

**A CRITIQUE OF THE EXCLUSIVE JURISDICTION AND
NATURE OF HUMAN RIGHTS MANDATE OF THE
NATIONAL INDUSTRIAL COURT ON THE
CONSTITUTION (THIRD ALTERATION) ACT 2010**

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Abstract

The article discusses the ramifications of the court's exclusive jurisdiction and the different aspects of the court's human rights jurisdiction as set out in the Constitution (Third Alteration) Act 2010. The article adopts a doctrinal approach to trace: the jurisdiction and nature of human rights; the criticism of the mandate of human rights; the exclusivity of jurisdiction; the applicability of the 2009 Rules of Procedure on Fundamental Right Enforcement; the right of appeal; and its implications by providing for an insightful consideration under the Constitution (Third Alteration) Act 2010 to prove its justification and finds that there are grounds for doing so. The article recommends amending the relevant laws and

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Constitutional rules and Fundamental Right Enforcement Procedure Rules 2009, to render the court's jurisdiction over human rights concurrent rather than exclusive, in order to give full effect to the human rights jurisdiction, to achieve the full objectives and enhanced success in its jurisdiction over human rights matters.

Key Words: Jurisdiction, Human Right, National Industrial Court, Constitution, Labour Law

Introduction

The National Industrial Court (NIC) is saddled with the responsibility of adjudicating on labour related matters. Despite lofty provisions which place human rights protection directly at the doorsteps of the court, the court's real position in the protection of human rights labour law has remained largely under-scrutinized.

There is no gainsaying the fact that human rights in their multifaceted dimension are the inalienable rights of the people. It ranges from civil and political rights, socio-economic right to solidarity right which include the right to environment, right to peace, right to development, among others.

One of the main ramifications of the Constitution (Third Alteration) Act 2010 is the re-adjustment of the court's human rights jurisdictional powers. Thus, in addition to the three courts (i.e. the High Court or States, the High Court of Federal Capital Territory and the Federal High Court in Nigeria) having original jurisdiction in the enforcement of human rights as prescribed in Chapter IV of the Constitution, the National Industrial Court has jurisdiction to enforce certain human rights, albeit in a limited

manner. The Constitution (Third Alteration) Act in recognition of the role of human rights in the realization of Labour Justice has exclusive jurisdiction over cases arising from the relationship between employees and employers, including all human rights issues arising from industrial relations, trade unions and all human rights issues related to the workplace.

It is against this background that, this article reviews ‘A Critique of the Exclusive Jurisdiction and Nature of Human Rights Mandate of the National Industrial Court on the Constitution (Third Alteration) Act 2010’. In doing so, the introductory article is divided into eight parts.

Part One examines the National Industrial Court's jurisdiction. It argues that Section 254C(1) of the 1999 Constitution as amended by the Third Alteration Act, 2010 reinforced the provisions of the National Industrial Court Act 2006.

Part two focuses on the scope of the National Industrial Court's human rights jurisdiction. It argues that the various categories of human rights have relative levels of recognition and enforcement in different jurisdictions. It further argues that the extent of the court's jurisdiction over human rights is not so clear, and this is the article's primary concern, and one of the fundamental implications of the Constitution (Third Alteration) Act is the re-adjustment of court jurisdiction in the area of human rights. Therefore, it discusses the different aspects of the court's human rights authority as set out in the constitution.

Part three deals with critique of the human rights mandate of the National Industrial Court. It argues that the National Industrial Court's vesting of human rights jurisdiction may create a series of

setbacks for the enforcement of human rights in Nigeria, although commendable. It further argues that the resurgence of interest in the National Industrial Court's boundaries of human rights jurisdiction and the fact that the exclusive nature of jurisdiction may restrict rather than expand access to justice may be one of the accompanying problems.

The issue of exclusive jurisdiction of the court is the subject of part four. It argues that its exclusive nature is the number one issue that has received scholars' attention in relation to the court's human rights jurisdiction.

Part five deals with the applicability of the 2009 fundamental right enforcement procedure rules to the national industrial court. It argues that the rules require priority to be given to cases of human rights in worthy cases.

Part six reviews the right to appeal. It argues that before the first day of July 2017, the National Industrial Court's appealable decision was limited only to judgments emanating from fundamental rights as enshrined in Chapter IV of the Constitution, and the NIC and nothing more determines appeals emanating from or relating to criminal matters.

Part seven focuses on the implications. It argues that the magnitude and latitude of exclusive jurisdiction currently in the court is so vast and huge that the very essence of creation can be defeated if not properly managed. It therefore lists other implications arrogated to the court of this vast exclusive jurisdiction.

Part eight ends with feedback on the article.

The Jurisdiction of the National Industrial Court

In law, jurisdiction connotes or represents a Court's ability and legal power to chair and decide a case.¹The National Court of Industry has civil, criminal and appeal jurisdiction.²A court is said to have authority over a specific topic when:

- a. The Court is set up properly
- b. The matter is within the ambit of the Court's jurisdiction; and
- c. The case is filed in accordance with the law's due process.³

Section 254C(1) of the 1999 Constitution, as amended by the Third Alteration Act, 2010 reiterated the provisions of the NIC Act 2006, which states that the National Industrial Court has jurisdiction and exercises jurisdiction to exclude any other court in civil cases and matters relating to or relating to any job, jobs, trade unions, industrial relations and arising matters from the workplace, conditions of service, including health, safety, labour welfare, employees, workers and incidental or related matters;⁴relating to, associated with or resulting From the Factories Act, the Trade Disputes Act, the Trade Union Act, the Employment Act, the Employee Compensation Act or any other Jobs, Industrial Relations, Workplace or any other legislation that replaces the Acts or Regulations;⁵Concerning or in connection with the grant of any order preventing any person or entity from taking part in any strike,

¹ E. A. Kenen. 'An Appraisal of the Jurisdiction of the National Industrial Court under the Constitution of the Federal Republic of Nigeria 1999 (as amended)' (April 2013) Vol. 5 No. 1 Port Harcourt Law Journal, p. 139.

² See Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 254C (1), (3) and (5).

³ *Madukolu v. Nkemdilim* (1962) 1 All NLR 587.

