigeria. Again this description points towards the attitude of the state and in particular how information is disseminated by statutory established state

institutions such as the MOL in Nigerian. The studies substantiate the views of Ridley-Duff and Bennett (2011), Chamberlain and Kuhn (1965) and Walton and McKersie (1965) regarding the importance of the role of the state and its effects on the activities of other stakeholders. This thesis affirms that the findings regarding the demeanour of the Nigerian state is rather disappointing, because it demonstrates how the efforts of other stakeholders seem to be frustrated by the state. It also indicates the way this impacts on how trade union and management representatives view the approach of the state towards issues that affect them and the end results of conciliation.

Another interesting finding is the attitude of the parties during negotiations and its effect on the way they share information and relate with each other. Empirical evidence presented in this thesis shows the link that exists between the history and attitude of the parties and their perception of other stakeholders. The analysis presented in Chapter Seven shows that the majority of management and conciliators describe the attitude of NUPENG and SEWUN/AUTOBATE as egoistic, aggressive and forceful. This behavioural preference by trade unions during negotiation tends to discourage management from sharing information or indicating their willingness to engage in discussions with trade unions, because according to management, the trade unions' approach does not show a readiness to listen or think through management's standpoint on the issues in dispute. This explanation confirms the viewpoints of Ott *et al.* (2016), Ridley-Duff and Bennett (2011), Chamberlain and Kuhn (1965) and Walton and McKersie (1965) on the significance of the parties' views of other stakeholders and their negotiating behaviour during negotiations.

The attitude of Vono and Conoco Phillips/Pilgrims Africa management indicates their unwillingness to share information or negotiate with trade unions, given their mind-set about the trade unions' manner of approach towards dispute resolution. In addition, the attitude of Tata management shows deceptive behaviour and delay tactics that tend to impact negatively on the way the parties share information. This study affirms that management attitude in the three case studies gives trade unions

the impression that management is not interested in union related issues, and hence this notion reveals how this attitude results in suspicion and distrust among the parties during negotiations. Interview excerpts presented in this thesis describe the trade unions and management relationships as 'cat and mouse'. This study shows how their attitude and readiness to share information influences their bargaining behaviour and demonstrates their 'win-lose'; 'win-win' or compromise approach that supports the account presented by Chamberlain and Kuhn (1965) and Walton and McKersie (1965) on the importance of the parties' bargaining behaviour and its effect of their relationships and the end results of negotiations.

Additionally, the empirical findings presented in this study provide a new understanding of the role of the MOL and identify factors that undermine its operation and effectiveness. Lack of funds and enforcing ability have been identified as the major problems facing the MOL in performing its activities, creating awareness among relevant stakeholders and advocating the importance of the parties' compliance with the process of conciliation and conformity to the implementation of its end results. Given the duties of conciliators during their interaction with the parties, an adequate training and awareness of the characteristic features of the parties and precise operations of the different sectors and industries is important, in order for them to build rapport, and to stimulate the trust and confidence of both trade unions and management in their ability to assist with resolution and at the same time maintain neutrality and professionalism during negotiations. This verifies the point of view of Dix *et al.* (2008), Dix (2000) and Kolb (1983), that the conciliator's behaviour supports the parties to approach negotiations with the frame of mind that the issues in dispute will be considered fairly and accurately; and the weaknesses of their case and faults pointed out to them without the conciliator being critical but instead persuasive and with a view to inspiring the parties to make compromises that will promote resolution and sustain a good relationships.

The conciliator's ability to reflect management's fear and uncertainty about the process and end results of conciliation tends to offer the assurance needed by management to erase the perception that conciliators are friendlier with trade unions and more responsive to them during negotiations than to management. This conciliatory stance tends to make management more comfortable about accepting that the end results of conciliation have been attained in their best interest. Interview evidence from the three case studies also reveals management's view about some conciliators' lack of industry experience and in-depth understanding of the way in which the private sector functions. This management opinion of conciliators' lack of information and knowledge tends to impact on their attitude, because they view conciliators as individuals who are unskilled in providing the assistance needed during conciliation. Suggestions presented by respondents during the interviews on how to remedy the identified lack of experience among conciliators show that the majority of management respondents emphasise the need for the MOL to arrange with industries for exchange programmes for conciliators to acquire relevant industry experience needed to build the trust and confidence of the parties in the conciliators' professionalism and proficiency, especially during negotiations.

