

Social Dialogue Under Globalization in Nigeria: Does Democracy Add Value?

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Abstract

Social dialogue as an aspect of the International Labour Organisation (ILO) is aimed at promoting industrial democracy by encouraging consensus building among social partners in the work place. The significance lies, among others, in minimising conflicts to enable harmonious industrial relations. This study utilized specific case illustrations to examine the inclination of the Nigerian government towards social dialogue in government-labour relations, with particular reference to the Obasanjo era 1999-2007— a period associated with the globalization of democracy. The cases included the minimum wage award 2000, University Autonomy Bill, the price deregulation of the downstream oil sector and the Trade Union Amendment Bill 2004. It was found that the government exhibited a penchant for authoritarianism in spite of the globalization of democracy. This was evident in the incapacity of the Obasanjo government to engage the social partners in social dialogue as indicated by the cases reviewed. The study, however, highlighted the modest contribution to social dialogue made by the wider democratic structure. It was concluded that the government had limited capacity for consensus building, accommodation of opposition and negotiated outcomes in government-labour relations.

Introduction

The conventional focus of industrial relations is how individuals and groups, the organizations representing their interests and wider institutional forces determine decisions affecting employment relationships. These include the contractual relationships between employers and employees, and the power relationships between employers and trade unions. The relationship integral to this implicates social dialogue currently emphasized by the International Labour Organization (ILO) as part of its Decent Work Agenda (Anker et al. 2002). Social dialogue refers to all types of negotiation, consultation or simply exchange of information between or among representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. Variables associated with social dialogue include freedom of association, collective bargaining, voice representation, security, and labour laws all of which are crucial for harmonious industrial relations.

Social dialogue as part of social regulation in labour relations is very important in developing economies where weak capacity for institutional regulation under neo-liberal economic globalization has resulted in the return of the iron fist of management - high handedness on the part of employers with implication for labour exploitation and conflict. Hence, the promotion of social dialogue can be viewed as part of a strengthening of global movement concerned with the promotion and protection of a wide range of human rights under

globalization, among which workers' rights form an important component. This implicates countries like Nigeria with an impressive record of ratification of ILO conventions on the one hand and deplorable real working conditions on the other - indicative of low commitment to the standards particularly under the ongoing private sector-led reforms. The ILO's Declaration on Fundamental Principles and Rights at Work, points to the imperative of making those principles and rights the foundation for the global economy, thereby making globalization capable of serving other key social goals such as employment, security and representation - as part of the goal of wealth creation. This implicates a more holistic policy framework in which social goals are an integral part of a strategy for economic growth and sustainable development.

The democratic era in this study is taken from May 1999 when the Fourth Republic commenced. The period also coincides with the era of the globalization of democracy in its liberal framework - which should be supportive of social dialogue in state-civil society relations given its emphasis among others, on rights and freedoms, the rule of law and pluralism evident in the multi-party electoral competition. This, however, was rarely the case, particularly at the level of the executive. The paper is divided into four sections. In the second and third sections that follow this introduction, I examine specific state-labour issues that relate with social dialogue in the pre- democratic and democratic periods respectively, while the fourth is the concluding section.

Social Dialogue and State-Labour Relations in the Pre-Democracy Era

The authoritarian state relations with labour during the era of military rule that occurred in much of the period between 1984 and 1999 and the draconian labour laws are well documented (Adesina , 1995). Only a summary is needful here to enable us establish the basis for comparison with the period of civil rule under the Obasanjo government.

Although industrial relations in Nigeria is premised on collective bargaining given its pluralist orientation, State-labour relations in practice have rarely reflected this framework. This is because of the authoritarian approach of the State to industrial relations - evident in such areas as wage determination and legal regulation of industrial relations through authoritarian means that often conflicted with international labour standards ratified by Nigeria (Onyeonoru and Aborisade, 1998; 2001; Onyeonoru, 2004). The authoritarian nature of the colonial State which translated to repressive state-labour relations in the colonial period (Otobo, 1988) did not fundamentally change at independence because the post-colonial state retained its dominant authoritarian character both in terms of structure and culture. The State remained inherently anti-democratic and served as the repressive apparatus of the occupying power:

The character of the colonial state did not change significantly at independence since with a few exceptions the colonial state was inherited rather than transformed. Like the colonizers before them most of the nationalists leaders regarded the state as the instrument of their will. They privatized, and exploited it for economic gain and used it oppressively to absolutized their power.

