Examining National Industrial Court of Nigeria Repositioned Status in Trade Dispute Resolution

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Chapter One

Introduction

1.1 Background to the Study

Disputes are as much a part of life as peaceful coexistence. In all nations and organizations, dispute is endemic. It is part of national and organizational life and its effective management is a necessity for organizational and national survival[1].In employment context, however, disputes not only cause disaffection in work place, they need fast, efficient, and effective settlement. In other words, dispute between employees of organizations and management are common in work place in every society and these disputes are usually referred to as trade disputes.

Trade dispute means any dispute or differences between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour.[2] In Nigeria, the principal legislation governing trade dispute is the Trade Dispute Act[3] and its defines trade disputes as "Any dispute between employer and workers or between workers and workers which is connected with the employment or non-employment or the form of employment and physical condition of work of any person".[4]

One of the main focuses of labour law is the resolution of such disputes. The National Industrial Court of Nigeria was established in part to address the problems with the

[1]L. Gordon, "Managing Conflict in Today Organization Management Training and Development," *Labour Law Journal*, (2007) (1) (1) 29.
[2]https://www.lawinsider.com/dictionary/trade-dispute. Accessed on the 3 August, 2021
[3] Laws of the Federation of Nigeria, 2004
[4] Ibid Section 47 (1)

resolution of such disputes, which are frequently clouded in controversy and complicated by operational logistics and regulatory framework.

For the past thirty years, the challenges of an ever-expanding global society and its echoing effect on the socio-political landscape have resulted in a proliferation of litigation in Nigeria. This has overburdened the superior court of law in Nigeria, and the high reliance on technicalities and strict legal procedures by the court have consequently resulted in in a remarkable slow process of dispensing justice in the country, with attendant negative effects on the economy and virtually every aspect of the nation's socio-political life.[5]

The need to unblock the regular court and to guarantee effectiveness in dispensing justice is therefore one of the primary reasons behind the establishment of specialised court for resolution of disputes in sensitive areas, where prompt access to justice assumes greatest significance and such area include the trade disputes or employment related issues.

An elaborate general framework for the resolution of trade and related labour disputes is currently enabled in the 1999 constitution of the of the federal republic of Nigeria.[6] Historically, the National Industrial Court of Nigeria came into being in 1976.[7] There was no court specifically established to consider disputes involving or arising from workers and/or the labour sector prior to the passage of the Act. The aforementioned Act gave the necessary push for the establishment of a Court or an adjudicating system

[5]Offornze and Paul, *The National Industrial Court of Nigeria: law, practice and procedure*, 2nded (Kraft book Limited, Sango, Ibadan, 2019)
[6]Third Alteration Act of the 1999 constitution
[7] Trade Dispute Decree No. 7 of 1976 (later the Trade Dispute Act, 1976)

specifically for labour or industrial disputes. The advancements seen in the Court (NICN)[8] today were the result of its metamorphosis.

It is equally significant to remember that the Court has faced jurisdictional issues since its inception, prior to this significant development. It is well known that neither the 1979 nor the 1999 Constitutions ever designated the Court as a superior court. However, due to a clause in the Constitution that also gave State High Courts unlimited jurisdiction to handle general civil matters, it was unclear whether the National Industrial Court could exercise exclusive jurisdiction in matters relating to and/or connected with labour, employment, and other industrial disputes prior to the passage of section 254 of the Constitution of the Federal Republic of Nigeria, 1999 through the Third Alteration Act, 2010.

Prior to the passage of the aforementioned law, there was a lack of consistency in the Court of Appeal's rulings regarding the jurisdiction of these two courts over labour and employment issues. While some Court of Appeal divisions agreed with the claim that the National Industrial Court had sole authority over labour disputes, other divisions believed that State High Courts could also exercise concurrent jurisdiction. In such appeals, the Court of Appeal generally took the position that because the National Industrial Court was not established or recognised by the Constitution, it could not replace the State High Courts, which are record-higher courts with unrestricted jurisdiction in general civil matters under the Constitution.

Second, disputing parties could only approach the Court after being referred by the Minister of Labour or by utilising the Court's interpretive jurisdiction.[9] The intriguing fact is that the regular courts insisted on the restrictive interpretation of the NICN as

[8] National Industrial Court of Nigeria
[9] Section 20 (3) TDA 1976

limited to attars qualifying as "trade disputes" under the TDA, excluding inter-and-intra Union disputes. This was despite the intention of Decree 47 of 1992, which sought to bring both inter and intra Union disputes within the purview of Part 1 of the Trade Dispute Act (TDA) 1990 and treat same as distinct disputes from trade disputes with jurisdiction conferred on the Court. Despite the aforementioned, the Court continues to struggle with a fragile reputation because the public is not well-informed about the majority of its activities, much less the wise arguments and decisions that result from them.

However, between 1992-2006, the National Industrial Court remained practically obsolete. The court only sat in Lagos for those years. It is nearly unknown and its decisions and pronouncements were hardly respected or acted upon.[10] However, in order to fully understands the impact of the 2006 enactment on the development of the NICN, some of the principal impediments faced by the court under the pre-2006 dispensation are highlighted below[11];

The non-inclusion of the NICN in the 1979 and 1999 Constitution was one of the most significant hurdles to the effective exercise of its jurisdiction.

There is no direct access to the NICN for disputing parties, unless the Minister of Labour refers them or they use the court's interpretative jurisdiction.

The dual control of the of the court by the Ministry of Labour and the National Judicial council.

The uncertainty regarding the NICN's exact jurisdiction over labour and trade disputes.

[10]Offornze and Paul, *The National Industrial Court of Nigeria: law, practice and procedure*, 2nded (Kraft book Limited, Sango, Ibadan, 2019).

[11] Extracts culled from "The National Industrial Court of Nigeria: past and future", a paper delivered by Hon. Justice BabatundeAdeniranAdejumo, OFR, President, National Industrial Court of Nigeria at the refresher course organised for judicial officers of between 3-5 years post appointment by the National Judicial Institute, Abuja at the OtutuObaseki auditorium, National Judicial Institute, Abuja on the 24th March 2011.