8.5: Methodological contribution

This research considers the world as existing independently of the human mind. This world depends on the interpretations presented by the people that operate within it and as individuals engage with each other within this world there is a tendency for different understandings to arise among the actors about the same phenomenon. Engaging with this social world and interacting with the people that operate within it, the researcher was able to explore the differences in understanding and meanings, hence allowing for an in-depth consideration of the process of giving meanings to the experiences of the people that operate within this world and the context that shapes their actions and behaviours using their language.

The results of the study on collective conciliation in Nigeria indicate the importance of multiple case studies and a research strategy that allows the researcher to use two distinct elements for exploring how conciliation interviews among key stakeholders that have a role to play in collective conciliation and offered an insight into the nature, process and end results of collective conciliation in Nigeria. The second element built up on the explanations presented in the first element by presenting three detailed case studies of specific disputes centred on redundancy benefits, non-payment of gratuity and the failure to introduce employee hand-book, in the manufacturing (Vono Plc), oil and gas (ConocoPhillips/Pilgrims Africa) and automobile (Tata Africa) industries respectively. The analysis of the case studies was used to demonstrate the uniqueness of each case and to establish the experiences of the actors in relation to conciliation. This is the first study to present such an exploration and use it to advance our understanding of the social process of collective conciliation in Nigeria. The descriptions presented by respondents during the analysis of the three case studies demonstrate the application of the model presented in Figure 2.3 of Chapter Two, and advances an understanding of the social process of collective conciliation by addressing the research questions and aim of the study, presented in Chapter One of this thesis.

Another important methodological contribution of this study was the use of qualitative and non-numeric data collection and analysis. Data was collected by means of interviews conducted among conciliators, trade unions, management representatives and other stakeholders that have a role to play in collective conciliation in Nigeria. For the first element of this study, interviews were conducted among twenty-three interviewees who formed the stakeholders that gave an insight into the nature, process and outcomes of collective conciliation in Nigeria as presented in Chapters Five and Six of this thesis. This is followed by twenty-two interviews among respondents who were involved in three specific disputes which form the basis of the case studies presented in Chapter Seven. The use of semi-structured interviews establishes a conscious effort to find out more data about the way the respondents describe their role and the process of conciliation, and thus semi-structured interview questions documented in the

interview schedule served as the basis for the thematic guide from which investigations and further explorations were generated from respondents. This process allowed the researcher to have access to more detailed and wide-ranging information beyond the initial answers provided by the respondents, and thus presenting the outline used by this thesis to advance our understanding of the social process of collective conciliation.

8.6: Areas for future research

As this thesis has shown, previous studies that have considered the social process of ADR, CB and N have identified approaches that focus the importance of the key elements mentioned in this thesis, namely: information sharing and communication, state legislation and regulations, and the trade union-management relationships. It makes sense to try and use these insights to understand conciliation, because the factors presented by these studies point towards the set of elements that together can be called the social process of collective conciliation.

This study has advanced our understanding by investigating how the interaction between the key elements that have been used to understand the outcomes of ADR, CB and N can be applied and used to understand conciliation through case studies of collective conciliation in Nigeria. Our initial analysis has revealed the significance of the role of the state and the impact of its attitude towards trade union and management related matters on the perception of other stakeholders concerning the role of the state and the process of conciliation. The elitist and hesitant role of the state in Nigeria has been attributed to their unwillingness to review obsolete legislation and provide the required environment for trade unions and management related matters. Further investigation is needed in order to gain an understanding of the ideological, environmental and political features that influence the attitude and perception of the state and in particular the activities of the National Assembly as it relates to the passage of legislative bills that affect trade union and management related matters.

As shown by Ridley-Duff and Bennett's (2011) study, the importance of the legislative role of the state and its influence on the perception of the parties cannot be overemphasised. As we saw in the empirical chapter of this thesis, the hesitant and disappointing attitude of the Nigerian state seems to have frustrated trade union and management efforts and influenced their point of view on how the approach of the state affects them and impacts on the end results of conciliation. Given that this legislative responsibility of the state is being implemented by the MOL and conciliators in Nigeria there are a number of additional areas for further research that have been highlighted by the investigations carried out during this research. Future studies need to present an investigation into how much enforcement power the MOL has to monitor the implementation of the end results of conciliation. Other studies could also examine the issue of sanctions by asking the question: should the MOL be empowered to sanction parties that default on the implementation of the end results of conciliation? Or in what ways does the introduction of sanctions by MOL undermine the process of collective conciliation? This thesis affirms that the outcomes of these investigations by future studies will present the description that will be used to consider how the MOL can be made more effective and relevant among other stakeholders in collective conciliation in Nigeria.