Even after independence, the state in Africa has not become a reassuring presence but remains a formidable threat to everybody except the few who control it (Ake 1994:7).

The State in its ambivalent position as employer and regulator of industrial relations has rarely associated itself with democratic norms reflective of the pluralist orientation of limited intervention via the Trade Union Act, 1973 and Trade Dispute Act, 1976 and within which framework it carried out the 1975-78 trade union restructure.

Irrespective of the fact that the decreeing of the 42 industrial unions which constituted the Nigeria Labour Congress (NLC) reduced tensions arising from ideological conflicts, Fajana (1997) observed that the enduring negative consequences include the umbilical tying of the unions to the dictates of the State as manifested in the prerogatives ascribed to the State to habitually intervene in the internal affairs of trade unions - in contradiction with its stated policy of limited intervention and guided democracy. A lack of the State's commitment to social dialogue also manifested in the jailing of 11 members of staff in the senior cadre of the National Electric Power Authority (NEPA) in 1988 for participation in a strike. The era was replete with arrests and detention of trade unionists without trial and the banning of university teachers' union in 1988 and 1992. The neo-liberal doctrine of offing back the frontier of the state which posits that the trade union undermines free-market exacerbated state encroachment upon and violation of the autonomy of the social institutions of civil society, such as trade unions (Otobo, 1992; Adesina, 1994; 1995).

An overview of the provisions of a few of the labour laws enacted under the Abadia military junta, may illustrate the dictatorial atmosphere that characterized state-labour relations at the time:

- The Nigeria Labour Congress (Dissolution of National Executive Council) Decree 1994 (Decree No. 9) that dissolved the national bodies of the NLC, while the NUPENG & PENGASSAN (Dissolution of Executive Councils) Decree 1994 (Decree No. 10) dissolved the respective National and State Executive Councils of the National Union of Petroleum and Natural Gas Workers and the Petroleum and Natural Gas Association of Senior Staff of Nigeria.¹
- Trade Union (Amendment) Decree 1996 (No. 4 of 5 January), signed into law on January 5, 1996, gave legal backing to the restructuring of the 41 trade unions to 29 and went further to prevent full-time union officials such as General Secretaries from contesting elective posts into the NLC.
- Decree 26 signed into law on 16 October 1996 provided for the following: a mandatory 'no-strike' clause for all collective agreement; the stoppage of the deduction of check-off dues

¹ The clampdown on the unions took place in the aftermath of the oil workers strike of 1994 see Onyeonoru and Aborishade 1998; 2001, for details)

and remittance to the union by the employer where unions embarked on a strike, (S. 16A(b); S.17 (4); a criminal offence for anybody who is not a "card-carrying member of any trade union to participate and assume a functional role in any of the policy or decision making organs and committees, or formations within the union or the Central Labour Organisation except if the function is strictly limited to administrative duties (S. 33(8); de-registration of the union and a fine of ₦100,000 or five years imprisonment or both for contravening the law (S.33(9); removal of the powers of the High Court as defined in Sections 5 & 7 of the 1973 Trade Union Act to hear appeals against refusal to register a union or (a proposed) cancellation of union registration, respectively with the Minister of Labour substituted for the High Court; and power conferred on the Minister to revoke the certificate of registration of any of labour unions for reasons of "overriding public interest" (S.7 (9)).

- Trade Unions (International Affiliation) Decree 1996 (No. 29 of 23 October) de-affiliated the NLC from international labour organizations with the exception of the Organisation of African Trade Union Unity (OATUU) and the Organisation of Trade Unions for West Africa.

Clearly the stated laws were stifling for the trade unions and reflected a resolve by the Abacha regime to muzzle the unions and absolutely control the industrial relations arena.

