

# **THE NATIONAL INDUSTRIAL COURT OF NIGERIA AND CONTEMPORARY INDUSTRIAL CHALLENGES**

**BY**

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## **Introduction**

This essay contends that with the Third Alteration to the 1999 Constitution, the National Industrial Court of Nigeria (NICN) has taken its place as a superior court of record thereby, jettisoning forever, the controversy that hitherto dogged its operations in the judicial milieu. The essay equally notes that the advantages to employment/labour relations and allied matters are legion. The preparation compartmentalizes discussion into: The National Industrial Court: Historical Development and Pre-2006 Issue; The National Industrial Court Act, 2006; Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 and the National Industrial Court National Industrial Court of Nigeria, Appointment of Judges and Powers of the Court, Prospects and Challenges before NICN. Pride of place was equally given to what constitute superior court of record as juxtaposed to inferior court of record. Lessons were drawn from common law and Nigerian decided cases. These paved the way for the conclusion.

## **The National Industrial Court: Historical Development and Pre-2006 Issues**

It is pertinent to underscore the point that attempt by the Nigerian government to provide an efficient legal framework for the settlement of trade disputes dates back to 1941,<sup>1</sup> with the promulgation of the Trade Disputes (Arbitration and Inquiry) (Lagos) Ordinance of 1941<sup>2</sup>. Since then there have been an avalanche of legislation on labour and employment issues through which several tribunals and adjudicatory bodies were constituted. In modern times however, the history of the court could be traced to the Trade Disputes Decree No. 7 of 1976. The National Industrial Court was established, pursuant to the Decree in 1978. From a modest beginning, the court has grown in strength and status with its giant strides in the past decade. The Trade Disputes Decree, which later became known as Trade Disputes Act (TDA), in S. 20 provides that:

*There shall be a National Industrial Court for Nigeria (in this*

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<sup>1</sup>Ahmed, A.B. "Jurisdiction and Powers of the National Industrial Court under the National Industrial Court Act, 2006", Being paper presented at NIC Orientation Workshop, Kano, 2006.

<sup>2</sup>Ordinance No. 32 of 1941.

*part of this Act referred to as “The court”) which shall have such jurisdiction and powers as are conferred on it by this or any other Act with respect to the settlement of trade disputes, the interpretation of collective agreements and matters connected therewith.*

Even with the Trade Disputes (Amendment) Act, 1992 and Trade Disputes Act (TDA) Cap. T.8, Laws of the Federation of Nigeria, 2004, the jurisdiction remained the same. In most cases, only matters referred to the court by the Minister of Labour could be heard as it is provided that Trade dispute “shall be commenced by reference from the Minister”.<sup>4</sup> The court comprised of the President of the Court and four ordinary members that members of the public label “laymen” with concomitant consequences for the respect accorded the court, not different from a tribunal, an administrative body and not in the real sense a court of superior court of record even with its branding as such by the TDA. Litigants were precluded from approaching the court directly to ventilate their grievances. Certain administrative procedures must be satisfied before the court is allowed to hear petitions. The whole idea of a ‘court’ was rendered nugatory as it must wait for matters to be brought or referred to it by the Minister of Labour. To worsen matters, the President of the court was compulsorily made a member of the Panel that was to attend to all matters with grave consequences for justice delivery in his absence.

Even in appointment of the President and members, the differing mode spoke volumes. While the President was to be appointed by the President of the Federal Republic of Nigeria upon the recommendation of the Federal Judicial Service Commission, the members of the court were to be appointed by the President on the recommendation of the Minister of Labour. This cacophony of modes was deprecated by several labour law practitioners.

All these issues were to be further compounded by the exact scope of the jurisdiction of the court. Matters were taken not only to the NIC but, even under the 1979 CFRN, advantage was taken of the provisions of S. 236 which made the High Court, a court of unlimited civil and criminal jurisdiction. In the words of some authors, it encouraged “forum shopping” by litigants depending on where “advantages” existed.

These issues and more are some of the galaxy or phalanx of issues that weighed the court down, not only in status but in performance, pre-2006.