There are also several areas for research development and application of the investigation undertaken in this thesis. The key elements – information-sharing and communication, trade union and management relationships and state legislation and regulations – used for understanding the social process of collective conciliation have been applied to the Nigerian context but could be usefully administered to the collective conciliation context in other countries. Doing this would achieve a better understanding of how the key elements advance our understanding of conciliation in other contexts and present an overall explanation of how these elements emerge and influence the process and end results of conciliation. This would therefore allow for comparison between the results presented in Nigeria and the evidence presented in other contexts. It is anticipated that this assessment could be used to categorise and connect how the distinct evolving information from the comparison produces new knowledge and enhances

our understanding of the social process of collective conciliation between Nigeria and other context in a nuanced way.

A fascinating future research project would be to consider how an independent and impartial yet state funded ADR platform could be established in Nigeria, using the explanations by Hawes (2000), Dix (2000) and Goodman (2000), about the establishment of the Advisory Conciliation Arbitration Service (ACAS) in the UK. A new set of mergers between NLAC and TUSIR among the state-established tripartite platform for addressing labour-related matters is suggested by the analysis presented in Chapters Five and Six of this thesis. As mentioned, the NLAC comprises representatives from employer's associations, trade unions and government and its objective is to provide for discussion and collaboration between the government and the represented organisations of workers and employers, particularly at the national level, on matters relating to social and labour related issues and international labour standards. The Trade Union Services and Industrial Relations Department (TUSIR) of the MOL, on the other hand, has the statutory responsibility of providing conciliators that engage with trade unions and management in negotiations and assisting them to attain dispute resolution. Further investigation into the possibility of merging NLAC and TUSIR could be used to build the trust and confidence of the parties in the neutrality and impartiality of the new ADR platform and possibly create a forum where employers, trade unions, conciliators and other stakeholders in collective conciliation in Nigeria could meet and share experiences and also learn about the changes in legislation and other related issues that guide labour-management relations in Nigeria.

8.7: Final concluding remarks

In conclusion, it is worth reiterating that this thesis presents a novel and original exploration into what the social processes of collective conciliation mean and how the process influence the results of collective conciliation. It challenges researchers on the need to critically engage with ADR, CB and N theories and models while exploring the collective forms of interaction that take place among conciliators, trade unions, management representatives and other stakeholders that have a role

to play during conciliation in Nigeria. In order to understand what this process entails and how the interaction among the actors emerge, the need to make information sharing and communication, state regulations and legislation, and the trade union and management relationships key elements for understanding the social process of collective conciliation was established as the main argument that emerged from this thesis. This is because it presents collective conciliation within a broader relational and contextual framework that takes into consideration the behaviours and perceptions of the actors regarding the process and results outcomes of conciliation. An important element of the analysis of this study is the connection that exists between ADR, CB and N theories and models and how their features are used in order to understand collective conciliation. The multidimensional demonstration of factors such as the nature of the issues in dispute, characteristics and behaviour of the parties, information sharing and communication, union and management representatives and their constituents, the institutional context and legislative factors, and relationships cannot be neglected when analysing the social process of collective conciliation, because they are essential in influencing the end results of conciliation. Additionally, interactions between the key elements within the context of dispute resolution are dependent on the experience and perception of the parties regarding the process and outcomes of this resolution.

By considering the research questions that have been presented to address the social process of collective conciliation, it is hoped that a considerably clearer view of the collective forms of interaction that take place among trade unions, management and conciliators during dispute resolution has materialised. The outcomes presented by this study are, however, limited to the descriptions obtainable from those that have experienced collective conciliation within the Nigerian context. As mentioned in Chapter One, collective conciliation plays a crucial role in the resolution of workplace disputes. This study has focused on the collective form of interaction between trade unions, management representatives, conciliators and other stakeholders that have a role to play in conciliation, to increase our understanding of the social process of collective conciliation. Empirical findings have established that by using case studies the relational factors that influence the

actions of actors such as the role of the state in Nigeria, the activities of the MOL and conciliators become visible in the way the opinions and attitudes of the parties are shaped namely: unwillingness to negotiate and compromise, hesitance and a renegeing attitude to implement the outcomes of negotiations, and aggression and the use of force to manipulate the process and results of collective conciliation. As the study engages with the social world and interacts with the people that operate within it, our exploration of the differences in their understanding and meanings has allowed for an in-depth consideration of the process of making sense of the experiences of these people that operate within it. How the parties give an account of the manner in which this procedure shapes their actions and opinions during negotiation is important, because the explanation is presented using the language and terminology of the parties, thus revealing the uniqueness of the process that is used to advance our understanding of the social process of conciliation. All of the accounts described in the empirical investigation and presented in the analysis have been used to establish the uniqueness of the nuanced approach adopted by this study and used to advance our understanding of the social process of collective conciliation.