Social Dialogue and State-Labour Relations in the Democratic Era

• Minimum Wage Award 2000

The democratic government of Obasanjo that came to power on May 29, 1999 proceeded to announce on May 1, 2000 an unnegotiated minimum wage of ₦7,500 for federal government workers and ₦5,500 for state government workers. This generated a lot of crisis in the industrial relations system as state governments protested the award on the basis of the fact that they were not consulted before the fixing and, hence, could not pick up the wage bill. The conflict led to widespread strikes between the NLC and state governments all over the country. Striking workers in several states were sacked including union officials in some cases. In Osun state for instance, the President of the Nigeria Union of Local Government Employees (NULGE) and 556 public sector workers lost their jobs during the strike (Olowogboyega 2000). In Lagos State, the Chair of the Lagos State Council of Industrial Unions also lost his job in similar circumstance. The tendency for wage award by the Nigerian government instead of collective bargaining (Damachi and Fashoyin 1986; Onyeonoru 2004) is one that plays out the authoritarian instinct of Nigerian state actors in the industrial relations field. This trend rarely changed under the Obasanjo - led democratic government - as discussions below may indicate.

• University Autonomy Bill 2003

University autonomy derives from the need for the university system to be girded from the assault of those whose concern with the exercise of power and control may

negatively affect the soul of the university and, hence, limit the potential and capacity of society to take advantage of the opportunities in the environment. It upholds the right of the members of the academic community to determine the manner in, or the ground rules by which they are governed and their capacity as a unit, to control their own affairs and shape their own destiny, relatively free of external interference or dictate.

Here lies the democratic intent. The autonomy question was one of the major issues in contention in the industrial disputes between ASUU and the federal (military) government particularly, within the period 1992 to 1999 dominated by military rule. The Academic Staff Union of Universities (ASUU) took advantage of the democratic era to sponsor in 2003, "The University (Miscellaneous Provisions) Bill 2003" - the Bill for an Act to Amend the University (Miscellaneous) Act of 1993. The Bill was ultimately signed into law by the then President Olusegun Obasanjo on July 3, 2003 consequent upon public hearing.

On the 27th of May 2004, the then Minister of Education, Prof. Abraham Borishade in a press statement conveyed the intention of the Federal Government to undertake a comprehensive assessment of the issues pertaining to good governance and productive management of the universities. According to the Minister,

the government wishes to define the purposes and roles of universities in national development and proffer sustainable strategies for the achievement of that purpose. The government is convinced that existing proposals on the subject matter are insufficient to be a basis for the establishment of a legal framework, within the constitution of the Federal Republic of Nigeria, for the establishment of universities.

The Federal Government proceeded to set up a 17-man panel, to review its proposed policy on university autonomy to enable the government prepare a draft bill to the National Assembly for an Act on a university autonomy in the country (This Day, May 28, 2005). Subsequently, the President in July 2004, proceeded to the National Assembly with an alternative bill on university autonomy without the implementation of the subsisting Act. The authoritarian provisions of the bill are noteworthy:

- to empower the Vice-Chancellor to by-pass Council and prepare/submit annual reports on, and audited accounts of the university, direct to the Visitor through the National University Commission;
- to empower the Vice-Chancellor to appoint and dismiss Heads of Departments and nominate persons to be appointed Registrar and Librarian;
- Council was to be dominated by external, un-elected members;
- to vest in the Visitor arbitrary and enormous powers, either which he never had before or that were previously wielded by internal organs of the university - empowered to determine the tenure of governing councils, exercise the discretion to determine the composition of governing councils and vary their memberships at will;
- to empower the Federal Government to abolish any university to have fallen short of NUC guidelines on the conditions for establishment and manner of administration and management.

The Bill was made without the input of the Senates and Governing Councils of the Nigerian universities and its content undermined the internal democracy of the institutions. The academic staff union described the new bill as an "attempt to muzzle it and frustrate its struggle for the sustenance of the nation's university system (Daily Independent, July 15, 2004; The Guardian Friday, July 16 2004).

• **Price Deregulation Of Downstream Oil Sector**

Attempt to align the prices of oil products with the international market led to incessant increases in the products between 1999 and the exit of the Obasanjo administration in May 2007. This brought the NLC into headlong collision with the government as the former organized several nation-wide protests in coalition with other civil society organizations to resist the price increases. The salient point to make here is the fact that the NLC objected to the lack of consultations with stakeholders in decisions bothering on such a public interest issue.