### **The National Industrial Court Act, 2006**

The promulgation of the NIC Act 2006 was an appropriate response to the panoply of problems highlighted above, problems that

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<sup>4</sup>See S. 13 of the National Industrial Court Rules, Cap. T8, LFN, 2004.

constituted an albatross on the neck of the court. The Act thus strengthened the court as the Explanatory Notes to the Act unequivocally 'establishes the National Industrial Court as a superior court of record and confers jurisdiction on the court with respect to labour and industrial relations matters'.

Even with respect to appointment, the President of the court and the judges were to be appointed by the President of the Federal Republic of Nigeria, upon the recommendation of the National Judicial Commission.<sup>41</sup> Persons appointable were also to be legal practitioners of not less than 10 years post-call, knowledgeable considerably in the law and practice of industrial relations and employment conditions in Nigeria and a graduate of a recognized University<sup>5</sup>.

The jurisdiction of the National Industrial Court were very elaborately provided for in S. 7 of the NIC Act, 2006 as follows:

- 7- (1) The Court shall have and exercise exclusive jurisdiction in civil causes and matters:
- (a) relating to:
    - (i) labour, including trade unions and industrial relations; and
    - (ii) environment and conditions of works, health, safety and welfare of labour, and matters incidental thereto; and
  - (b) relating to the grant of any order to restrain any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action;
  - (c) relating to the determination of any question as to the interpretation:
    - (i) any collective agreement,
    - (ii) any award made by an arbitral tribunal in respect of a labour dispute or an organizational dispute,
    - (iii) the terms of settlement of any labour dispute, organizational dispute as may be recorded in any memorandum of settlement,
    - (iv) any trade union constitution, and
    - (v) any award or judgment of the court.
- (2) The National Assembly may by an Act confer such additional jurisdiction on the court in respect of such other causes or matters incidental, supplementary or related to those set out in subsection (1) of this section.

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<sup>4</sup>See S. 2(1) (2) NIC Act, 2006.

<sup>5</sup>Ibid at 2(4)

- (3) Notwithstanding anything to the contrary in this Act or any other enactment or law, the National Assembly may by an Act prescribe that any matter under subsection (1)(a) of this section may go through the process of conciliation or arbitration before such matter is heard by the court.
- (4) An appeal shall lie from the decisions of an arbitral tribunal to the court as of right in matters of disputes specified in subsection (1)(a) of this section.
- (5) For the purposes of subsection (4) of this section, a party to an arbitral award shall be entitled to obtain a copy of the records of the arbitral proceedings and the award from the arbitral tribunal.
- (6) The court shall, in exercising its jurisdiction or any of the powers conferred upon it by this Act or any other enactment or law, have due regard to good or international best practice in labour or industrial relations and what amounts to good or international best practice in labour or industrial relation shall be a question of fact.

The power of the NIC in civil appeals were also succinctly stated in S. 8 of the NIC Act as follows:

- 8 - The court may, upon hearing an appeal under subsection (4) of section 7 of this Act, draw any inference of fact and:
- (a) confirm, vary or set aside the judgment, award or order of the court, tribunal or body mentioned therein; or
  - (b) order a rehearing and determination on such terms as the court may think just; or
  - (c) order judgment to be entered for any party; or
  - (d) make a final or other order on such terms as the court may think fit to ensure the determination on the merits of the matter in dispute between the parties.

The NIC was made a 'final court' under the NIC Act as "subject to the provisions of the Constitution of the Federal Republic of Nigeria 1999 and subsection (2) of this section, no appeal shall lie from the decisions of the court to the Court of Appeal or any other court except as may be prescribed by this Act or any other Act of the National Assembly". Exception was however provided in S. 9(2) of the Act wherein appeal may lie from the decision of the court to the Court of Appeal on questions of Fundamental Human Rights as contained in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999.

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<sup>6</sup>S. 9(1) NIC Act, 2006

The NIC is imbued with powers under S. 10 of the Act to “enforce its judgment and accordingly may commit for contempt any person or a representative of a trade union or employers organization who commits any act or an omission which in the opinion of the court constitutes a contempt of court.”<sup>8</sup> In **ASCSN V. INEC & 2 ORS.**,<sup>9</sup> on the question of enforcement of judgment and general arguments that judgments cannot be enforced against a party who is not party to the suit, the court held that “the arguments of the respondents that they were not parties to suit No. NIC/5/93 and so cannot have the judgment in that suit enforced against them, is therefore, erroneous.