The president of the NICN was statutorily mandated to preside over all the sittings of the court.[12]

The NICN lacked powers over criminal matters arising from trade disputes brought before it

Moreover, between 2006-2010, the National Assembly sought to remedy the shortcomings heighted above and reposition the NICN through the enactment of the National Industrial Court Act of 2006 (NICNA)[13]. The Act re-established the Court as a superior Court of record with all the powers and sanctions of a court. The enactment of the NICNA in 2006 marked a turning point for the NICN and ensured its developm1ent as a court charged with the important duty of adjudicating labour and industrial disputes in the country.

Furthermore, post 2010 dispensation witnessed a remarkable development and strong legal backing. Though, despite the great innovations in the NICNA 2006 to reform the court and reposition it for effectiveness, it was hindered by the non-inclusion in the constitution. The recurrent discussion regarding the constitutionality of the court exclusive jurisdiction over labour issues, industrial disputes and its status as a superior court of record under the NICNA 2006 were great challenges.

Nevertheless, a new down was ushered in for the NICN on the 4th of March, 2011,[14] when the P resident[15] of the Federal Republic of Nigeria assented to the amended of constitution to include the NICN in the relevant section.

1.2. Statement of the Research Problem

[12] Section 20(4) of the TDA 1976 (as amended).
[13]The NICNA came into force on the 14th of June2006
[14] Third Alteration of the 1999 Nigeria Constitution
[15] Former President GoodluckEbele Jonathan

The Nigerian Trade Disputes Act (TDA), 2004[16] established and conferred on the National Industrial Court, the jurisdiction to sit over references from Trade Dispute Arbitration Tribunals. However, over the years, especially by the Third Alteration of the 1999 Constitution, the Jurisdiction of the NIC has been expanded to cover wider issues relating to labour and employment/industrial disputes. The legal issue, is hence whether the repositioned jurisdiction vested on the NIC is likely to solve the confusion associated with its jurisdiction.

Thus, there is a need to review the jurisdiction and powers of the National Industrial Court of Nigeria under the Trade Disputes Act (2004) and the National Industrial Court Act 2006, then juxtapose same with the amendments contained under the Third Alteration Act, 2010.

Problems associated with the jurisdiction and powers of the National Industrial Court of Nigeria under the current legal regime include the conflict of laws in its operation as regard the provisions of Section 7 and 11 of the National Industrial Court Act and Section 272 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Also, there is a shortage of manpower in the number of judges and judicial divisions of the court available to handle labour and employment disputes arising in different parts of the country, some of which are highly litigious states. It is important to state that in recent time some new judges were appointed to National industrial court of Nigeria, the total number of the judges still lower than the required numbers to handle the overflow of cases coming before the court in view of expanded jurisdiction of the court under the 1999 constitution as amended. The shortage of judicial officers in the NICN means the overstraining of the current judges of the court, which may adversely affect the ability of the court to thoroughly adjudicate on cases before it.

[16] Section 14

1.3 Aim and Objectives of the Study

The aim of this thesis is to review the extended Jurisdiction of the NIC, particularly under the Third Alteration of the 1999 Constitution, to confirm whether the repositioned jurisdiction given to the NIC is likely to solve the confusion associated with its jurisdiction.

The objectives are to:

(i) examine the mandates of the NIC under the Trade Disputes Act 1976, National Industrial Court Act 2006 and the 1999 constitution

(ii) identify the impacts of the repositioning of the NIC on the jurisdiction, composition, and powers of the court.

(iii) examine the effect of the decision in the case of Skye Bank v Iwu on the existing appellate structure of the NIC

1.4. Research Questions

(i) what is the mandate of the NIC under the Trade Disputes Act 1976, National Industrial Court Act 2006 and the 1999 constitution

(ii) what are the impacts of the repositioning of the NIC on the jurisdiction, composition, and powers of the court.

(iii) what is the effect of the decision in the case of Skye Bank v Iwu on the existing appellate structure of the NIC

1.5 Research Methodology

This is a legal and descriptive research that relies on qualitative method of analysis. The research work also relies on the primary and secondary source of Nigerian laws. The primary source includes statutes such as the Constitution of the Federal Republic of Nigeria, 1999,[17] the National Industrial Court Act,[18] Trade Disputes Act, 2004 Cap. T9 Laws of the Federation of Nigeria 2004, Trade Unions Act, 2004 Cap T14 Laws of the Federation of Nigeria 2004, Labour Act Cap L1 Laws of the Federation of Nigeria, African Charter on Human and People's Rights 1986, case laws. It also adopts some secondary source of law relevant to the research work such as textbooks, Journals, articles, Newspaper

1.6 Scope of the Study

The scope of this research is restricted to the statutory repositioning of the National Industrial Court of Nigeria in the resolution of trade disputes in Nigeria. Trade dispute is very wide area in law, hence, the research work focus on specific legal instruments such as Trade Disputes Act, National Industrial Court Act and the Third Alteration Act, institutional mechanism and case law as well as policy framework that regulate trade disputes in labour relation in Nigeria.

The National Industrial Court of Nigeria is taken into account in this study in relation to its authority and jurisdiction under the Trade Disputes Act, National Industrial Court Act, and Third Alteration Act. The National Industrial Court of Nigeria's structure, power, composition and applicability to the resolution of disputes are also examined in this study.

1.7 Significance of the Study

[17] As amended (especially Third Alteration Act, 2010)
[18] N0.1, 2006

This research work is important because it reviews the establishment and the role of national Industrial Court of Nigeria in trade dispute resolution over the years, especially the innovations by the Third Alteration of the 1999 Constitution; the expanded Jurisdiction which covers wider issues relating to labour and employment/industrial disputes.

The research work also focusses on the legal issue of whether the repositioned jurisdiction vested on the NIC is likely to solve the confusion associated with it jurisdiction for the special purpose for which the court was initially established. Thus, the research work reviews the jurisdiction and powers of the National Industrial Court of Nigeria under the Trade Disputes Act (2004) and the National Industrial Court Act 2006, then juxtapose same with the amendments contained under the Third Alteration Act, 2010.