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APPENDIX 1A

TABULAR PRESENTATION OF ALL THE INTERVIEWS CONDUCTED IN NIGERIA				
VONO dispute on Gratuity (2011-2012)	TATA dispute on employee handbook/gratuity (2010-2016)	CONOCO PHILLIPS/PILGRIMS AFRICA dispute on redundancy (2013-2014)	Other stakeholders interviewed in Lagos: the purpose of the interview is to understand the process of collective conciliation in Nigeria	Other stakeholders interviewed in Trade Union Services and Industrial Relations Department, Ministry of Labour, Abuja: the purpose of the interview is to understand the process of collective conciliation in Nigeria
Names of union officers interviewed on the social forms of interaction during this dispute	Names of union officers interviewed on the social forms of interaction during this dispute	Names of union officers interviewed on the social forms of interaction during this dispute	23. Stakeholder 1	36. Stakeholder 14
1. SEWUN, METAL/ VONO UNION 1	9. AUTOBATE 1	17. NUPENG 1	24. Stakeholder 2	37. Stakeholder 15 38. Stakeholder 16
2. SEWUN, METAL/ VONO UNION 2	10. SEWUN 1	18. NUPENG 2	25. Stakeholder 3	39. Stakeholder 17
3. SEWUN, METAL/ VONO UNION 3	11. SEWUN 2	19. NUPENG 3	26. Stakeholder 4	40. Stakeholder 18 41. Stakeholder 19
4. SEWUN, METAL/ VONO UNION 4	12. AUTOBATE 1		27. Stakeholder 5	42. Stakeholder 20
5. SEWUN, METAL/ VONO UNION 5	13. TUC/ TATA UNION 3		28. Stakeholder 6	43. Stakeholder 21
			29. Stakeholder 7	44. Stakeholder 22
HR Manager: interview is focused on understanding the social forms of interaction during the VONO dispute	HR Manager: interview is focused on understanding the social forms of interaction during the TATA dispute	HR Manager: interview is focused on understanding the social forms of interaction during the PILGRIMS dispute	30. Stakeholder 8	45. Stakeholder 23
6. VONO HRM	14. TATA HRM	20. PILGRIMS AFRICA HRM	31. Stakeholder 9 32. Stakeholder 10	
Conciliators: interview is focused on understanding the social forms of	Conciliators: interview is focused on understanding the social forms of interaction during the TATA dispute	Conciliators: interview is focused on understanding the social forms of interaction during the PILGRIMS dispute	33. Stakeholder 11	

interaction during the VONO dispute				
7. VONO CONCILIATOR 1	15. TATA CONCILIATOR 1	21. CONOCO PHILLIPS/PILGRIMS AFRICA CONCILIATOR 1	34. Stakeholder 12	
8. VONO CONCILIATOR 2	16. TATA CONCILIATOR 2	22. CONOCO PHILLIPS/PILGRIMS AFRICA CONCILIATOR 2	35. Stakeholder 13	

APPENDIX 1B

TABULAR PRESENTATION OF THE POSITIONS OF RESPONDENTS

Trade union representatives	Position of respondents
1. SEWUN, METAL/ VONO UNION 1	Principal Assistant General Secretary
2. SEWUN, METAL/ VONO UNION 2	Principal Deputy General Secretary
3. SEWUN, METAL/ VONO UNION 3	Deputy General Secretary
4. SEWUN, METAL/ VONO UNION 4	National President of SEWUN, Metal Section
5. SEWUN, METAL/ VONO UNION 5	Organizing Secretary of SEWUN, Metal Section
6. TATA AUTOBATE 1	National President, AUTOBATE
7. TATA SEWUN 1	Principal Deputy General Secretary, SEWUN
8. TATA SEWUN 2	Assistant General Secretary, SEWUN
9. TATA AUTOBATE 2	General Secretary, AUTOBATE
10. TUC/ TATA UNION 3	Head, Industrial Relations, National Secretariat, Trade Union Congress
11. NUPENG 1	Secretary, Lagos Zone of NUPENG
12. NUPENG 2	Senior Organizing Secretary of NUPENG
13. NUPENG 3	Chairman, Lagos Zone of NUPENG
Management representatives	
14. TATA HRM	HR Manager TATA
15. VONO HRM	HR Manager VONO
16. PILGRIMS AFRICA HRM	HR Manager PILGRIMS AFRICA
Conciliators involved in case study disputes	
17. TATA CONCILIATOR 1	Chief Labour Officer, Ministry of Labour, Lagos
18. TATA CONCILIATOR 2	Labour Officer, Ministry of Labour, Lagos
19. VONO CONCILIATOR 1	Asst. Director, Ministry of Labour, Lagos
20. VONO CONCILIATOR 2	Senior Labour Officer, Ministry of Labour, Lagos
21. CONOCO PHILLIPS/PILGRIMS AFRICA CONCILIATOR 1	Chief Labour Officer, Ministry of Labour, Lagos
22. CONOCO PHILLIPS/PILGRIMS AFRICA CONCILIATOR 2	Labour Officer, Ministry of Labour, Lagos
Key stakeholders involved in collective conciliation in Nigeria	
Senior officials and key respondents at the Ministry of Labour, Lagos and Abuja	
23. Stakeholder 1	Zonal Director, South-West, Ministry of Labour
24. Stakeholder 2	Lagos State Controller, Ministry of Labour, Lagos
25. Stakeholder 3	Asst. Director, (National ElectronICN Labour Exchange) Ministry of Labour, Lagos