The court was allowed to regulate its own practice and procedure but shall be bound by the Evidence Act even though departure is permissible in the interest of justice in appropriate cases.<sup>10</sup> It was pursuant to this that the National Industrial Court Rules was made in 2007, a rule which has elicited wide academic review.<sup>11</sup>

Other matters dealt with under the NIC Act are issues on administration of law and equity by the court concurrently in every civil cause or matter,<sup>12</sup> the grant of injunctive reliefs if it is convenient to do so<sup>13</sup>, conditionally or unconditionally; the grant of prerogative orders such as mandamus, prohibition or certiorari notwithstanding that the order is made against an officer or authority of the Federal, State or Local Government.<sup>14</sup> This is in addition to other forms of injunctions, grant of urgent interim reliefs, declaratory order, appointment of a public trustee for the management of the affairs and finances of a trade union or employers organisation involved in an organizational dispute; award of compensation or damages,<sup>15</sup> order of compliance with any provision of any Act of the National Assembly and the promotion of reconciliation among parties thereto including encouraging and facilitating amicable settlement thereof.

Issues of discipline, tenure, allowances, pension, salaries, status and powers were provided for in accordance with prevailing orthodoxy at the other courts of record. In addition, the court was able to obviate the

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<sup>8</sup>S. 10 NIC Act

<sup>9</sup>Suit No. NIC/5/93

<sup>10</sup>S. 12 NIC Act, 2006

<sup>11</sup>See Kanyip, B.B. “Form and Formlessness: An Appraisal of the National Industrial Court Rules, 2007” in Alubo, A.O. et al, *Emerging Issues in Nigerian Law: Essays in Honour of Hon. Justice B.A. 9S. 10 NIC Act*

<sup>12</sup>S. 14 NIC Act, 2006

<sup>13</sup>S. 16

<sup>14</sup>S. 17 NIC Act. *Mandamus* compels the performance of a statutory duty by a public official as opposed to discretionary duty. *Prohibition* is available to an applicant to prevent the performance or continuance of administrative action, which is a judicial characteristic, likely to affect the applicant's rights in an adverse manner. *Certiorari* is available as a remedy for an action already performed.

<sup>15</sup>See S. 18, 19 and 20 NIC Act. See also generally Kanyip, B.B. “The National Industrial Court: The Journey So Far”; Adejumo, B.A. OFR, “Labour and Industrial Relations”, Being the text of the Keynote Address Delivered at the National Workshop on Labour and Industrial Relations, NIALS, Lagos, June, 2010; Kanyip, B.B. “The National Industrial Court of Nigeria: The Future of Employment/Labour Disputes Resolution”.

problem associated with sitting under the TDA when the court could not exercise its jurisdiction except the President presided as the court could competently sit with any of the legally qualified judges presiding. Even a single legally qualified Judge of the court could completely sit under such situations”<sup>15</sup>.

It was thought that the criticisms that impelled the re-establishment, pungently, of the NIC, by the NICA would be laid to rest after 2006. Certain 'grey areas' remained, however. Issues such as: whether NIC by virtue of S. 7(2) NICA had additional jurisdiction conferred on it by the Trade Union Act (TUA) 1990, Trade Unions (Amendment) Act, 2005, Criminal Jurisdiction, being an essentially civil court with civil jurisdiction except with committal for contempt; enforcement of award since because of Section 53(1) NICA, Section 22 of the TDA was repealed, the issue was whether the Industrial Arbitration Panel (IAP) could enforce it's own award since the substratum had been removed; the finality of the decision of the NIC was also contested as it was regarded as unconstitutional<sup>16</sup>.

Perhaps, the issue that has generated the most miasma, is the issue of the jurisdiction of the court the NIC being a court of superior court of record. In a plethora of cases before the NIC Act, 2006, for example, the cases of **Kalango v. Dokubo**<sup>17</sup>, and **Attorney-General, Oyo State v. Nigerian Labour Congress**<sup>18</sup>, the courts held that the NIC was not a superior court of record and concomitantly could not lay claim to exclusivity of jurisdiction in relation to the areas it covered. The courts held that it's jurisdiction was concurrently shared with the State and Federal High Court. Imprimatur for that was laid or predicated on S. 272 of the 1999 CFRN.