It also provides information on effective dispute resolution procedures and the various ways that parties can settle disputes in labour and trade disputes. Employers, the government, workers, and society as a whole stand to gain from the work as well because it will likely ensure a better understanding of the role of the court and how various category of people and institution can benefit from the repositioned

This work is equally advantageous because it gives students, law lecturers, lawyers, parties in labour disputes, and the general public who are interested additional reference materials. The legislative branch of the government will also receive assistance in understanding the need to strengthen the current NICN Act for the greater good in light of its role in providing assurance to both domestic and foreign investors that their investments would be protected by international best practises in dispute resolution.

1.8 Limitation of the Study

Some of the limitations that were encountered during the course of this research work could be briefly discussed as follows;

Financial constraint poses a major problem or limitation during the course of this research and conducting investigation.

Time is another problem that was encountered during the course of this study due to the limited time available to carry out the research

Electricity also pose challenge to this research due to shortage of electric supply in Nigeria.

Lack of prompt and proper update on the NICN website in order to get accurate information.

However, having stated the above limitations, the researcher will like to state that they are not insurmountable as he devised a means to make sure that they do not affect the outcome of this research. For instance, the researcher approached banks for loans to reduce the effect of the financial burden.

More so, on the issue of electricity, the researcher purchased a generation and a solar system to complement the epileptic electricity supply

On the issue of time, 90% of materials that was needed for this research were sorted for through online store, library materials, etc

1.9 Operational Definition of Terms

Trade Dispute: this refers to any disagreement over terms of employment, physical conditions of employment, or employment and non-employment that exists between employers and employees or between workers.[19]

Minister: means the minister responsible for matters relating to the welfare of workers, such as the minister of employment, labour, and productivity.[20]

Trade Union: means any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers, whether the combination in question would or would not, apart from this Act, be an unlawful combination by reason of any of its purposes bring in restraint of trades and whether its purposes do or do not include the provision of benefits for its members.[21]

Collective agreement: means any agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between –

(a) an employer, a group of employers or organizations representing workers or the duly appointed representative of anybody of workers, on the one hand; and

(b) one or more trade unions or organization representing workers, or the duly appointed representatives of anybody of workers, on the other hand.[22]

19 Section 48 of the Trade Dispute Act.

20 Section 54 of the Trade Unions Act, Cap. T14 Laws of the Federation of Nigeria 2004 and Section 48 of the Trade Disputes Act, Cap. T8 Laws of Federation of Nigeria 2004

21 Section 1 of the Trade Union Act, Cap. T14 Laws of Federation of Nigeria 2004

22 Section 48 Trade Disputes Act Laws of Federation of Nigeria 2004

Strike: means the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other workers in compelling their employer or any persons or body of persons employed, to accept or not to accept terms of employment and physical conditions of work.[23]

Worker: means any employee, that is to say any public officer or any individual (other than a public officer) who has entered into or works under a contract with an employer, whether the constraint is for manual labour, clerical work or otherwise, express or implied, oral or in writing and whether it is a contract of service or of apprenticeship.[24]

Arbitration: is a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding. [25] It also means a commercial arbitration whether or not administered by a permanent arbitral institution. [26]

Conciliation: means a settlement of a dispute in an agreeable manner or a process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved especially a relatively unstructured method of dispute reconciliation parties in an attempt to help them settle their differences.[27]

23 Ibid.
24 Ibid
25Black‟s Law Dictionary (Ninth Edition) Bryan A. Garner
26 S.57 of the Arbitration and Conciliation Act, Cap. A.18, Laws of the Federation of Nigeria 2004.
27 Op. Cit.

Mediation: is a procedure for non-binding dispute resolution in which a neutral third-party attempt to force the disputing parties to reach a compromise.[28]

Industrial Relations: is defined as relation of individual or group of employees and employers for engaging themselves in a way to maximize the productive activities. Industrial relations involve attempts at arriving at solutions between the conflicting objectives and values; between the profit motive and social gain; between discipline and freedom, between authority and industrial democracy; between bargaining and corporation and between conflicting interests of the individual, the group and the community. It is also the study of the laws, conventions and institutions that regulate „the work place"[29]

Employee's compensation: can be defined as all the rewards earned by employees in return for their labour. This includes: direct financial compensation consisting of pay received in the form of wages, salaries, bonuses and commissions provided at regular and consistent intervals.[30]

Compensation: is a broad term that defines payments and rewards given to workers in order to persuade them to keep working for a company. Compensation is not just about regular rewards for work done but also attempts made by employers to retain employees. It goes beyond salary and transcends this boundary to include benefits and other inceptives e.g. salary, wages and bonus.[31]

International Labour Organization: is the tripartite United Nation agency that brings together governments, employers and workers of its 183 member states in common action to promote decent work throughout the world for strategic objectives:

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28 Op. cit.

29 www.nautrihub.com>industrialrelations Accessed on the 14th August, 2021

30 www.hrcouncil.ca/hr-toolkit-/defining-compensation Accessed on the 14th August, 2021

31 www.enotes.com/homework-help/what-compensation-employees 14th August, 2021

1. Fundamental principles and rights at work and international labour standards.

2. Employment, sustainable enterprise & income opportunities

3. Social protection

4. Social dialogue & tripartite consultations, gender equality & non-discrimination in employment are mainstreamed in the four pillars.[32]

Industrial Arbitration Panel: is a body established to settle industrial disputes and to give binding decisions on both parties in form of an award. It marks the beginning of judicial processes for resolving industrial disputes and it settles dispute that cannot be handled through mediation and conciliation.[33]

Alternative Dispute Resolution: refers to a variety of processes that help parties resolve dispute without a trial. It is used generally to describe the methods and procedure used in resolving disputes either as alternatives to the traditional dispute resolution mechanism of the court in some cases supplementary to such mechanism. Alternative Disputes Resolution arose largely because the litigation process was and still is unduly expensive in the long run and especially prolonged as a result of judicial technicalities embedded in that method of disputes resolution.[34]

Conflict of Laws: is a set of rules of procedural law which determines the legal system and the law of jurisdiction applying to a given legal dispute. It is an area of law, the subject matter taught to Law Students, and which purport to set out, in a long list

32www.unbrussels.org/agencies/ilo Accessed 14th August, 2021
33www.grossarchive.com/upload/1416397901.html Accessed 14th August, 2021

34 Oddiri, E.R. Alternative Dispute Resolution: (Being a paper presented at the Annual Delegates Conference of the Nigerian Bar Association at Lemeridan Hotel, Abuja on the 22-27th August 2004).

of rules how to resolve prevent disputes which include an international or foreign element.[35]

Jurisdiction: The right of a court to hear a particular case, based on the scope of its authority over the type of case and the parties to the case. However, jurisdiction can be classified into two; Original and appellate jurisdiction

a. Original jurisdiction: the right of a court to be the first to hear a legal case[36]

b. Appellate jurisdiction: it refers to the power of a court to hear appeals from lower courts.[37]

Power: ability to do or act; capability of doing or accomplishing something.[38]

Reposition: To place or put in a new position; position again. The act of replacing, or restoring to its normal position; reduction.