26. Stakeholder 4	Asst. Director, Ministry of Labour, Lagos
27. Stakeholder 5	Deputy Director, Trade Union Services and Industrial Relations Department (TUSIR), Ministry of Labour, Abuja
28. Stakeholder 6	Asst. Director, TUSIR, Ministry of Labour, Abuja
29. Stakeholder 7	Chief Labour Officer, TUSIR, Ministry of Labour, Abuja
30. Stakeholder 8	Asst. Director, Labour, Dept. of Employment & Wages, Ministry of Labour, Abuja.
31. Stakeholder 9	Chief Labour Officer, Labour, Dept. of Employment & Wages, Ministry of Labour, Abuja.
32. Stakeholder 10	Chairman, Assoc. of Senior Civil Servants of Nigeria, Abuja
33. Stakeholder 11	Asst. Director TUSIR, Ministry of Labour, Abuja
34. Stakeholder 12	Registrar, Institute of Chartered Mediators and Conciliators, Abuja
35. Stakeholder 13	Chief Research Officer, Institute for Peace and Conflict Resolution, Abuja
Other stakeholders (employers association/management representatives) involved in collective conciliation in Nigeria	
36. Stakeholder 14	Director, Social Economic & Labour Affairs Department, Nigeria Employers' Consultative Association
37. Stakeholder 15	Senior Executive, Social Economic & Labour Affairs Department, Nigeria Employers' Consultative Association
38. Stakeholder 16	Executive Secretary, Hotel & Personal Services Employers' Association of Nigeria
39. Stakeholder 17	-Group General Manager Human Resources, Tower Aluminium Nigeria Plc -Chairman, National Joint Industrial Council
40. Stakeholder 18	-Deputy General Manager Personnel, West Africa Household Utilities Manufacturing Company Nigeria Ltd -Former union representative for over twenty years (SEWUN)
41. Stakeholder 19	-Company Secretary & Legal Adviser, Eko Hotels Limited -Former Chairman, HOPESEA -President, Federation of Tourism Association of Nigeria -Management Rep during CB & DR for Construction and Food & Beverage Industries.
42. Stakeholder 20	Head Human Resources, Lagos Airport Hotel Limited
43. Stakeholder 21	Manpower Development Manager, Seven-up Bottling Company PLC
44. Stakeholder 22	Branch Human Resources Manager, Seven-up Bottling Company PLC
45. Stakeholder 23	Human Resources Manager, Kunech Group of Companies

OBSERVATION OF COLLECTIVE-CONCILIATION DISPUTES.

Name of organization and trade union	Issues in dispute	Year	Outcome
Gold Cross Hospital Management and Employee Representatives	Redundancy and re-organization	2015/2016	On-going
TATA Management and AUTOBATE union	Redundancy	2016	On-going

APPENDIX 2

INTERVIEW SCHEDULE

PROBING QUESTIONS FOR STAKEHOLDERS THAT HAVE A ROLE TO
PLAY IN CONCILIATION

- How would you describe the process of collective conciliation?
- How would you describe the role of the conciliator?
- How would you describe the styles and strategies adopted by conciliators during negotiations?
- How does the conciliator build trust and confidence of the parties?
- How does the conciliator prove his/her independence and neutrality to the parties?
- How much confidence do the parties have in the process of conciliation?
- How well do the parties share information with each other and the conciliator during conciliation?
- How would you describe the relationships between trade union and management (before, during and after) conciliation?
- How would you describe the legislation that guide conciliation in Nigeria?
- How would you describe the role of the MOL and TUSIR department?
- How much enforcement power do you think TUSIR has to implement the outcomes of conciliation?
- How does the conciliator manage the issue of mandate and signing of agreement at conciliation?
- How would you describe the actions and behaviour of trade unions and management?
- How effective do you think conciliation process is in Nigeria?
- What are some of the challenges that you faced during conciliation?
- How would you describe your overall experience at conciliation and why?
- How important do you think the process and outcome of conciliation is and why?