There was “considerable controversy concerning the status of the court. Many writers concluded that the court was not a court of superior record. They supported this view by pointing to Section 6(3) of the Constitution of the Federal Republic of Nigeria, 1999 which states that the courts listed in Section 6(5) (a) (i) of the Constitution shall be the only superior courts of record in Nigeria. It is instructive to note that the NIC is not one of the courts listed in Section 6(5) (a) (i) of the Constitution”<sup>19</sup>. The learned author further stated that:

*Now the common law implication of not being a court of superior record can be very grave indeed. First, an inferior court is subject to the supervisory jurisdiction of the superior courts. In other words, it's processes can be controlled by judicial review. Thus, a High Court, which is a court of superior record may prohibit the NIC from sitting on a matter if it is of the opinion that the NIC is likely to*

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<sup>16</sup>Adejumo, B.A. OFR, “The National Industrial Court of Nigeria: Past, Present and Future”. Being a paper delivered at the Refresher Course organized for Judicial Officers of Between 3-5 years Post Appointment by The National Judicial Institute, Abuja on 24 March, 2011.

<sup>17</sup>See Ibid.

<sup>18</sup>(2003) 15 WRN 32

<sup>19</sup>(2003) 8 NWLR 1.

*exceed its jurisdiction. Its proceedings may also be quashed by an order of certiorari. Secondly, inferior courts at common law do not have the power to punish for contempt as such. Sections 22 and 23 of the Trade Disputes Act seem indirectly to corroborate the inferior status of the NIC with regard to punishment for contempt. Although Section 22 empowers the court to commit for contempt, Section 23 provides that if the President of the court considers the evidence sufficient to commit for contempt a person, he shall commit such a person for trial in the High Court.*<sup>20</sup>

Inferior courts of records are prohibited from the grant of injunctive and declaratory orders. The query is: Can a court be really said to be a court devoid of the grant of interim and long term orders, some compulsion, devoid of sanctions? Would such a court provide justice? Must lawyers extend the necessary courtesies to the court and judges as “my Lords”? Unfortunately, this was the *cul de sac*, a judicial cross-roads that the NIC found itself, simply for being omitted from the Constitution.

But lawyers and jurists have often time disagreed on the inferior status that certain decisions imbued the court with. On the marble and correctly in my view, is the case of **Ekong v. Oside**,<sup>21</sup> where the Court of Appeal robustly posited that:

*On the issue of the unlimited jurisdiction of the High Court of the Federal Capital Territory as submitted by learned counsel for the appellants, I find it difficult to agree with him. On my part, I will prefer to regard the jurisdiction conferred on the High Court of the Federal Capital Territory by Section 257 of the Constitution as general but limited. That section is made general subject to the provisions of some sections of the same Constitution, such as Section 251 and any other provision of the Constitution. Any other provision of the Constitution may, in my view, include Section 315 of the Constitution, which saves the Decrees/Acts that created the National Industrial Court and conferred jurisdiction on it. It is difficult therefore, to read unconstitutionality in the statutes that created the National Industrial Court and the jurisdiction it has been conferred with especially by Decree No. 47 of 1992. Thus, by Decree 47 of 1992, the only court that is conferred with jurisdiction to hear trade dispute matters is the National Industrial Court. Same Decree accorded the status of a superior court of record to the National Industrial Court, as appeals from its decisions on questions of fundamental rights contained in Chapter IV OF THE Constitution shall lie to the Court of Appeal.*

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<sup>20</sup>Ibid.

<sup>21</sup>(2004) All FWLR 562.

The issue of jurisdiction of the court, as a superior court of record was a recurring decimal. It reared its ugly head again in 2010 in a case filed in 2004.<sup>22</sup> The Supreme Court removed whatever doubt existed, unfortunately, on the status of the court, to the chagrin of several labour law practitioners and academics<sup>23</sup>, in **National Union of Electricity Employees & 1 Or. V. BPE**. There, the Supreme Court confirmed that the NIC was a court of subordinate jurisdiction, an inferior court of record as it had no exclusive jurisdiction over labour and allied matters. In a lengthy judgment, the Supreme Court, discountenanced the argument that S. 315 CFRN preserves existing courts and deems them to have been established under the 1999 Constitution as the NIC, included as a superior court of record through amendment under the 1963 CFRN, must be deemed to be a court of superior record. The court also stated elsewhere in the judgment:

*The least that has changed is that the State High Court under Section 272 now has power to deal with trade disputes it has previously lacked. It means therefore that Decree No. 47 of 1992 arrogating to the National Industrial Court a superior court of record without due regard to the amendment of the provisions of Section 6(3) and (5) of the 1999 Constitution which has listed the only superior courts of record and known to the 1999 Constitution and the list does not include the National Industrial Court; until the Constitution is amended it remains a subordinate court to the High Court.*

Alubo argued that everything not provided for in the Constitution can certainly not be unconstitutional. The learned author suggested that strident effort be made to amend the Constitution to make the court one of superior records. No doubt, the decision was calamitous and debilitating. It threw the entire labour law landscape into a topsy-turvy, some quandary of sorts. It meant one thing. The courts: State High Courts, Federal High Court and High Court of the FCT shared concurrent jurisdiction with the NIC. Exclusivity was gone with the decision. Other courts quickly opened their doors to suits by counsel, on labour and allied matters. The silver lining from the decision was that it provided the tonic, the elixir for a more and successfully robust discourse on the status of the court before the legislature the National Assembly. This culminated in the passage of bill altering the Constitution of the Federal Republic of Nigeria and its subsequent signing on the 4<sup>th</sup> of March, 2011.

Inferior courts are those courts whose jurisdiction is limited and

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<sup>22</sup> Unreported Suit No/SC/62/2004

<sup>23</sup> See Alubo, A.O. "National U.E.E. & 1 Or. V. BPE, SC 26/2004, delivered on 25<sup>th</sup> February, 2010: Where the Supreme Court Missed the Point on the Jurisdiction of the National Industrial Court", Confluence Journal of Private and Property Law (CJPPL) Vol. 3, Part 1, 2009.



special and whose proceedings are not according to the course of common law<sup>24</sup>. An inferior court is an inferior tribunal, such as a justice court presided over by a justice of the peace, that does not keep systematic records and is often not regarded as having an identity distinct from that of its presiding magistrate.<sup>25</sup> This is also the case of administrative tribunals that make or review governmental administrative decisions.<sup>26</sup> In appearances before an inferior court, litigants extend the usual courtesies 'Your Honour', 'Your worship'. The courtesy: 'My Lord' is only reserved for superior courts of record. Lawyers appearing before judges of superior courts of record are expected to be robbed fully. There is a presumption in favour of the validity of the judgment of superior courts and none in favour of those of inferior court.<sup>27</sup>

It was therefore disheartening that a court that enjoyed all these respect, honour, good will of all and sundry could be so judicially castrated in broad day light by the nation's apex court. The damage was gargantuan. It was huge. Remedial measures were needed. There were provided by the Third Alteration to the Constitution.

### **Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 and the National Industrial Court of Nigeria**

The Third Alteration amended Cap 23, LFN, 2004, Sections 6, 84, 240, 243, 254(a)-(f), 287, 289, 292, 204, 295, 316, 318, Third Schedule to the Constitution and seventh schedule to the CFRN 1999.

Section 6(5) (cc) now includes the National Industrial Court as a superior court. Appeal now lie from the decision of the National Industrial Court to the Court of Appeal as of right on questions of fundamental rights under Chapter IV as it relates to the matters upon which the NIC has jurisdiction and with leave in other cases.

Section 254(f) now established 'the National Industrial Court of Nigeria' consisting of the President and such number of Judges that the National Assembly may, by Act, prescribe. The judges and President shall be appointed by the President upon the recommendation of the National Judicial Council.

The jurisdiction of the court is expansively and elaborately stated hereunder in the newly introduced S. 254C(1) as follows:

1. Relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, health safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;
2. Relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Workmen's Compensations Act or

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<sup>24</sup> Smith v. Andrew, 6 Cal. 651.

<sup>25</sup> [Wikipedia.org/wiki/court of record](http://Wikipedia.org/wiki/court_of_record).

<sup>26</sup> Ibid. See also Jones v. Jones 188 MO. APP 220, Ledwith v. Rosalsky 244, NY 406.