1.10 Structure

Chapter One contains the general background of the thesis. It introduces the background of the thesis. It states the statement of the problem, Aim and Objectives, Research Questions, Research Methodology, the Scope of the research, Significant of study, Limitation of the study, Operational Definitions and the Structure.

Chapter Two contains Literature Review and theoretical frame work.

Chapter Three contains the mandate of the the NICN under the TDA 1976 and National Industrial Court Act 2006

35www.duhaime.org>legaldictionary>conflictoflaws Accessed 14th August, 2021

[36] Cambridge Dictionary, "*Original jurisdiction"* <https://dictionary.cambridge.org/dictionary/english/original-jurisdiction> Accessed 14th August, 2021

[37]Legal Information Institute, "*Appellate Jurisdiction*" <https://www.law.cornell.edu/wex/appellate_jurisdiction> Accessed 14th August, 2021

[38] Dictionary.com, "*Power"*<https://www.dictionary.com/browse/power> Accessed 14th August, 2021

Chapter Four is to establish findings on the effect of the repositioned National Industrial Court on its composition, powers and jurisdiction under the 1999 constitution of the Federal Republic of Nigeria (Third Alteration) Act No. 3 Of 2010

Chapter Five provides the summary and conclusion of the research, findings, recommendations, contribution to knowledge and suggested areas for further research.

Chapter Two

2.1 Literature Review

The Trade Disputes (Arbitration and Inquiry) Ordinance, later Act, which was passed into law in 1941, is credited with establishing the first formal legal procedures for resolving labour disputes in Nigeria.[39] In a sense, Lagos was the only place where that Act applied. This indicates that the application at the time was limited to Lagos, argued that from 1979, when labour issues were listed as Item 32 on the Executive Legislative List of the Constitution, both the National and Regional Assemblies could no longer pass regulations relating to work matters simultaneously.[40] This was because prior to January 1966, both the National and Regional Assemblies could do so.[41] On matters pertaining to work and labour, the Federal Government assumed leadership in a decisive manner. The Trade Disputes Decree[42], which was included in the 1990 edition of the Laws of the Federation of Nigeria as Trade Disputes Act Cap. 432 and is currently Cap. T8 Trade Disputes Act, Laws of the Federation of Nigeria 2004, repealed the 1941 Act later on. This Act is applicable to the entire nation. The National Industrial Court was first established by this Decree (NIC). According to Section 19(1) of the TDA of 2004, the Court shall have the authority granted to it by the aforementioned law or any other Act with respect to the settlement of trade disputes, the interpretation of collective bargaining agreements, and other matters related thereto.[43]

It has been argued that, in accordance with the Trade Dispute Act's provisions, parties could not directly approach the arbitration panel; rather, the Minister would refer questions to the panel, which would then submit an award to the Minister. Due to the

[39]Uvieghara, E. E., *Labour Law in Nigeria*. (Malthouse Press Ltd, Lagos 2001) 415
[40] *Esan R.S.M; Legal Framework of Industrial Relations in Nigeria*; in Otobo D. and Omoole M. (ed.) *Readings in Industrial Relations in Nigeria. (*Malthouse Press Ltd. Lagos, 1987) 205.
[41]Listed as item no. 32 of the Second Schedule to the 1979 Constitution and item no.34 on the Second Schedule to the 1999 Constitution of the Federal Republic of Nigeria as amended.
[42] No. 7 of 1976
[43]Opar L.C 'The Legal Frame Work of Trade Union Activism and the Role of National Industrial Court (NIC) in Handling Trade *Disputes' International Journal of Humanities and Social Science* [2014] (4) 3.

unqualified power left in the minister's will, Section 8 of the Trade Dispute Act gave the minister a lot of authority.[44]

The NIC originally had jurisdiction to hear requests for the interpretation of a collective agreement's provisions.[45] However, some fundamental ideas, such as conflict and trade dispute, dispute resolution, conflict management and industrial court need to be reviewed in order to have a better understanding of this work.

2.1.1 Dispute

Nearly every academic field has its own theoretical framework for understanding conflicts. For example, economists study game theory and decision-making, psychologists look into interpersonal conflicts, sociologists study status and class conflicts, and political scientists' study intra- and inter-national conflicts. As a result, it is nearly impossible to review the conflict literature as a whole. Our conflict review will attempt to give a brief overview of the contested ideas and various definitions of the complex phenomenon known as conflict, even though it is primarily focused on conflict as a general concept.

The term "conflict" already has no positive connotation in everyday language. It is frequently associated with dysfunctional phenomena such as discord, dispute, or fighting. It was opined that it is not surprising that the discussion over this subject has gained importance in political science given how pervasive conflicts are. Despite the fact that this topic partially inspired the name of the field of peace and conflict research, there is still debate about the exact definition of conflict. Given that it

[44] S.A Fagbemi 'An overview of the Institutional mechanism for the Settlement of Labour Dispute in Nigeria' *US-CHINA Law Review 1325* [2014] (11) < http://www.davidpublishing.com > accessed 10 January 2022.
[45] Section 15 of the TDA.

involves one of the most ambiguous and divisive terms, which frequently causes conflict, this is somewhat surprising.[46]

It was asserted that all social interaction must include conflict. The most challenging kind of workplace conflict resolution pits the government against one or more public employees.[47] The term "government" refers to a broad range of powerful and wealthy groups and individuals, including high-ranking politicians, government employees, the armed forces, the police, and businesses. Public employees in many nations or circumstances hesitate and frequently lack the courage to oppose the government, least of all in court. There is a very slim chance that the employee will prevail in court if they do so or if the government chooses to sue them instead. When analysing the results of legal proceedings, this becomes especially clear. In these cases, the government typically benefits from the resolution. Cases that involve a government actor but were filed in court by a public employee are frequently not addressed at all. Bribery frequently plays a significant role. Other times, the government simply has the resources to hire a superior attorney and make lethal threats.