⁴ Constitution of the Federal Republic of Nigeria 1999 (As Amended), Section 254C (1)(a).

⁵ Section 254C(1)(b), *Ibid*.

industrial or lock-out action, or any actions considering or attempting a strike, lock-out or any industrial action and related matters;⁶ Concerning or relating to any conflict concerning Interpretation and application of the provisions of Chapter IV of this Constitution in respect of any job, labour, industrial relations, trade unionism, employers' organization or other matter to be considered by the Court and determine;⁷ Concerning or relating to any controversy arising out of, or arising out of, the Federation's national minimum wage or any aspect thereof and matters relating to or arising out of it;⁸ Concerning or relating to unfair labour practices or global best practices in matters of labour, education and industrial relations;⁹ Concerning or relating to any controversy arising out of discrimination or sexual misconduct in the workplace;¹⁰ Concerning, referring to or relating to the implementation or interpretation of universal labour standards;¹¹ Related or related to child labour, child abuse, trafficking in human beings or any matter linked to or connected to child labour;¹² Concerning the resolution of any issue as to the definition and operation of any collective agreement; Award or order of an arbitral tribunal in respect of a labour dispute or trade-union dispute; award or decision of the tribunal; scope of resolution of any trade dispute; trade-union conflict or job dispute as set out in a mediation memorandum; trade-union dispute;¹³

⁶ Section 254C(1)(c), *Ibid.*

⁷ Section 254C(1)(d), *Ibid.*

⁸ Section 254C(1)(e), *Ibid.*

⁹ Section 254C(1)(f), *Ibid.*

¹⁰ Section 254C(1)(g), *Ibid.*

¹¹ Section 254C(1)(h), *Ibid.*

¹² Section 254C(1)(i), *Ibid.*

¹³ Section 254C(1)(j)(i) – (vii), *Ibid.*

The NIC also has exclusive jurisdiction in civil cases and in disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, insurance, benefits and any other privilege of any employee, worker, political or public office holder, judicial officer or civil or public servant in any part of the Federation incidental matters thereof.¹⁴ Appeals from or relating to decisions of the Registrar of Trade Unions; appeals from decisions or recommendations of any administrative body or committee of inquiry arising from or relating to jobs, labour, trade unions or industrial relations; and such other authority, whether civil or criminal, to the exclusion of any other jurisdiction;¹⁵ and related to or related to the collective agreement registration.

The NIC's jurisdiction also includes any matter relating to or relating to the application of any international convention, treaty or protocol on labour, employment, workplace, industrial relations or related matters ratified by Nigeria.¹⁶ Furthermore, the NIC may create, within the premises of the Court, an Alternative Dispute Resolution Centre on matters which the Constitution or any Act or law confers on the court; and nothing in the Constitution or any other law shall prohibit the NIC from entertaining and exercising appeal and supervisory jurisdiction over an arbitral tribunal or commission, agrees or board of inquiry on matters within the capacity of the NIC to entertain or any other matter as may be specified by the National Assembly Act or the statute in effect in any part of the Federation.¹⁷

¹⁴ Section 254C(1)(k), *Ibid.*

¹⁵ Section 254C(1)(l), *Ibid.*

¹⁶ Section 254C(2).

¹⁷ Section 254C(3).

With regard to the NIC's criminal jurisdiction, the Constitution (as amended) provides that the NIC shall have and exercise jurisdiction in criminal cases and matters arising from any jurisdiction or matter imposed by the Constitution on the National Industrial Court¹⁸ or no other Act or other regulation of the National Assembly.¹⁹ To exercise its criminal jurisdiction under Section 254C(5) of the Constitution (as amended), the President of the NIC may hear and decide or appoint to hear and determine such matters a single judge of the court.²⁰ The NIC when sitting on a criminal case, has all the jurisdiction of a high court,²¹ and the appeal is based on the Court of Appeal's decision as of right.²²

Scope of the National Industrial Court's Human Rights Jurisdiction

Human rights are the inalienable rights of the people in their multifaceted dimensions. Human rights range from civil and political rights, socio-economic rights to rights of solidarity, including the right to environment, the right to peace, and the right to development.²³ The various types of human rights have relative levels of recognition and compliance in different jurisdictions. Without prevarication, if there are no existing legal and institutional frameworks to protect them, these rights of individuals would be in abeyance and with little or no significance. This may be submitted cleverly to account for the recognition of certain

¹⁸ Section 254C.

¹⁹ Section 254C(5).

²⁰ Section 254E(2), 1999 Constitution (as amended).

²¹ Section 254C(6), 1999 Constitution (as amended).

²² Section 254D(1), 1999 Constitution (as amended); V. O. Ayeni. "Beyond Labour Law: A Critique of the Role of the National Industrial Court in the Promotion and Protection of Human Rights in Nigeria" (2018), 9(2), *Ebonyi State University Law Journal*, pp. 238 – 240.

²³ See provisions of the African Charter on Human and Peoples' Rights (1981).

rights in the Federal Republic of Nigeria Constitution of 1999 (as amended). Furthermore, in order to facilitate the realization of human rights, the judiciary has been given the power to adjudicate on all matters between individuals, or between government or authority and any person in Nigeria, and on all actions and proceedings relating to them, in order to determine any question concerning their civil rights and obligations.²⁴

There is no dispute as to the jurisdiction of the State High Courts, the Federal Capital Territory High Court and the Federal High Court to entertain matters brought under Chapter IV of the Constitution. The Constitution provides that any person alleging that any of the provisions relating to fundamental human rights are being or likely to be infringed in any State in relation to him may appeal for redress to a High Court in that State.²⁵ It further provides that a High Court has original jurisdiction to hear and decide any request made to it and may make such orders, issue such writings and offer such directions as it may deem appropriate for the purpose of implementing or enforcing any right to which the individual making the request may be entitled under the section.²⁶ The specific rights protected by the Constitution in Chapter IV include the right to life,²⁷ the right to human dignity,²⁸ the right to personal freedom,²⁹ the right to hear equally,³⁰ the right to family and private life,³¹ the right to free thought,³² awareness and

²⁴ Section 6(6)(b), Constitution of the Federal Republic of Nigeria 1999 (as amended).