<sup>27</sup> Cohen v. Barrel 5, Cal. 195 7 Cal. Jur. 579.

any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;

3. Relating to or 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 contemplation or in furtherance of a strike, lock out or any industrial action and matter connected therewith or related thereto;
4. Relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employers association or any other matter which the court has jurisdiction to hear and determine;
5. Relating to or connected with any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith or arising therefrom;
6. Relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;
7. Relating to or connected with any dispute arising from discrimination or sexual harassment at the workplace;
8. Relating to, connected with or pertaining to the application or interpretation of international labour standard;
9. Connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;
10. Relating to the determination of any question as to the interpretation and application of any:
  - (i) collective agreement;
  - (ii) award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute;
  - (iii) award or judgment of the court;
  - (iv) terms of settlement of any trade dispute;
  - (v) trade union dispute or employment dispute as may be recorded in a memorandum of settlement;
  - (vi) trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or workplace;
  - (vii) dispute relating to or connected with any personnel matter arising from any from any free trade zone in the Federation or any part thereof;
1. Relating to or connected with trade disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil

or public servant in any part of the Federation and matters incidental thereto;

2. Relating to:

- (i) appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith;
- (ii) appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations; and
- (iii) such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;

1. Relating to or connected with the registration of collective agreements.

2. Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.

3. The National Industrial Court may establish an Alternative Dispute Resolutions Centre within the court premises on matters on which jurisdictions are conferred on the court by this Constitution or any other Act or Law:

Provided that nothing in this subsection shall preclude the National Industrial Court from entertaining and exercising appellate and supervisory jurisdiction over an arbitral tribunal or National Industrial Court has jurisdiction to entertain or any other matter as may be prescribed by an Act of the National Assembly or any law in force in any part of the Federation.

4. The National Industrial Court shall have and exercise jurisdiction and powers to entertain any application for the enforcement of the award, decision, ruling or order made by any arbitral tribunal or commission, administrative body, or board of inquiry relating to, connected with, arising from or pertaining to any matter of which the National Industrial Court has the jurisdiction to entertain.

5. National Industrial Court shall have and exercise jurisdiction and powers in criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this section or any Act of the National Assembly or by any other law.

6. Notwithstanding anything to the contrary in this constitution, appeal shall lie from the decision of the National Industrial Court from matters in subsection 5 of this section to the Court of Appeal. Section 254D(1) provides further thus:

*For the purpose of exercising any jurisdiction conferred upon it by this Constitution or as may be conferred by an Act of the National Assembly, the National Industrial Court shall have all the powers of a High Court.*

Subsection (2) of section 254D provides:

Notwithstanding subsection (1) of this section, the National Assembly may by law, make provisions conferring upon the National Industrial Court powers additional to those conferred by this section as may appear necessary or desirable for enabling the court to be more effective in exercising its jurisdiction.

The lengthy quotation of the provision of the constitution is geared towards one aim: to bring out the jurisdictional odyssey of the National Industrial Court and the improvements that the amendment has done.

To avoid the needless but ever ubiquitous criticisms, schisms and controversies that NIC found itself, the Third Alteration to the Constitution provided elaborately and we dare say, comprehensively, in my view for the jurisdiction of the court. In the words of a learned author, it is perhaps the widest and elaborate jurisdiction conferred on any court in the 1999 Constitution<sup>27</sup>.

### **Appointment of the Judges and Powers of the Court, etc.**

The amendment harmonized the requirement and procedure for appointment of the President and other Judges of the court with other courts established by the Constitution and brought it into conformity with what obtained in cases of other superior courts of record appointment, discipline, conditions of service etc.

Additionally, expertise in law and practice in labour matters is a requirement for appointment as a Judge or President of the Court.

Section 254D CFRN confers the court with all the powers of the High Court. It is trite that High Court weigh excessively great powers for the effective performance of it's jurisdiction.

Section 254E vest on the President of the court the power to determine the composition of the court, either a single judge or two or more but not more than three Judges presiding over a matter. The section equally imbues the court with powers to call in aid, one or more assessors specially qualified to try and hear the matter in whole or in part with the assistance of such assessors.

S. 254F empowers the court to make rules for regulating the practice and procedure of the National Industrial Court. No new rules have been made under the new alteration. The NIC Rules 2007 is still the

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<sup>27</sup>Adejumo, op. Cit.

applicable rules. With the unequivocal, crystal vesting of Criminal Jurisdiction on the court, the provisions of the Criminal Code, the Penal Code, Criminal Procedure Act, Criminal Procedure Code or the Evidence S. 254F, the controversy over the Criminal Jurisdiction of the court, has been laid to rest.