Conflict arises from the intentional interaction of two or more people.[48] Although conflict is commonly perceived as destructive, it can also serve a positive purpose. Sociological conflict theories emphasize the significance of social conflict in bringing about social change. Industrial conflicts may also serve as change agents if they lead to widespread unrest and alterations in both policy and its application. Therefore, it is

[46] ZentraleBegriffe der Friedens- und Konfliktforschung: Konflikt, Gewalt, Krieg, Frieden<https://www.infona.pl/resource/bwmeta1.element.springer-445ab98f-b7ad-3140-8e8b-050c342183ce> Accessed 22nd December 2021

[47] Fadi Smiley, ''*Leadership Guide to Conflict and Conflict Management*'' <https://ohiostate.pressbooks.pub/pubhhmp6615/chapter/leadership-guide-to-conflict-and-conflict-management/ > Accessed 22 December 2021

[48] Kent Alan McClelland, "Cycles of Conflict: A Computational Modeling Alternative to Collins's Theory of Conflict Escalation" (2014) <https://www.researchgate.net/publication/261503001_Cycles_of_Conflict_A_Computational_Modeling_Alternative_to_Collins's_Theory_of_Conflict_Escalation> Accessed 10th January, 2022

crucial to address industrial conflicts in a constructive manner rather than ignoring them or merely attempting to stop them. Conflict is inevitable in every society, according to conflict theorists.

Sociological concern with "disputes" has two main roots: anthropological studies of law and social control, and conflict theory. Other sources have been identified,[49] but it is my contention that the study of disputes represents the merging of two distinct methodological traditions, and that an examination of these origins helps us to identify and explain the merits and the limitations of the all the approaches.[50]

The definition of a dispute may appear superfluous at first sight. Everyone knows the meaning of a dispute and one may presume that one will recognize a dispute when one sees it. However, in actual practice the existence of a dispute may be in doubt and may in itself be disputed. At times, the existence of a dispute is denied in order to contest the jurisdiction of an international court or tribunal.

The existing definitions have done little to clarify the questions that arise in this context. Black's Law Dictionary circumscribes "dispute" as "a conflict or controversy, especially one that has given rise to a particular lawsuit."[51] The Permanent Court of International Justice (PCIJ) and the International Court of Justice (ICJ) have addressed the issue of the existence of a dispute in several cases. In the Mavrommatis Palestine Concessions case the Permanent Court gave the following broad definition: "A dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons."[52]

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[49]Tracy Kidder, The Soul of a New Machine <https://www.researchgate.net/publication/249909172_Tracy_Kidder_The_Soul_of_a_New_Machine> Accessed 10th January, 2022

[50]MAUREEN.C and KALMAN.K, "*Thinking Disputes: An Essay On the Origins of the Dispute Industry",* Law & Society Review, 1981 - 1982, Vol. 16, No. 3 (1981 - 1982), pp. 375-402

[51]3 Black's Law Dictionary, 7th ed. (1999).

[52]Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P. C.I. J., Series A, No. 2, p. 11.

According to Legal information Institution, A dispute is a disagreement, argument, or controversy—often one that gives rise to a legal proceeding (such as arbitration, mediation, or a lawsuit).[53]

The definition of dispute is itself a matter of dispute as a plethora of definitions as to what constitutes a dispute can be found in the normative literature.[54] Several authors submitted that the terms dispute, conflict and claim are often used interchangeably.[55]

A scholar outlined four requirements for an unprepossessed approximation of the conflict as a term, and summarises them as follows:[56]

- First and foremost, the conflict must be viewed as a social fact, distinct from its form.

- Secondly, in order to avoid influencing the analysis of conflicts, by definition no limiting evaluation is permitted.

- Thirdly, the complexity of its notion should not be diminished unnecessarily by reducing the contextual Conflict categories characteristics of conflicts.

- Fourth, defining conflicts should not combine or swap out cause and effect.

According to the ontological perspective, subjectivist and objectivist conflict approaches have typically been the focus of research into the causes and classifications of conflict. The objectivist approach considers that the goals in question may be entirely feasible and looks for the point of contention in the social and political

[53] https://www.law.cornell.edu/wex/dispute#:~:text=A%20dispute%20is%20a%20disagreement,dispute%20is%20the%20corresponding%20verb.
[54] H. Brown and A. Marriott, ADR Principles and Practice. 1999 (2nd edn), London: Sweet & Maxwell.
[55] H. Al-Tabtabai and V. Thomas, Negotiation and resolution of conflict using AHP: an application to project management'. Engineering, Construction and Architectural Management, Vol. 11, No. 2, 2004. (90-100).
[56] Oliver Schwarz, Conflict – a literature review <https://www.researchgate.net/publication/323847788_Conflict_-_a_literature_review> Accessed 11th January 2022

structure and design of society.[57] In actuality, the subjectivist perspective spotlights fundamentally on the apparent contrariness of objectives and contrasts. It was stated that: "… it is contrary contrasts which bring about struggle... Not the objective incongruence is vital yet rather the apparent contradiction."[58] The political conflicts under investigation are also embodied by their incompatibility with goals and interests, or perhaps by the groups involved recognising them as incompatible. The primary factor affecting the strength of the query and dynamic of contention stages is the level of consistency. Every time conflict arises, it intensifies with a particular dynamic and force shifting its stages and directions. Understanding the stages of conflict and their sequence is crucial in this regard because it may indicate what might happen immediately and what might help bring about peace. The inconsistencies between the various struggle parties and the various ways in which these are expressed are seen as essential, building on Messmer's concept of cycle model conflicts.[59]