PROBING QUESTIONS FOR TRADE UNIONS AND MANAGEMENT IN CASE
STUDY DISPUTES

- What are the key issues in the dispute?
- How would you describe your role in the dispute?
- What are the factors that influence your role in the dispute?
- Are you aware of the principles that guide your role? If yes, what are the principles?
- Are you aware of the regulations that relate to the issues in your dispute?
- How does your understanding of these regulations influence your actions during the dispute?
- How would you describe your relationships with other unions in your organisation?
- How would you describe the way information was shared between trade unions and management and why?
- What does mandate mean and how important is it during negotiations?
- How would you describe unions/ management relationships during this dispute and why?
- How did unions/ management relationships during this dispute affect their actions?
- To what extent do you think the trade union/ management were willing to reach compromise?
- To what extent would you say the conciliators assisted in the resolution of this dispute and why?
- How would you describe your experience at conciliation and why?
- How would you rate your satisfaction at the end of the dispute?
- Are there lessons learnt from your experience of resolving disputes? If yes, what are they?

PROBING QUESTIONS FOR CONCILIATORS IN CASE STUDY DISPUTES

- How would you describe your role in the dispute?
- What are the factors that influence your role in the dispute?
- What are the challenges that you faced during the dispute?
- How did you handle these challenges?
- In what ways did your handling of the challenges facilitate the resolution of the dispute?
- How would you describe the relationships between the management and trade unions during this dispute?
- How would you describe your relationships with unions and management during this dispute?
- To what extent would you say that the trade unions and management were willing reach compromise?
- How would you rate the behaviour of trade unions/management in this dispute?
- How would you describe your experience with trade unions and management during conciliation?
- What form of assistance, skills or tools do you need to enhance your performance during conciliation?

APPENDIX 3
LETTER TO RESPONDENTS

Ige, Adejoke Yemisi
Post- Graduate Research Student,
Leeds University Business School,
University of Leeds,
LS29JT, Leeds, UK
16th March 2015.

Dear Sir/madam,

Request for participation in research

I am a Postgraduate Research Student at Leeds University Business School. I am conducting a PhD project entitled: 'An investigation into the social process of collective –conciliation in Nigeria'. The purpose of this letter is to request your participation in this research for the purpose of data collection, which will be obtained through interviews which can be conducted face-to-face, via telephone or skype internet call. The purpose of this interview is to enable the researcher to generate data from respondents, which would be used to explain the social process of collective conciliation.

Your cooperation is highly solicited and any information given will be treated with strict confidence, in accordance with the University of Leeds ethics regulations. The data generated from this study will be solely for the purpose of this research. I appreciate your kind consideration with regards to this request and thank you in anticipation for your assistance. I would be glad to clarify or respond to any queries regarding this study. You can contact me through my e-mail: igeadejoke@yahoo.com, bnayi@leeds.ac.uk,

Kind regards.

Ige, Adejoke Yemisi

APPENDIX 4

PARTICIPANT CONSENT FORM

Title of Research Project: An investigation into the social process of collective conciliation in Nigeria

Name of Researcher: Adejoke Yemisi Ige

Initial the box(X) if you agree with the statement to the left

- 1 I have read and understand the information sheet/ letter dated explaining the above research project and I have had the opportunity to ask questions about the project.
- 2 I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason and without there being any negative outcomes. In addition, should I not wish to answer any particular question or questions, I am free to decline. *The contact number of lead researcher is 07424740265*
- 3 I understand that my responses will be kept strictly confidential. I give permission for members of the research team to have access to my anonymised responses. I understand that my name will not be linked with the research materials, and I will not be identified or identifiable in the report or reports that result from the research.
- 4 I agree for the data collected from me to be used in future research
- 5 I agree to take part in the above research project and will inform the principal investigator should my contact details change.