## **Prospects**

Indeed with the Third Alteration to the Constitution, solely done to reposition the NICN, various innovations were introduced viz: fundamental right provision, National Minimum wage, discrimination in workplace, sexual harassment at work place, child labour and human trafficking, payment of salaries and lack of it, matters relating to application of any international convention or treaty which Nigeria has ratified and the power to establish Alternative Dispute Resolution Centre, issues relating to exclusivity of jurisdiction of the court as well as appeals, enforcement or application of IAP awards and other similar awards and recognition of international best labour practices in arriving at decision by the court. Thus, treaties and conventions relating to labour matters that have been ratified by Nigeria but not yet domesticated by the National Assembly can still be applied. This, in my view, constitute an exception to S.12 CFRN, 1999 which provides that “No treaty between the federation and any other country shall have the force of law except to the extent which any such treaty has been enacted in to law by the National Assembly.”<sup>28</sup>

The Alteration is *a tour de force* in labour related matters. In the words of Adejumo, with respect to some of the new responsibilities placed on the court which are novel:

*What this simply means is that the conduct or workplace practices, such as refusal to employ pregnant women, request for pregnancy test before being hired, request for HIV/AIDS test, dismissal for reasons bothering on pregnancy or child care, unequal pay for smaller jobs of equal value, non-provision of government aided/funded child care facilities, untoward or indecent behaviour by men towards women, cultural and societal stereotyping against women and other sundry discriminatory practices against women can now be tested against the back drop of international best practices, international labour standards or unfair labour practices. Also disputes arising from the engagement of women and children under conditions that negate international law or international best practices or unfair labour practices against women can now be adjudicated upon by the NICN.*

Unarguably, in my view, the environment is ripe for a harmonious resolution of labour/employment and ancillary matters with the berthing of

<sup>28</sup>Of course, application of the provisions may not be as straightforward as this write up indicates.

<sup>29</sup>Adejumo, B.A., OFR, “The Role of the Judiciary in Industrial Harmony: The New Constitution (Third Alteration) Act, 2010: Feminism, Gender Implication – Prospects and Challenges, being paper

the Third Alteration to the Constitution which re-established the National Industrial Court of Nigeria.

### **Challenges Before NICN/Conclusion**

For the National Industrial Court of Nigeria, (The Third Alternation to the Constitution notwithstanding), it is not *Uhuru* or *Eldorado* yet. With the expansive and expanded jurisdiction, there is huge responsibility. In the 21<sup>st</sup> century and with the gamut of issues at hand, the challenges are huge.

From a small obscure building in Lagos, the expansion of the court in the last decade has been phenomenal. But with the expanded jurisdiction of the court touching on life and living, the need to have divisions of the court in all the states of the federation cannot be over-emphasised. This comes and will come at no meagre cost. Allied to this are recruitment or appointment of Judges to man the courts. The creation of fresh registries to service the courts are also matters of profound importance. Providing funding to tackle these myriad of issues is a sine qua non to positively positioning the court. This is even moreso with Nigeria's burgeoning population.

With the expansive jurisdiction of the court, the 2007 National Industrial Court Rules 2007, is certainly otiose and in dire need of review to bring it into conformity with present realities. The Rules was based on the NIC Act, 2006. New Rules must now be made pursuant to the amendment contained in the Third Alteration to the Constitution. A lot has changed and so must the rules.

In the light of the amendment, the need to sensitize and train staff on novel areas that have been brought within the Jurisdiction cannot be over-emphasised. This will equip staff with the necessary acumen to play supportive role. Even the judges of the court may need training in certain specialized areas outside the shores of Nigeria. This is imperative if our labour and Industrial Court must take it's place in the community of nations.

The need to also sensitize members of the public on this 'New' court that the Third Amendment heralded, is imperative. Organizing workshops, in the six-geopolitical zones is germane as it would help to foist this into the consciousness of Nigerians. No doubt, Nigerians have lots of labour-related problems that only sensitization and knowledge can obliterate.

With the challenges surmounted, there is little doubt that the NICN, as a superior court of record, will even do better in the quest for real harmony in the labour/employment sector.