Conflict does not necessarily go away just because there is no violence. It is possible to pursue divergent interests amicably without using force or coercion. When a conflict already exists, this merely refers to the absence of violent methods being employed by parties in their struggle to resolve diametrically opposed disagreements over matters that are significant to them on a national level. Force is not used by the parties against one another. However, for nonviolent conflict to exist, both the outside world and at least one of the parties involved must be aware of it. It should also be emphasised that any conflict that escalates to violence first enters a nonviolent stage. Nonviolent conflict is defined as a "manifest conflict process (MCP)" in which at least

[57] Herman Schmid,Peace Research and Politics<https://journals.sagepub.com/doi/10.1177/002234336800500301> Accessed 11th January 2022
[58] Juliet E. Kele and Catherine M. Cassell, *"The Face of the Firm: The Impact of Employer Branding on Diversity"* (24 March 2022) https://onlinelibrary.wiley.com/doi/10.1111/1467-8551.12608 Accessed 11th July 2022
[59] A Comprehensive Mapping of Conflict and Conflict Resolution: A Three Pillar Approach <https://nsuworks.nova.edu/pcs/vol5/iss2/4/> Accessed May 2022

two parties, or their representatives, make an effort to pursue perceived mutually exclusive goals by undermining, directly or indirectly, the ability of the other party to pursue its own goals.[60] In a similar manner, his strategy refers to a latent conflict as the pre-MCPs stage. Latent conflicts and manifested conflicts are the two categories of nonviolent conflicts according to the COSIMO conflict classification. A conflict cannot be identified unless there are some obvious indicators of a disagreement in positions or conflicts of interest between two states regarding a particular good. The parties do not pursue an overt strategy to achieve their goals when the conditions for conflict are present. However, positional differences must be expressed in the form of demands by at least one party, and the other party must be aware of these demands. According to this reasoning, a latent conflict is a stage in the development of a conflict where one or more groups, parties, or states contest existing national values, problems, or goals.[61] To be recognised and noticed as such, latent conflicts must exhibit some identifiable and observable signs. In a latent conflict, positional differences and competing interests must be stated as demands or claims. When tensions are present but not violently expressed, the conflict is said to be manifest. A tipping point can be reached in tense relations between the parties, increasing the likelihood that force will be used. Economic sanctions, for instance, can be used to enflame a simmering conflict.[62]

Manifest conflicts are resolved through nonviolent means and without the use of force at all stages, just like latent conflicts. In the sense that "communicative interaction"

[60]Alison Doyle, Conflict Resolution: Definition, Process, Skills, Examples (2022) <https://www.thebalancecareers.com/conflict-resolutions-skills-2063739 > Accessed 12 May 2022
[61] Understanding Conflict - Meaning and Phases of Conflict <https://www.managementstudyguide.com/understanding-conflict.htm> Accessed 12 May 2022
[62] Pathways for Peace; Inclusive Approaches to Preventing Violent Conflict https://openknowledge.worldbank.org/bitstream/handle/10986/28337/9781464811623.pdf Accessed 10 June, 2022

(Diez/Stetter/Albert 2004)[63] between the parties is necessary for a latent conflict to become a manifest conflict, it is important to distinguish between objectively latent and manifest conflicts.[64]

2.1.2 Conflict Management

The term "conflict management" refers to the viewpoint of the so-called "third party" who is called to assist or acts in its own self-interest in order to assist both conflict parties (a mediator, conflict advisor, conflict manager, or supervisor) (or eventually one of them). When both sides of a conflict look for a mutually agreeable solution without asking for outside help, that situation is referred to as conflict resolution. Approaching and resolving conflicts can be done in a variety of ways. There are two types of conflict management to be discussed: conflict settlement and conflict resolution.[65]

2.1.3 Conflict Settlement

The idea of conflict resolution encompasses all conflict resolution techniques that aim to definitively put an end to direct violence without necessarily addressing the fundamental causes of the conflict. The works of a conflict management expert[66] serve as examples for this method of research, as well as that of others.[67] Here, the violent conflict is viewed as being solely the result of the pre-existing conflicting interests or

[63] https://www.researchgate.net/publication/4854321_The_European_Union_and_Border_Conflicts_The_Transformative_Power_of_Integration> Accessed 10th January, 2022

[64] A M Chaudhry and Ch Asif "Organizational Conflict and Conflict Management: a synthesis of literature" (2015) Accessed 10th January, 2022 <https://www.researchgate.net/publication/275955013_Organizational_Conflict_and_Conflict_Management_a_synthesis_of_literature>) Accessed 10th January, 2022

[65] M A Reimann, Background and threshold: Critical comparison of methods of determination <https://www.researchgate.net/publication/7749856_Background_and_threshold_Critical_comparison_of_methods_of_determination> Accessed 10th January, 2022

[66] Jacob Bercovitch, Social Conflicts and Third Parties: Strategies of Conflict Resolution (Boulder, Colorado: Westview Press 1984), <https://journals.sagepub.com/doi/abs/10.1177/003231878703900215>Accessed 12 January 2022

[67] Fisher and Ury's Four Principles of Negotiation<https://www.atlas101.ca/pm/concepts/fisher-and-urys-four-principles-of-negotiation/>Accessed 12th January, 2022

as the result of a struggle for limited resources or power. The conflict is therefore seen as a zero-sum game. However, as the neo-realistic works of Bercovitch and Zartman show, depending on the interests of the parties involved and the stage of the conflict's escalation, this zero-sum game can be broken. This viewpoint is related to the works of Fisher and Ury, and game theory and the rational choice approach are key components. The conflict parties (especially political and military leaders) are therefore seen as logical parties who are interested in cooperation that can lead to mutual gain and the end of the conflict for their own benefit. Generally speaking, a significant portion of conflict resolution research focuses on third-party activities in conflict situations with the aim of identifying strategies that facilitate the transformation of zero-sum games and, consequently, the resolution of the conflict and achievement of the political agreement. The majority of strategies combine coercive tactics like military, political, or economic sanctions with peaceful ones like negotiations, mediation, or facilitation, as well as the threat of such tactics (power mediation). The former is typically of a short-term nature, but the former lay the groundwork for a long-term view of conflict resolution.