²⁵ Section 46(1), *Ibid.*

²⁶ Section 46(2), *Ibid.*

²⁷ Section 33, *Ibid.*

²⁸ Section 34, *Ibid.*

²⁹ Section 35, *Ibid.*

³⁰ Section 36, *Ibid.*

³¹ Section 37, *Ibid.*

spirituality,³³ the right to assembly and association in unity,³⁴ the right to move freely,³⁵ the right to free discrimination,³⁶ acquisition and possession of immovable property in Nigeria.³⁷

By virtue of Section 46 of the Constitution, every High Court in the State in which the breach took place shall have jurisdiction to prosecute all matters in Chapter IV of the Constitution. In this context, the High Court covers the separate High Courts of the 36 federal states, the Federal Capital Territory High Court (FCT Abuja) and the Federal High Court.³⁸ To a large extent, the jurisdictional powers of the three above-mentioned courts overlap with each other except whether the subject matter of the disputes concerns the Federal Government or any of its agencies or the subject matter relates to issues listed in Section 251 of the Constitution.³⁹ The Federal High Court has exclusive jurisdiction in such cases. The provisions of the Constitution (Third Alteration) Act 2010, however, made far-reaching amendments to the courts with jurisdiction over human rights as well as the extent of jurisdiction of the different courts. Importantly, in relation to Chapter IV of the Constitution, the NIC has been incorporated into the league of courts with 'special jurisdiction.' The scope of the NIC's human rights jurisdiction is not so clear, however, and this is the primary concern of this report.

³² Section 38, *Ibid.*

³³ Section 39, *Ibid.*

³⁴ Section 40, *Ibid.*

³⁵ Section 41, *Ibid.*

³⁶ Section 42, *Ibid.*

³⁷ Section 43, *Ibid.*

³⁸ See I. David Efevwerhan. *Principles of Civil Procedure in Nigeria* (Enugu: Chenglo, 2007), pp. 340 – 344.

³⁹ *Ibid.*, p. 344. See also *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117), p. 517.

One of the fundamental consequences of the Constitution (Third Alteration) Act is the re-adjustment of human rights courts' jurisdictional powers. In addition to the three courts previously listed that have original jurisdiction in the enforcement of human rights as prescribed in Chapter IV of the Constitution, the NIC has now been given jurisdiction, albeit in a limited manner, to enforce some human rights.⁴⁰ In recognition of the role of human rights in the implementation of social justice, the Constitution (Third Alteration) Act has vested exclusive jurisdiction over the NIC in human rights or human rights related cases arising from the relationship between employees and employers, including all human rights issues arising from industrial relations, trade unions and all human rights issues relevant to the workplace.⁴¹ The successive segment of this article discusses the different aspects of the NIC's human rights authority as laid down in the Constitution (Third Alteration) Act 2010.

Limited Jurisdiction over Chapter IV of the Constitution

Section 254C(1)(d) of the Constitution (as amended) provides that the NIC has jurisdiction over and exercises jurisdiction over the exclusion in civil cases of any other court and matters relating to or relating to any dispute over the interpretation and application of the provisions of Chapter IV of the Constitution relating to any employment, labour, industrial relations, trade unionism, employers

⁴⁰ Section 254C (1)(d), 1999 Constitution of the Federal Republic of Nigeria; Section 6, Third Alteration Act.

⁴¹ See Abdullahi Saliulshola, Adekumbi Adeleye, and Dauda Momodu. 'Rethinking the Jurisdiction of the National Industrial Court in Nigeria Rights Enforcement in Nigeria: Lessons from South Africa', (2016) 3, *Transnational Human Rights Review*, p. 18. See also Abdullahi Saliulshola, Adekumbi Adeleye, and Dauda Momodu. 'A Critique of Jurisdiction of the National Industrial Court in Nigeria Rights Enforcement in Nigeria' (2016) 2(4), *Journal of Asian & African Social Science & Humanities*, p. 103.

'rights. The Constitution recognizes human rights marriage and labour justice marriage. This provision is specific to civil causes and matters. In this paper, however, it is argued that, in view of the provision of paragraph 5 of Section 254C of the Constitution, the criminal jurisdiction of the NIC may arise in respect of fundamental human rights under Chapter IV since the Constitution has conferred on the NIC civil jurisdiction in respect of matters under the same chapter. The consequence of Section 254C (1) (d) of the Constitution (as amended) is that the NIC may be called upon to interpret and apply any of the rights contained in Chapter IV of the Constitution to the extent that the right relates to a labour dispute or is related to it. This is the NIC's first human rights jurisdiction category.⁴²

The NIC has jurisdiction to protect the freedom of association of workers within the scope of Section 254C (1) (d) of the Constitution (as amended). Association freedom follows the axiom that a person should be free to join an association and work in collaboration with others as long as there is no harm. This right is protected in the world's different jurisdictions, and Nigeria has its own provision covered by Section 40 of its 1999 Constitution. The concept of freedom of association in labour relations involves workers' rights to join, belong to, or engage in collective bargaining in a trade union. It also covers, as an extension, the right to strike if necessary. For example, if employers refuse to pay wages, employees may go on strike. The NIC is able to handle disputes regarding the infringement of human rights.

⁴² See Section 254 (C), sub-section (1) (d) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Discrimination and Sexual Harassment at Workplace

Section 254C (1) (g) of the Constitution (as amended) comprises the second class of human rights relevant authority given to the NIC under the Third Alteration Act. The clause shall have exclusive control over the NIC in matters relating to or relating to any conflict arising from discrimination or workplace sexual harassment.⁴³ Section 17 of the 1999 Constitution stipulates that the values of democracy, equality and justice are based on the state social order. It also provides for equal rights, responsibilities and privileges for every person before the law. Section 42 of the 1999 Constitution acknowledges each person's right to freedom from discrimination on the grounds of their race, ethnic group, place of origin, age, religion or political opinion. A worker is said to have been discriminated against if he is treated differently from other workers on grounds that are not necessarily in line with the law.⁴⁴ In addition, the Trade Unions Act provides that a person eligible to belong to a trade union can not be denied trade union membership on the grounds that he or she belongs to a particular community, tribe, place of origin, religion or political opinion. Article 12 of the Act makes it an offense for the union and all its members to deny the person's membership as a member of the union on grounds of discrimination.⁴⁵ In the above cases, the NIC has exclusive jurisdiction.⁴⁶

⁴³ Section 254 (C), sub-section (1) (g) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

⁴⁴ Bamidele Aturu. 'Discrimination in the Workplace' *Vanguard* (Lagos, March 6, 2010) <www.vanguardngr.com/2010/03/discrimination-in-the-workplace/> accessed 10 November 2019.