Name of participant

Date

Signature

(or legal representative)

Name of person taking consent

Date

Signature

(if different from lead researcher)

To be signed and dated in presence of the participant

Adejoke Yemisi Ige

Lead researcher

Date

Signature

APPENDIX 5						
DATA ON COLLECTIVE CONCILIATION DISPUTES IN NIGERIA FROM 2010-2016						
s/n	Year	Name of union/management	Nature and causes of disputes	Number of workers	Duration of dispute	outcome
1	2015/201	Osun State Civil Servants/ Osun State Government	Non-payment of 8months salary and welfare	48,500	1 month	Resolve
2	2015/201	Employee Representatives /Management of Asphalt Production Company	Redundancy	58	40 days	Resolve
3	2015/201	Construction Workers Union/ Management	Management decision to discontinue collective agreement on annual increment	70,000	-	Pending
4	2015/201	Employee Representatives/ Management of Gold Cross Hospital	Non- payment of 8 months salaries	30	-	Pending
5	2015/201	Agriculture and Allied Employees Union/ Management of Rubber Estate Nigeria Ltd	Trade union recognition	394	-	Pending

6	2015/201	Senior Staff Association of Nigerian University/Federal University of Technology Akure	Unlawful deployment	425	-	Pending
7	2015/201	Hotel and Personal Services Senior Staff Association/Ministry of commerce and Industry	Unlawful disengagement of workers, breach of existing collective agreement and refusal to pay outstanding 19months' salary arrears	150	-	Pending
8	2015	Joint Public Service Negotiating Council/ Ondo State Government	Non-payment of co-operative and thrift society, shilling funds and monthly loan repayment deduction	1,000	3 months	Resolve
9	2015	National Association of Nigeria Nurses and Midwives	Cancellation of unity election	350	7 days	Resolve
10	2015	Nigerian Union of Local Government Employees/ Ekiti State Government	Minimum wage	3,000	1 month	Resolve
11	2015	National Air-transport Workers Association (NUATE)/ Air France/KLM	Non-payment of redundancy package	80	4 months	Resolve

12	2015	Senior Staff Association of Nigeria Universities/ Adekunle Ajasin University, Akungba Akoko, Ondo State	Unlawful termination of Appointment	435	-	Pending
13	2015	Agriculture and Allied Employees Union/ Management of Okitipupa Oil palm Nigeria Ltd	Trade union recognition	1,980	-	Pending
14	2014	Union of Tipper & Quarry operators of Nigeria/ National Union of Road Transport Workers	Jurisdictional dispute	2,000	7 days	Resolve
15	2014	Association of Senior Civil Servants/ Nigeria Civil Service Union	Alleged poaching of members	30,000	1 month	Resolve
16	2014	Maritime Union Workers of Nigeria/ Hydrodive Nigeria LTD	Non-unionization	-	-	Pending
17	2014	Ogun JNC/ Ogun State Government	Non remittance of pension and other deductions	2,000	2 days	Resolve
18	2014	National Union of Banks Insurance & Financial	Acquisition of AECSSL & Non-remittance of check-off	-	-	Pending

		Institutions Employees/ AEC Security Services Limited	Dues			
19	2014	National Union of Transport Employees/ Cave ton	Redundancy	-	-	Pending
20	2014	National Union of Hotel & Personnel Services Workers/ Sheraton Hotels Victoria Island & Lekki	Trade Union Recognition	1,000	-	Pending
21	2013	Ekiti State Civil Servants/Ekiti State Government	Non-payment of August and September salary	7,000	14 days	Resolve
22	2013	National Union of Chemical Footwear Leather & Non- metallic Products Employees/Nycil	Payment of check off dues to unregistered union	70	2 days	Resolve
23	2013	NUPENG/ Sterling Global Oil Resources	Redundancy	156	-	Pending
24	2013	Employee Representatives/ Frencies Foods Nigeria Limited	Non-payment of salaries/arrears	20	-	Pending
25	2013	National Union of Printing	Non-remittance of check-off	-	-	-

		Publishing and Paper Products Workers/ Epesok Paper Mills LTD.	Dues			
26	2013	Academic Staff Union of Research Institute/ National Institute of Sports	Unfair Labour Practices	500	1 month	Resolve
27	2013	National Union of Hotel & Personnel Services Workers/ Things Remembered Snacks, Bar & Restaurant	Victimization of employees & Non-payment of entitlement	-	-	Pending
28	2013	SEWUN/ Germaine Auto Centre	Union recognition	-	-	Resolve
29	2013	NUPENG/ CONOCO PHILLIPS & PILGRIMS AFRICA	Redundancy			
30	2012	Ekiti State union of NASU/ Ekiti State Government	Non-payment of salary	300	1 month	Resolve
31	2012	National Union of Civil Engineering, Construction, Furniture & Wood workers/ Denver Building Services	Anti-union practices	-	-	Pending
32	2012	National Union of Road	Dismissal of employees	-	-	Pending