The NLC-led protests were to create divisions among the top hierarchy of the Ruling Peoples Democratic Party (PDP) to the effect that the National Chairman of PDP, Chief Audu Ogbeh, in a Press conference, regretted that certain international forces were behind the controversial deregulation process of the Obasanjo administration, and that the Party was in a dilemma over the resultant hardship. According to him,

*We have international agencies saying 'deregulate' and yet, as a political group, we are aware that if you surrender your country to the fierce forces of the market, you will crush many people to the dust... We are in a dilemma, what do we do? . . . as a political party, we keep expressing concern that there must be a meeting point because something has to be done to heal the pain because we are not all strong enough to cope ... We are very worried about it. The pain is heavy but then you are told if **you** are deregulating this is inevitable, otherwise, we can't find somewhere around. It is a very difficult thing and we are all agonizing over it. That is the truth." (Guardian 30 September 2004).*

The statement was a pointer to the externality of the neo-liberal economic reforms in Nigeria - contrary to government's claims. Upset by the pressure from the civil society arising from the protests, President Obasanjo went on air and accused the NLC of running a parallel government. On the 8th of June 2004, he proceeded to sponsor a unilateral Trade Union Amendment Bill 2004, at the National Assembly. This was irrespective of the tripartite body facilitated by the senate which was already working on the labour reforms.

• **Trade Union (Amendment Bill) 2004**

The stated objectives of the Bill as officially spelt out in the government's letter to the Senate, was woven around the promotion of the democratization of labour, further strengthening of labour, to enhance choices for all Nigerian

workers in the true spirit of the Constitution; to comply with ILO requirements concerning democratization in the organization of labour unions and centres; and to consolidate the values of accountability and participation. The Bill, however, contained authoritarian provisions given that it specifically sought, among others, to:

- to confer upon the Minister discretionary powers in deciding whether or not members of trade unions employed in different trades, occupations or industries could form or join a single federation of trades unions;
- insert a no-strike clause in the collective bargaining agreement as a condition for remittance of union dues by employers (without a corresponding "lock out" clause);
- make it mandatory for a trade union or registered federations of trades unions to obtain a two-thirds majority vote of all members before embarking on a strike; de-register the Nigeria Labour Congress (NLC) as the only legally recognized central labour organization (rather than federalize); a six months jail term for picketing.

In his submission on the matter, the ILO Director, Cornelius Dzakpasu, urged the government to halt the legislative process on the labour bill so as to make the expected reforms meet the basic requirements that may lead to passage of a law acceptable to all stakeholders in the industrial relations sector stressing the need for observance of social dialogue as enshrined in its Convention 144 on tripartism in the process leading to reforms of labour laws. The Director insisted that the process adopted by the NLC, Nigeria Employers Consultative Association (NECA) and government with the assistance of the ILO in reviewing the labour laws which was to culminate in the Collective Labour Relations Bill before the government's Bill overshadowed it, was capable of ensuring that the end result was not only credible and acceptable but meet all the fears and meet the expectations of the stakeholders especially on the issue of ownership. According to the ILO:

One of the concerns related to globalization is the distribution of the benefits both within and between countries. Social dialogue is an effective means of distributing economic and social gains in an equitable and democratic manner. It contributes to good governance by increasing transparency and accountability in decision-making at the enterprise, sectoral, national, regional and global level. National case studies undertaken by the Office on the role of social dialogue in Barbados, the Czech Republic, Indonesia, Kenya, Panama, the Philippines, Poland and Zambia have demonstrated the value of social dialogue in addressing labour market problems and the importance of this for labour peace, social stability and national economic

development (ILO 2003:7).

The amendments undertaken by the Senate Committee on the Bill and the public hearing process to which the Bill was subjected on Wednesday, 25th August, however, infused certain democratic elements into the Bill. Hence, rather than deregister the NLC, the amendment provided for other federations to be registered alongside the NLC. On the issue of "no-strike" clause, the amendment provided that once a worker gives his/her written consent for deductions to be made from his/her wages for the purpose of paying his/her union dues, there is no need for the employer to require a "no-strike" clause in the collective bargaining agreement before remitting the funds so deducted to be union.