⁴⁵ Another relevant provision is Section 9(6) of the Labour Act which prohibits contracts of employment that results in the dismissal of a worker on the grounds of either belonging to or not being a member of a trade union or participating in trade union activities.

⁴⁶ Section 254C(1) (b) 1999 Constitution of the Federal Republic of Nigeria (as amended).

As a fundamental principle, the International Labour Organization (ILO) advocates that member states should respect their workers' right to freedom from discrimination and the elimination of discrimination in the fields of employment. Nigeria, an ILO member, ratified the 1951 ILO Convention on Equal Remuneration and the 1958 Convention on Discrimination (Employment and Occupation). However, it is a matter of fact to determine whether these provisions have been breached. However, the NIC has the power to adjudicate on matters that are caught by these provisions.⁴⁷

Protecting the human rights of disabled workers is also at the NIC's mercy. Nigeria's level of abuse of the right of disabled people is lugubrious. The role of the NIC in protecting the rights of persons with disabilities in work-related matters can not be dismissed. Section 2 of the 1993 Nigerians with Disabilities Act ensures equal treatment for other people. Equal treatment is a corollary to freedom from discrimination and both fall within the scope of the constitutionally recognized fundamental human rights. Section 6 of the Act also saddles the government with the responsibility of taking action to promote disabled employment. Therefore, for reasons of disability, a disabled person must not be subjected by his employer to any disability or conditions. Matters resulting from such incidences are labour-related issues and fall within the NIC's jurisdiction.

Child Abuse, Child Labour and Human Trafficking

The region of the NIC's human rights authority under Section 254C (1) (g) of the Constitution (as amended) is child abuse, child labour, and human trafficking. This clause further affirmed the

⁴⁷ *Ibid.*

NIC's important role in protecting human rights in Nigeria and the rights of the child in this case. Child labour and child abuse are not just a question of human rights, they are multifaceted, risky and clearly a flagrant violation of children's best interests. In labour-related matters, the NIC must ensure that it exercises its jurisdiction to eliminate any form of child abuse, child labour or trafficking in children. Because of the different forms of child abuse⁴⁸ in Nigeria, it is becoming more important to ensure social justice is achieved.⁴⁹ While work is important to life and has its associated benefits, it becomes diabolical when children are forced to work on end for sometimes sixteen hours or more as early as four years of age, among other incidences of child labour.⁵⁰ As succinctly said by Admassie,⁵¹ the plight of millions of children living in unsafe conditions for their development calls for action. The NIC will ensure that it respects children's best interest in labour-related issues as its authority under the Third Alteration includes this area of human rights.

Nonetheless, the issue can also be asked whether the family court is more suited to deal with child violence problems than the NIC. Besides the fact that family courts are more personal and their constitution more suited for dealing with such issues, there is the question of accessibility to the NIC as the NIC only has a small number of divisions throughout the federation. There is a point that the NIC can get over flooded with many cases as child abuse

⁴⁸ Example include incidences of street trading, domestic servitude, among others.

⁴⁹ J. Ogunsakin. 'A Legal Prognosis of Child Labour Under the Nigerian Child's Rights Act', (2015), *International Affairs and Global Strategy*, pp. 28 – 38.

⁵⁰ *Ibid*, p. 30.

⁵¹ Assefa Admassie. 'Exploring the High Incidence of Child Labour in Sub-Saharan Africa' (2002), *African Development Review*, pp. 251 – 275.

happens almost daily. However, if the NIC invokes its authority under Section 24 of the 2006 NIC Act and Rule 28 of the 2007 NIC Regulations, this question can be circumvented. The NIC has the authority to move cases where the circumstances warrant, under the above provisions.

Procedural Fair Hearing

Another point to consider in the administrative and procedural array of industrial organizations is the indispensability of fair hearing. In recent times, globalization and economic recession have caused many employers, multinational corporations, to violate their workers' rights. Many workers are now losing their jobs for various reasons, including downsizing, restructuring, and arbitrary termination of contracts, without due process of law being respected. Article 36 of the Constitution provides for a fair hearing based on the principles of natural justice.⁵² In *University of Calabar v. Essien*,⁵³ Uguh JSC stated:

Where an employer dismisses or terminates an employee's position on the basis of wrongdoing, all that the employer needs to prove in order to justify his decision is to show that the complaint has been reported to the employee, that he has been given a fair hearing, that is, that the law of natural justice has not been violated and that the disciplinary committee has followed, if any, the procedure laid down.

⁵² Emeka Chianu. 'Towards Fair Hearing for all Nigerian Employees' (2007) 1(1), *Review of Nigerian Law and Practice*, pp. 29 – 60.

⁵³ (1996) 10 NWLR (Pt. 477), pp. 225, 262.

Before an employer can dispense with his employee's work under common law, he must provide an opportunity for the employee to be heard until exercising his summary power of dismissal.⁵⁴ Also in employers' training of employees, the idea of fair hearing is very German. Employees may request recourse to the NIC as part of their jurisdiction to obtain redress for wrongful dismissal from jobs. In *Danmole v AG Leventis & Co (Nigeria) Ltd.*⁵⁵ Ilori J. Reiterated that absence from duty without leave amounts to misconduct that justifies dismissal, but the principle of *audi alteram partem* imposes a duty on an employer to act fairly by giving the employee the opportunity to explain himself before making any decision that affects the employee's own right. The NIC has jurisdiction to deal with this issue by deciding on issues arising from such events.⁵⁶

A Critique of the Human Rights Mandate of the National Industrial Court

Although commendable, the vesting of human rights authority in the NIC would create a series of setbacks for Nigeria's enforcement of human rights. The resurgence of interest in the NIC's scope of human rights jurisdiction and the fact that the exclusive nature of jurisdiction can restrict rather than expand access to justice may be one of the problems involved. As Ishola, Adeleye and Momodu have noted, 'the court will have to contend with the demarcation of its jurisdiction from time to time and will be constantly concerned to ensure that any human rights violations it deals with have been truly committed in connection with a labour dispute / issue'.⁵⁷ The lingering debate on whether a human rights issue relates in work or dispute may result in the administration of labour justice being

⁵⁴ *Yusuf v Union Bank of Nigeria* (1996) 39 LRCN 1139, 115, Per Wali JSC.