2.1.4 Conflict Resolution

The conflict resolution techniques also emphasise tactics that could be applied to break the conflict's destructive cycle and work toward a result that is agreeable to all parties. A British scholar might be regarded as the most well-known representative of this field of study among the many.[68] Also, worth mentioning are the works of other scholars[69] who both contributed some crucial ideas to this discussion. Burton in

[68] Burton, Conflict: Human Needs Theory, https://link.springer.com/content/pdf/bfm%3A978-1-349-21000-8%2F1.pdf>Accessed 12 January, 2022

[69] Conflict analysis and resolution<https://www.researchgate.net/publication/306154183_Conflict_analysis_and_resolution>Accessed 12th January, 2022 and Kriesberg, Constructive Conflicts: From Escalation to Resolution

contrast to methods for resolving conflicts, sees lingering conflicts as the result of unmet human needs. His approach to problem-solving and conflict resolution, as well as his human-needs theory, are particularly indicative of this point of view. The author distinguishes between needs that are nearly natural and interests that are flexible or negotiable.

Among the other needs and values to be mentioned are security, justice, and recognition. These values are indivisible because they are universal, inviolable, and cannot be suppressed. The objective of this approach to conflict resolution is to change the conflict into a nonviolent conflict rather than trying to put an end to it as it currently exists. Burton offers a wide range of techniques (such as workshops, discussion groups, or round tables) and processes (such as mediation, negotiations, or arbitration) for resolving the relevant conflict in a way that is acceptable to the two sides, despite the fact that he does not provide specific guidelines for how all of these fundamental needs could be met. The main goal of Burton's argument is to enhance communication between the parties to the conflict and create an understanding of each side's interests. Both parties must recognise that there are no finite resources for meeting human needs and that any negotiation strategy can result in a win-win situation. Here, specifically, are the social-psychological foundations of Burton's strategy, which was greatly influenced by other works.[70]

2.1.5 Trade Dispute

<https://books.google.com.ng/books/about/Constructive_Conflicts.html?id=H0W8SAAACAAJ&redir_esc=y> Accessed 12 January, 2022

[70] "Kurt Lewin's change model: A critical review of the role of leadership and employee involvement in organizational change" *Journal of Innovation & Knowledge" [2018] (3) (123-127) Accessed* 12 January, 2022

For industrial development as also for the smooth functioning of industries, the cooperation of employees and employers is of great importance. Unfortunately, quite often the relations have been strained, causing large losses to the parties concerned as also to the society. It is thus of paramount necessity that industrial disputes do not occur, or if they do, they do not last long. More importantly the need is to ensure a situation for durable peaceful relations[71]. The phrase "trade dispute," can also be referred to as "industrial dispute" or "labour dispute".[72] In a layman's term, trade dispute is any disagreement between an employer and workers.

However, trade dispute is defined in Section 47 (1)[73] as "any dispute between employer and workers or between workers and workers which is connected with the employment or non-employment or the form of employment and physical condition of work of any person".

Also, Section 54 (1)[74] defines "trade dispute" to mean "any dispute between employer and employees including dispute between their respective organisations and federations which is connected with: the employment or non-employment of any person, terms of employment and physical conditions of work of any person, or the conclusion or variation of a collective agreement, and an alleged dispute".

Noteworthy is the fact that the Supreme Court in "National Union of Electricity Employees v. Bureau for Public Enterprises",[75] following its earlier decision in National "Union of Road Transport Workers v. Ogbodo"[76] held that in determining the

[71]A REVIEW OF LITERATURE ON INDUSTRIAL DISPUTES IN INDIA<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3837311> Accessed 10th February, 2022
[72]https://sprojectng.com/analysis-of-the-national-industrial-court-act-2006-under-the-nigerian-constitution/#_ftn25
[73] Trade Disputes Act (TDA), 2004
[74] National Industrial Court Act (NICA)
[75](2010) 41 NSCQR (pt 1) 611
[76](1998) 2 NWLR (pt 537) 189

existence or otherwise of trade dispute, all the ingredients mentioned in Section 47(1) of TDA must be present.

However, in the words of Chukwuma-Eneh, JCA, in the Apena V NUPPP[77] "one needn't go outside the Act to ascertain who is a worker under the Act. Section 47(1) has defined a worker under a contract with an employer whether the contract is for manual labour, clerical work or otherwise… and whether it is a contract of service or apprenticeship." By the provision of the Act, an employee is an individual who works under a contract of employment.

The term "trade dispute" is often used interchangeably with "labour dispute." However, labour dispute is a wider term, which refers to a dispute between workers and employers, whether at the individual or collective level, in a dependent or subordinate labour relationship[78]. Thus, labour disputes may be categorised into individual labour disputes and collective labour disputes.

Individual labour disputes comprise disputes concerning an individual over his rights, that is, what he thinks he is entitled to as a workman in his workplace[79]. They include disputes arising from or connected with payment or non-payment of salaries, wages, pensions, gratuities, allowances and other entitlement of individual employees. They also include disputes arising from dismissal, unfair labour practice, discrimination and sexual harassment at workplace[80] over which the National Industrial Court now has

[77] (2003) 8 NWLR (pt 822) 426

[78]Roo Annie and RobbJagtenberg, "Settling Labour Disputes in Europe" (Kluwer Law Publishers 1994) 11; INE Worugji,"Institutional Mechanisms forthe Settlementof Labour Disputes in Nigeria: The Prospects for Industrial Peace" (2008) 2(1) Nigerian Journal of Labour Law and Industrial Relations 47, 51-52.

[79] Abel K. Ubeku, Industrial Relations in Developing Countries: The Case of Nigeria (London: MacMillan Press, 1963)157; TayoFashoyin, Industrial Relations in Nigeria: Developing and Practice (Ikeja, Longman Nigeria Ltd, 1992) 191

[80]Constitution of the Federal Republic of Nigeria 1999 as amendedby the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010, s.254C (1)(f), (g) and (k)

exclusive jurisdiction[81]. Conflicts between management and a group of employees or their union that are dependent on one another are collective labour disputes.[82] They are concerned mainly with economic matters, except in cases where individual disputes develop into collective disputes. The economic matters that cause collective disputes include wages and salaries, housing allowances and other fringe benefits.[83]

2.1.6 Industrial Court

Any of a number of tribunals established to settle disputes between management and labourers, most commonly between employers and organized labour, is referred to as an industrial court.[84] The industrial courts are based on guild courts from the Middle Ages. Modern industrial courts originated in France in 1806 and evolved from factory courts in Germany until an industrial code for Prussia in 1869 incorporated them into the government. These courts handled back wages and discharge compensation disputes, as well as acting as arbitration boards. Eventually, industrial courts expanded beyond commerce to include industry. The French courts functioned more haphazardly than the German courts. The Belgian, Portuguese, Spanish, Italian, and Swiss courts all followed the French model.