Rather than a "no strike" clause, the Act outlined conditions for embarking on a strike but excluded workers and employers engaged in the provision of essential services from engaging in a strike or lockout. Those engaged in the provision of essential services are to submit themselves for arbitration or settlement at the National Industrial Court where arbitration fails. The amendment also required anyone engaged in a strike or lockout to adhere to a code of good practice and in particular to refrain from intimidation or victimization of other people with the aim of compelling them to work or abstain from work. The amendment further provided for the freedom of the employee to revoke his/her written authorization by which union dues are deducted from his/her wages if s/he wishes to do so - in consonance with his/her freedom to withdraw his/her membership of the union if s/he wishes to do so.

On the wide discretion given to the Ministers in the determination of registration of trade union federations, the amendment stated that "to further support the freedom of choice guaranteed under Section 40 of the constitution, the Committee emphasized the need to allow complete freedom of members of trade unions to decide whether or not they wish to federate together regardless of the fact that they are employed in different trades, occupations or industries. The requirements to be fulfilled for any federation of trade unions to be registered and recognized as such were spelt out - to help standardized registration requirements. Both Houses of the National Assembly passed the amended Bill into law on the 23rd March 2005.

Implications for Social Dialogue

The Nigerian State under the Olusegun Obasanjo administration demonstrated limited capacity to accommodate opposition and negotiated outcomes in government-labour relations. The executive bill that produced the Trade Union Amendment Act, 2005 was reminiscent of the draconian decrees of the military era. Democracy nevertheless made contributions to the dilution of the authoritarian content of the bills via social dialogue. This

continued tendency for authoritarian behaviour in governance may partly be viewed as the culture lag between democratic structure and culture symbolized by the Obasanjo administration. Though democratic structure was in place symbolized by the National Assembly, the then President's character in industrial relations matters was arguably undemocratic. His personality was alien to democratic culture being a retired Army General. This corroborates the view that,

Nigeria at present does not enjoy the sort of integrated, symbiotic state- civil society relationship that most healthy developing democracies feature. Rather, Nigeria's two public spheres are still largely bifurcated and at frequent odds with one another. Political society continues to be Nigeria's famous "political class" raised on the prebendal style of politics of the second and stillborn. Third Republics with greater interest in using the state for wealth accumulation than as a medium to govern and improve the lives of their constituents. Civil society is seen as less a partner in this process and more as a nuisance to be accommodated or "settled" (paid off). (Kew 2004: 2).

The Value Added by Democracy: Some Conclusions

The above also implicates Nigerian democracy as "directed democracy"; a system in which though formal institutions and practices of constitutional democracy are in place, the extensive powers of the ruler, party, or regime, however severely limit contestation by individuals, organized groups, legislative assemblies, and the judiciary (Chenge 1995; Janda 2000).

In the cases reviewed, the provisions of the bills sponsored by the government during the Obasanjo administration were rarely different from those of the military era. The value added by democracy lies in the moderation brought to bear on the bill via public hearing and related debates in the National Assembly. This can be distinguished from the military era when the ruling juntas single-handedly made repressive decrees (earlier highlighted) and implemented them using coercive state apparatus.

The foregoing emphasises the observation of the ILO¹ Conference on Integrated Labour Inspection System that the globalization of economy affects the political agenda, including working life and the way individuals, organizations and economies work and the hazards they have to face. Hence, national solutions through social dialogue and tripartite consultations are needed.

The Conference also emphasized the need for a tripartite partnership in order to achieve and to preserve decent working conditions and environment, to prevent health and safety risks and the well-being of workers. A social contract involving stakeholderism is, therefore, imperative in the emergent democratic era that will promote social dialogue and inclusiveness in state-labour relations. A lot can be achieved through active

participation in the democratic process and developing alternative proposals with new pacts negotiated by all social players (Kester and Sidibe 1997; Adu-Amankwa and Kester 1999; Rodgers 2002; Block 2005).

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