⁵⁵ (1981) 1 – 3 CCHCJ 227.

⁵⁶ V. O. Ayeni, *supra* n. 22, pp. 240 – 244.

⁵⁷ Abdullahi Saliu Ishola, Adekumbi Adeleye *supra*, n. 41, p. 18.

delayed. Significantly, it is unclear whether the Fundamental Right Enforcement Procedure rules apply to proceedings before the NIC. Below, this article addresses some of the issues arising from the NIC's jurisdiction over human rights.⁵⁸

The Issue of Exclusive Jurisdiction of the Court

The exclusive nature of the NICN's jurisdiction is the number one issue that scholars have received attention in relation to the NIC's human rights jurisdiction. The Constitution (Third Alteration) Act 2010 grants the NIC exclusive jurisdiction in civil matters in all cases of infringement of fundamental rights resulting from or resulting from labour, trade disputes and industrial relations issues. In addition, all matters relating to these matters pending before a State High Court, the FCT High Court or the Federal High Court must be transferred to the appropriate NIC section.⁵⁹ This position has been affirmed in the cases of *Josiah Madu v Solus Schall Nigeria Ltd*⁶⁰ and *Echelukwu John O & 90 Others v Igo-Etiti Local Government Area*.⁶¹ In the latter case, instead of moving it to NIC, the Court of Appeal also rebuked the trial judge for striking out a labour-related human rights issue.⁶² The custom to date has been to

⁵⁸ V. O. Ayeni, supra, n. 22, pp. 244 – 245.

⁵⁹ Abdullahi Saliu Ishola, Adekumbi Adeleye, and Dauda momodu, supra n. 41, p. 25.

⁶⁰ Unreported. See the fact of the case in Gbenga Biobaku & Co. 'The Exclusive Jurisdiction of the National Industrial Court in Labour and Employment Matters' < <http://www.gbc-law.com/assets/publications/The-Exclusive-Jurisdiction-of-the-National-Industrial-Court.pdf> > accessed 22 July 2020.

⁶¹ See *Echelukwu John O & 90 Others v Igbo-Etiti Local Government Area*, Appeal No CA/E/261/2011 (unreported). Judgment was delivered at the Enugu Division of the Court of Appeal, on 10 December 2012.

⁶² See for instance, *Mrs. Folarin Oreka Maiya v The Incorporated Trustees of Clinton Health Access Initiative, Nigeria & 2 Ors*, Suit No

report at the NIC human rights issues related to the relationship between employee and employer.⁶³ As the law currently stands, it is no longer possible to interpret the provisions of Section 46 of the Constitution and, by extension, the Fundamental Right Enforcement Procedure Rules as only applicable to the State High Court, FCT High Court and High Court of the Federal Court. The NIC can now be considered as having limited special authority under Section 46 of the Constitution under the Third Alteration Act.⁶⁴

This is argued that this is better to make the jurisdiction reciprocal rather than exclusive rather than impose exclusive jurisdiction on the NIC in labour matters relevant to human rights. Before the Third Alteration Act, where labour-related human rights violations can be brought before any State High Court, Federal High Court or Federal Capital Territory High Court, victims of human rights violations clearly had more access to justice, and due to their presence in all states and many local governments at the state level, it was quick and easy to access any of these courts. Thus, vesting exclusive jurisdiction in the NIC on labour-related human rights issues may result in an avoidable delay in the administration of labour justice and may impose additional constraints on litigants who may have to travel to state capital where the available NIC divisions are located. Once again, the question is whether the NIC

NIC/ABJ/13/2011, <judgment.nicn.gov.ng/pdf.php?case_id=346> accessed 15 November 2018.

⁶³ Suit No NIC/ABJ/13/2011, <judgment.nicn.gov.ng/pdf.php?case_id=346> accessed 15 November 2018.

⁶⁴ Abdullahi Saliu Ishola, Adekumbi Adeleye, and Dauda Momodu, *supra* n. 41, pp. 25 – 27.

can manage the resulting workload.⁶⁵The NIC also needs to establish divisions in all states, and the current divisions are not uniformly distributed around the federation. It causes tough challenges for litigants and needless hurdles. While creating more divisions will improve this issue, it does not yet explain why high courts with multiple divisions in each state are dismissed from the jurisdiction of human rights in labour matters.⁶⁶

The Applicability of the 2009 Fundamental Right Enforcement Procedure Rules to the National Industrial Court

The Fundamental Right Enforcement Procedure Rules were adopted in 2009 in the exercise of the powers vested on the Nigerian Chief Justice under Section 46(3) of the Constitution.⁶⁷The Fundamental Right Enforcement Procedure Rules 2009 in its Preamble demands that the provisions of Chapter IV of the Constitution be interpreted expansively and purposefully in order to promote the protection of human rights.⁶⁸ Domestic

⁶⁵ See Ifeoluwa Olubiyi. 'Jurisdiction and Appellate Powers of the Nigerian National Industrial Court: Need for further Reform' (2016) 7(3), *The Gravitas Review of Business & Property Law*, p. 44.

⁶⁶ V. O. Ayeni, *supra*, note 22, pp. 245 – 246.

⁶⁷ The Fundamental Right Enforcement Procedure Rules came into force on 1 December 2009. See Federal Republic of Nigeria Official Gazette No. 74, Vol. 96, Lagos, 17 November 2009. For a general critical appraisal of the strengths and weaknesses of the Fundamental Right Enforcement Procedure Rules, see Dakas CJ Dakas, 'Judicial Reform of the Legal Framework of Human Rights Litigation in Nigeria: Novelties and Perplexities' in Epiphany Azinge & Dakas CJ Dakas (eds), *Judicial Reform and Transformation in Nigeria: A Tribute to Hon Justice Dahiru Musdapher, GCON, FNIALS, Chief Justice of Nigeria* (Lagos: Nigerian Institute of Advanced Legal Studies, 2012) 334. See also Abiola Sanni. 'Fundamental Rights Enforcement Procedure Rules, 2009 as a Tool for the Enforcement of the African Charter on Human and Peoples' Rights in Nigeria: The need for Far-Reaching Reform' (2011) 11 *African Human Rights Law Journal*, p. 511.