		Transport Workers/ Human Rights League				
33	2012	National Union of Food Beverage & Tobacco Employees (Niger Biscuit Branch)/Management	Suspension of branch union officials & formation of caretaker committee	-	-	Pending
34	2012	National Union of Chemical Footwear Leather & Non-metallic Products Employees/ OK Plast Nigeria LTD	Casualization of employees	1000	14 days	Resolve
35	2012	SEWUN/Niger Dock	Gratuity	500	21 days	Pending
36	2011	Petroleum and Natural Gas Senior Staff Association of Nigeria/ Management of Oil & Gas Companies	Unfair labour practices, anti-union activities	32, 000	3 days	Resolve
37	2011	National Union of Chemical Footwear Leather & Non-metallic Products Employees/Gemini	Non-union recognition			Pending

		Pharmaceutical				
38	2011	Osun State Civil Servants/ Osun State Government	Non-payment of salary	48,000	37 days	Resolve
39	2011	Sterling Oil Exploration/ Aineregy Contracting Services LTD	Severance of kitchen and auxiliary personnel	156	-	-
40	2011	SEWUN/ VONO Plc	Gratuity	-	-	Resolve
41	2010	National Union of Printing Publishing and Paper Products Workers/ Management of Maple Leaf Nigeria LTD.	Non-union recognition	-	-	
42	2010	SEWUN/VACC Technical	Non-union recognition	-	-	Pending
43	2010	National Union of Chemical Footwear Leather & Non- metallic Products Employees/KSR Nigeria Limited	Wrongful termination	-	-	Pending
44	2010	AUTOBATE, SEWUN/ Management of Tata	Employee Handbook/ Gratuity	3,000	6 years	Resolve
45	2010	National Union of Chemical	Redundancy		-	Pending

		Footwear Leather & Non-metallic Products Employees/ CFAO Motors				

Source: Ige, A.Y 2016.

APPENDIX 6: ETHICS APPROVAL

Research Support
3 Cavendish Road
University of Leeds
Leeds LS2 9JT



Tel: 0113 343 4873

E-mail: j.m.blaikie@adm.leeds.ac.uk

Adejoke Ige
LUBS
University of Leeds
Leeds, LS2 9JT

AREA Faculty Research Ethics Committee
University of Leeds

Dear Adejoke

Title of study: **Assessing the United Kingdom Advisory, Conciliation
Arbitration Service (ACAS) settlement process**

Ethics reference: **AREA 10-067**

I am pleased to inform you that the above research application has been reviewed by the ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee and following receipt of the amendments requested, I can confirm a favourable ethical opinion on the basis described in the application form and supporting documentation as of the date of this letter.

The following documentation was considered:

<i>Document</i>	<i>Version</i>	<i>Date</i>
AREA 10-067 researcher's 1st reponse.txt	1	31/03/11
AREA 10-067 Ethical_Review_Form.doc	2	09/03/11
AREA 10-067 ACAS Letter of Introduction for access.doc	1	09/03/11
AREA10-067ConsentForm.pdf	1	09/03/11

Please notify the committee if you intend to make any amendments to the original research as submitted at date of this approval. This includes recruitment methodology and all changes must be ethically approved prior to implementation.

Please note: You are expected to keep a record of all your approved documentation, as well as documents such as sample consent forms, and other documents relating to the study. This should be kept in your study file, which should be readily available for audit purposes. You will be given a two week notice period if your project is to be audited.

Yours sincerely

Jennifer Blaikie

Research Ethics Administrator

Research Support

On behalf of Dr Anthea Hucklesby

Chair, AREA Faculty Research Ethics Committee

CC: Student's supervisor(s)

APPENDIX 7

STATISTICAL PRESENTATION OF ADR DISPUTES IN NIGERIA 2000-2015

Years	No. of disputes reported at mediation	No of disputes settled or frustrated at mediation	No. of disputes reported at conciliation	No of disputes settled by conciliation	No. of disputes reported at IAP	No of disputes settled by IAP	No of disputes settled by NICN
2000	49	6	-	42	-	10	28
2001	51	27	-	24	-	32	27
2002	50	28	-	22	-	28	24
2003	149	117	-	32	-	18	23
2004	152	107	-	45	-	15	21
2005	157	118	160	138	22	10	6
2006	162	146	164	140	24	13	5
2007	159	155	161	135	26	11	12
2008	171	167	162	144	18	10	6
2009	184	170	180	153	27	14	13
2010	188	185	206	181	25	5	10
2011	193	190	296	178	38	18	10
2012	180	160	206	140	16	15	8
2013	199	177	239	185	54	5	2
2014	210	200	304	189	115	13	9
2015	212	195	296	191	105	9	4

Source: Ministry of Labour, Nigeria.