⁶⁸ Fundamental Right Enforcement Procedure Rules 2009, Preamble.

courts are also required to respect instruments of international human rights, including the African Charter on Human and Peoples' Rights (African Charter), the Universal Declaration of Human Rights (UDHR) and other regional and international instruments of human rights.⁶⁹ The Rules also allow courts to expand access to justice for all groups of litigants and to encourage litigation in the public interest and to loosen *locus standi* rules. The Fundamental Right Enforcement Procedure Rules require that human rights cases be given priority in eligible cases in order to ensure speedy review of human rights cases.⁷⁰

As ambitious as the Fundamental Right Enforcement Procedure Rules are, there are a number of reasons to argue that the Fundamental Right Enforcement Procedure Rules can not be extended to the NIC. Second, there is a slight difference between the human rights jurisdiction in the NIC under Section 254 of the Constitution (as amended) and the special jurisdiction in the High Courts under Section 46(3) of the Constitution, and it is claimed that this disparity is consequential to the applicability of the Fundamental Right Enforcement Procedure Rules to the NIC.⁷¹ The Third Alteration Act confers authority on the NIC 'connected to or relevant to any controversy concerning the interpretation and operation of Chapter IV of this Constitution'.⁷² By contrast, Section 46 of the Constitution gives jurisdiction to high courts. Thus, while the High Court's special jurisdiction relates to the enforcement of fundamental rights in Chapter IV, the NIC's limited jurisdiction relates to the jurisdiction over the interpretation and application of

⁶⁹ *Ibid.*

⁷⁰ Fundamental Right Enforcement Procedure Rules 2009, Preamble.

⁷¹ See generally Abdullahi Saliulshola, Adekumbi Adeleye, and Dauda Momodu, *supra* n. 41, pp. 29 – 32.

⁷² Section 254C, 1999 Constitution of the Federal Republic of Nigeria.

Chapter IV provisions as it relates to the relationship between employee and employer. In a strict sense, therefore, NIC may have no jurisdiction to enforce Chapter IV other than to resolve disputes concerning the application and interpretation of Chapter IV provisions as they relate to labour matters. Furthermore, Section 46(3) authorizes the Nigerian Chief Justice to make rules specifically 'on the practice and procedure of a High Court for the purposes of Section 46' and since the NIC is not a High Court, it is doubtful whether the Fundamental Right Enforcement Procedure rules would apply to it. The Fundamental Right Enforcement Procedure rules themselves define 'court' to mean the State High Court, the Federal Capital Territory High Court or the Federal High Court.⁷³ In practice, the NIC allows a request for human rights submitted before it to comply with its Rules of Procedure and not even the Fundamental Right Enforcement Procedure Rules of 2009.⁷⁴ Because human rights in Nigeria can only be applied by means of the Fundamental Right Enforcement Procedure Rules, the NIC's human rights jurisdiction may therefore be limited to conflicts over the interpretation and application of the provisions of Chapter IV of the Constitution as they relate to labour matters and not to overall human rights compliance jurisdiction.⁷⁵

Right of Appeal

Prior to the epoch making decision of the Supreme Court in the case of *Skye Bank v Iwu*,⁷⁶ the school of thought on whether or not any of the NIC's decisions were appealable to the Court of Appeal

⁷³ See Order I (2), fundamental right enforcement procedure Rules, 2009.

⁷⁴ See Abdullahi Saliu Ishola, Adekumbi Adeleye, and Dauda Momodu, *supra* n. 41, p. 33.

⁷⁵ V. O. Ayeni, *supra* n. 22, pp. 246 – 247.

⁷⁶ (2017) 16 NWLR (Pt. 1590), p. 24.

was challenged. The views of scholars as mistaken reflected in Kenen's explicit position:

Appeals ... According to the rulings of the National Industrial Court, the Court of Appeal has the right to appeal issues of fundamental rights as alluded to in Chapter IV of the Constitution in relation to matters within which the National Industrial Court has jurisdiction ... In other civil cases and matters, an appeal is based solely on the National Industrial Court's decision to the Court of Appeal as provided by a National Assembly Act. The National Assembly's only law that should have made provision for this purpose is the 2006 National Industrial Court Act. However, Section 9 of the National Industrial Court Act, 2006 emphatically provides that there shall be no appeal from the decisions of the National Industrial Court to the Court of Appeal or any other Court except as prescribed by any Act of the National Assembly. The combined effect of Section 243(3) of the Constitution (as amended) and Section 9 of the National Industrial Court Act 2006 is that, in civil and non-fundamental human rights matters contained in Chapter IV of the Constitution, the National Industrial Court remains the final court of jurisdiction conferred upon it by the Constitution. This submission is based on the fact that, from the decisions of the National Industrial Court to the

Court of Appeal in civil matters, no National Assembly Act has prescribed the right of appeal...⁷⁷

In essence, the law's pre-July 1st day position was that the NIC's appealable decision was limited only to judgments emanating from fundamental rights as enshrined in Chapter IV of the Constitution and appeals emanating from or relating to criminal matters determined by the NIC and nothing more. The above position has been held for a long time and it has been said that the NIC has the final say on industrial matters except when it concerns or touches on Chapter IV of the Constitution and in circumstances where the court has been invoked in its criminal jurisdiction.⁷⁸

Nonetheless, following the Third Alteration of the Constitution of 1999, by virtue of which the National Industrial Court of Nigeria is exculpated from the curious contention that the NIC is a High Court of Record, that is, that the NIC has been repositioned and raised to the level of a Superior Court of Record and has therefore been ranked in the judicial hierarchy with the High Court of the States and that of the Federal Capital Territory Abuja, Federal High Court Customary Court of Appeal and Sharia Court of Appeal, the NIC has undoubtedly become a superior court of record and has therefore been (as amended) listed with its counterparts under Section 6(5) of the Constitution of the Federal Republic of Nigeria in 1999, and the same has also been reflected in the courts to which

⁷⁷ E. A. Kenen, *supra* n. 1.

⁷⁸ Abdulwahab Abdulahi. 'National Industrial Court Judgment-non-final-Supreme' <<http://www.vanguardngr.com/2017/08/industrial-court-judgment-no-final-supreme-court/>> accessed 5 November 2019.

the Court of Appeal has constitutionally exclusive jurisdiction to hear appeals arising from it.⁷⁹

Hitherto, in the case of *Skye Bank Plc v. Iwu*, the long-standing view that NIC had the final say on industrial matters was subject to judicial activism. In the case of *Iwu*, the Respondent, a defunct Afri Bank Plc employee launched the lawsuit against Mainstreet Bank Ltd as the successor to the Nigerian Plc Africa Bank. The suit was initiated for the first time at the Lagos Division of the National Industrial Court where, among others, the Respondent as a Claimant at the trial court challenged his wrongful termination of the Appellant's employment, unpaid accrued wages and other benefits that he alleged were due to him in the course of his bank employment.

Following the suit, Mainstreet Bank Ltd raised a preliminary objection challenging the jurisdiction of the court where, after exchanging relevant proceedings and hearing the objection, the court held that it had jurisdiction to hear and determine the case and dismissed the preliminary objection accordingly.

Unhappy with the verdict, Mainstreet Bank appealed to the Court of Appeal after the Respondents raised an exception to the Court of Appeal's jurisdiction to consider the appeal, claiming that the NIC's decision was only appealable in civil proceedings on fundamental rights issues and that the immediate appeal was not relevant to fundamental rights issues.

After the appellant and the respondent were heard on the objection by the Court of Appeal and adjourned for ruling, the appellant

⁷⁹ Section 240 Constitution of the Federal Republic of Nigeria 1999 (as amended).

(Mainstreet Bank) appealed that the Court of Appeal should bring a case for the opinion of the Supreme Court on the constitutional issues raised on the objection, hence the Court of Appeal, put its ruling in abeyance and refer the case to the Supreme Court for its opinion. The explanation for the application for referral is that two sets of contradictory Court of Appeal decisions are reported as to whether the Court of Appeal had jurisdiction over appeals against all NIC decisions. Although one section of the decision claims to have appeal authority over all NIC decisions, the other states that it only has jurisdiction over the NIC's decisions on matters of fundamental right. Accordingly, the Court of Appeal acting pursuant to Section 295 of the Federal Republic of Nigeria Constitution approved Mainstreet Bank Plc's petition and proposed three issues to be resolved by the Supreme Court. However, the Appellant (Skye Bank Plc) became the successor-in-title of Mainstreet Bank Ltd in the course of the Supreme Court proceedings and was granted leave of court to pursue the case as the Appellant.

At the Supreme Court, the appellant argued among other things that since the NIC was one of the tribunals referred to in Section 240 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Court of Appeal had reviewed all of the court's decisions. It was also the claim of the appellants that the right of appeal against any decision of the NIC was foreclosed on the provisions of the constitution. It was also contended by the appellants that, in the absence of any specific provision in both the Constitution and the NICA to the effect that NIC was a final court on any matter before it, it could not be said that it had finality on the matters brought before it. Adding that an appeal is a continuation of the litigation process and constitutionally

guaranteed access to court under Section 6 of the Constitution. Similarly, the appellant further argued that access to the court only begins and ends with access to the trial court but continues as a right of appeal and as the right of access to the courts up to appeal is a fundamental right, the NIC decisions were appealable as a right of fundamental violation of human rights and with the Court of Appeal's leave on other cases.

Contrary to the arguments put forward by the appellant, the respondent argued that, pursuant to Section 243(2) – (4) of the Constitution, the Court of Appeal could only exercise limited appeal jurisdiction over NIC's decisions and that such appeal jurisdiction concerns only NIC's decisions on fundamental rights issues as enshrined in Chapter IV of the Constitution. The respondent also requested that the Court of Appeal lacked authority to prosecute NIC's decisions until further appeal jurisdiction is submitted to the NIC by a National Assembly Act.

Following counsel's submissions, the Supreme Court formulated the issue for wit determination: whether the Court of Appeal was established by the Federal Republic of Nigeria Constitution as an appeal court. 1999 (as amended) has authority to exclude any other court of law in Nigeria from the order of the NIC of Nigeria to hear and decide all appeals. In resolving the issue(s), the Supreme Court considered, among other things, the provisions of Sections 6(1) – (5), 240 and 243 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and subsequently held that the intention of the 2010 Constitution of the Federal Republic of Nigeria (Third Alteration) was to equate the NIC with a superior court of record and a court of coordinate. The sequel to the change made under the

Act to the Constitution,⁸⁰ The Court of Appeal's appeal jurisdiction was extended to include the hearing and determination of appeals by the NIC and others, subject to the provisions of the Constitution. It further held that the NIC is not normally able to oust its constitutional jurisdiction from the Court of Appeal. Using a junior's analogy to a senior brother, the Supreme Court argued that the younger man could not unjustifiably strip the elder of one of his rights. Ogunbiye JSC dictum is as follows:

The National Industrial Court was set up vide Section 254A of the Constitution (Third Alteration Act) in 2010 when it was elevated to the status of the Superior Court of Record and thus elevated its status to the level of the courts that already exist as provided for in Section 240 of the Constitution. Therefore, it will be against logical reasoning that a child, who is the last in the family, should attempt to take over the birthright of those who are elders and so expressly stated without any reason and explanation. Esau and Jacob's biblical situation, where the younger has taken over the older's birthright, is well explained and with reason. It wasn't born out of imagination or anything. The Supreme Court is the country's highest court, whereas it is subordinated to all other courts. In some areas, the Constitution cannot be interpreted or created as another Supreme Court by implication (NIC).

⁸⁰ Constitution of the Federal Republic of Nigeria (3rd Alteration) Act also for emphasis see Sections 2, 4, 5, and long title of the 3rd Alteration Act as well as Section 254D (1) Constitution of the Federal Republic of Nigeria 1999 (as amended).

Furthermore, the Supreme Court held that an appeal is a continuation of the legal process which does not end at the trial stage, adding that it is equivalent to the right of access to court which is legally guaranteed under Section 36 of the Federal Republic of Nigeria 1999 Constitution (as amended). Consequently, the right of access to the court does not end only with access to the court of the jury as the right continues through the appeal and does not depend on whether the appeal is as of right or with leave of the court. It further held that the right of appeal is guaranteed by the Constitution and Section 240 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), expressly vests jurisdiction in the Court of Appeal to entertain NIC appeals and in that regard the substantive right of appeal to the Court of Appeal was created in favour of those persons who may be grieved by the NIC's decisions. In this regard, every litigant who is aggrieved by the trial court's decision, that is, the NIC that exercise the right of appeal to the Court of Appeal, whether with the court's leave or as a matter of law.

However, the Supreme Court held that the right of appeal is a very important constitutional right and that its exercise should not be unduly fettered, reaffirming that access to the court is a constitutional right that no subordinate law, definition or presumption of any court will take away, except by the constitution. The Supreme Court also ruled on the finality of the decisions of the Court of Appeal on appeals from the decision of the NIC in which it held that Section 234(4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) had the effect that the decisions of the NIC could only be appealed to the Court of Appeal and that there was no further appeal in any appeal against the decision of the Court of Appeal. On the basis of the above

opinion, the law stipulates that the Supreme Court can not contest the Court of Appeal's judgment upon labour issues because the Supreme Court held unanimously that the Court of Appeal was the court of last resort on appeals arising from the judgments of the National Industrial Court of Appeal.

One question, however, calls for an answer, that is, whether NIC's appeals relating to Fundamental Human Rights and Criminal Matters, for which the NIC has the power to attempt to make statements, cannot be brought before the Supreme Court? It is claimed that issues related to human rights security and evidence of guilt or otherwise of any citizen of the Federal Republic of Nigeria are unrestricted and, legally, no court shall be excluded from its jurisdiction to hear and decide criminal appeals in respect of appeals arising from the provisions of Chapter 4(4) of the Federal Republic of Nigeria Constitution 1999 (as amended). It is therefore claimed with reverence that such appeals may be appealed as a matter of law to the Supreme Court.

It is also worth stating that the case of *Iwu* is not only a breakthrough, but also an epoch-making decision that eventually resolved the long-standing issue and argument as to whether other decisions of the National Industrial Court are appealable except for criminal matters and human rights enforcement issues. While it is now settled that the National Industrial Court's decisions are appealable to the Court of Appeal, it is worrying that in *Iwu's* case the Supreme Court limited that right to appeal to the Court of Appeal alone the decisions of the National Industrial Court. This is because the law can only be expounded for the benefit of all if decisions of the lower courts are allowed to be tested by the higher courts. Of course, if the Supreme Court did not allow the appeal in

the case of Iwu in its judicial activism, the daylight would not have seen the judicial progress so far being celebrated.

Although it was argued that the rationale for appointing a special court like the National Industrial Court to hear and determine labour matters is to ensure speedy dispensation of industrial / labour-related matters. But while expediency is being pursued in hearing and determining labour matters, it must be noted that justice can be denied just the way justice is delayed, which is also how justice can be crushed. It would therefore serve the right of the Nigerian legal system for all appeals arising from the decisions of the National Industrial Court to be brought before the Supreme Court in order to strengthen labour law jurisprudence in Nigeria.⁸¹

The Implications

It is now becoming very clear that the National Industrial Court was formed to ensure and improve the effectiveness, quality and timeliness of labour disputes.⁸²

It is also very certain that the NIC is well positioned and empowered to fulfil its purpose of existence under the current legal regime.

It should be noted, however, that the extent and latitude of exclusive authority presently in the hands of the NIC is so immense and enormous that if not properly managed, the very essence of the

⁸¹ S. N. Didia. "Rethinking the Status, Jurisdiction and Right of Appeals of Decisions of the National Industrial Courts Digest of the case of Skye Bank Plc v Anamem Iwu" (2018), 4 (1), *Port Harcourt Journal of Business Law*, pp. 127 - 131. *Coca Cola Nig Ltd v Akinsanya* (2017) NWLR (pt 1593)74.

⁸² See the case of *John v. Igbo-Ekiti L.G.A.* (2013) 7 NWLR (Pt. 1352), p. 1 at p. 13; *S.C.C. (Nig) Ltd v. Sedi* (2013), NWLR (Pt. 1335), p. 230 at 246.

NIC's creation can be overcome. Other implications arrogated to the NIC by this vast exclusive jurisdiction are:

- a. Overcrowding and Case Glut in Court;
- b. Case delay;⁸³
- c. Access to the justice system;⁸⁴
- d. Conflict of the Constitution.

Conclusions

The constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 was appropriately welcomed by the re-establishment of the National Industrial Court and its groundbreaking inclusion in Section 6 as a giant leap in the right direction with respect to the Nigerian judiciary. The Third Alteration Act makes an immense contribution to the realization of human rights in labour matters and extends its jurisdiction to cover new areas such as sexual harassment, child labour, child abuse, human trafficking and related matters.

The issues arising from the expanded jurisdiction are clearly issues of human rights. In order to achieve the goal in vesting jurisdiction on human rights in the NIC, it is recommended that the relevant laws and provisions of the Constitution be amended to make the court's jurisdiction over human rights concurrent rather than exclusive in order to give full effect to the court's jurisdiction over human rights.

One obvious advantage of this is greater access to justice, a rapid dispensation of labour disputes related to human rights, and the

⁸³ *Unongo v. Aku & Ors* (1983) 14 N.S.C.C. 563 at 577; *Nzer Ibe v. A. G. Imo State* (1996) 10 NWLR (Pt. 478) 322 at 329; *Bamidele v. Comm. For Local Government* (1994) 2 NWLR (Pt. 328) 568 at 578.

⁸⁴ *Global Excellence Communications Ltd v. Duke* (2007) 7 SC (Pt. 11), 162.

removal of technicalities and frivolous preliminary objection as to whether or not human rights issues arise from the relationship between employee and employer.