In the United Kingdom, the industrial court was established by a government Act that authorized its appointment.[85] The court has been known as the Central Arbitration Committee since 1975. If the parties agree, the minister of labour can refer a dispute to ad hoc arbitrators or the industrial court for an award. If the parties do not reach an agreement, the labour minister may refer the case to a court of inquiry or a

[81] National Industrial Court Act 2006(hereinafter simply referred to as NICA), s. 7(1) and Constitution of the Federal Republic of Nigeria 1999 as amended by the Constitution (Third Alteration) Act 2010, s. 254C(1).
[82]KW Wedderburn, "Conflicts of 'Rights' and Conflicts of 'Interests' in LabourDisputes" in Benjamin Aaron (ed) "Dispute Settlement Procedures in Five Western European Countries" (Instituteof Industrial Relations 1969) 65, 66.
[83]Ubeku (n 22) 159
[84]Industrial court<https://www.britannica.com/topic/industrial-court> Accessed 11 March, 2022
[85] The Industrial Courts Act of 1919 established a permanent body.

commission of investigation for recommendations; however, these recommendations are not legally binding. As a result, matters may end up in civil court. Employment disputes in the United States are frequently resolved in civil courts. Only in Australia is the industrial court a court in both name and fact.

Similar tribunals exist in the United States, including the National Labour Relations Board (NLRB), which was established by the National Labour Relations Act of 1935.[86] The NLRB adjudicates labour-union representation disputes and provides mediation services from the federal Mediation and Conciliation Service to all industries except railroads and airlines, which are served by the National Mediation Board. Such bodies can also be found in various states. Disputes are generally settled privately in the United States, as they are in Canada and Sweden. Canada, like the United States, has both national and provincial bodies.

However, in Nigeria, The Trade Dispute Act of 1976 first established the Industrial Court, which first convened in June 1978.[87] The Act created it as the specialised court primarily responsible for resolving labour and trade disputes.[88] The Court was acknowledged as Nigeria's highest court for resolving commercial disputes and disagreements. [89] The National Industrial Court was established in 2006 when the National Assembly passed the National Industrial Court Act (NIC Act), giving it exclusive jurisdiction over all labour-related disputes and trade disputes.[90] Establishing

[86] Amended in 1947
[87]E.E. Uvieghara, Labour Law in Nigeria (1st ed. Malthouse Press Limited, Lagos, 2001) 424
[88]The Court was initially established in 1976 by section 19(1) of the 1976 Decree, which stated that the Court shall have jurisdiction and powers granted by the said law or any other Act with regard to the resolution of disputes, the interpretation of collective agreements, and matters related thereto. The Trade Disputes (Amendment) Decree No.47 of 1992 subsequently amended the Trade Disputes Act. The Court was made a Superior Court of Record with the status of a High Court by the provisions of section (a) thereof. The new National Industrial Court Act was passed by the National Assembly on June 14, 2006, in accordance with its statutory duties, to address current labour and industrial relations issues.
[89]E.E. Uvieghara and J.E.O. Abugu, "Trade Unions Law, in Commercial Law in Nigeria", E.O. Akanki (ed.) (University of Lagos Press, Lagos 2007) 771.
[90] The Explanatory Memorandum to the National Industrial Court Act, 2006; sections 7(1)(a),(b) &(c) and 11(1) of the NIC Act, 2006. Moreover, the NIC aims at promoting industrial harmony through a

the NIC properly as a superior court of record and placing it on the same pyramid as the Federal and State High Courts is one of the main goals of the NIC Act,[91] putting an end to the legal dispute between the NIC and other Courts regarding specific labour-related issues.[92] It is significant to note that prior to the Federal Republic of Nigeria (Third Alteration) Act of 2010, there had been some hullabaloo regarding the Court's legal standing, which has since been resolved.[93] The Act entered into force on the 4th March, 2011.[94] The Third Alteration has several effects, among them the extension of the Court's jurisdiction, the introduction and acceptance of the concept of unfair labour practises, and the unrestricted application of international best practises, such as international conventions, treaties, and protocols relating to employment and labour issues that Nigeria has ratified.[95]

According to the mission statement of the NICN,[96] it stipulates that,

> *The National Industrial Court of Nigeria is a specialized superior court of record of dispensing social justice, dedicated to administering justice in an equitable impartial and timely manner. In accordance with the rule of law and by fostering public trust, understanding and confidence. It shall*

timely, but fair resolution of disputes arising from industrial relations in a flexible, expedient, reliable and affordable manner thereby providing the enabling environment for the nation's industrial development and economic growth. The Court combines the rule of law with speedy resolution of industrial disputes conscious of the impact of economics of time on the nation's growth and development. See the Corporate Brochure of the NIC.

[91]53(1) of the NIC Act, 2006.

[92]I.N. Eme-Worugji , J.A. Archibong., and E. Alabo " The NIC Act (2006) and the Jurisdictional Conflict in Adjudicatory Settlement of Labour Disputes in Nigeria: An Unresolved Issue." *Labour Law Review* [2007] 25

[93]Before the Third Amendment to the Constitution, there were two points of contention: I whether Section 19 of the Trade Disputes Act, which created the Court as a superior court of record but did not expressly list the court among superior courts of record under Section 6(3) of the 1999 Constitution, was constitutional; this placed the court under Section 6(5)(g), which permits such other courts as may be authorised by law to exercise jurisdiction on matter. Section 20(3) of the Trade Disputes Act which provides that no appeal shall lie to any other body or person from any decision of the Court, and section 15(2) which makes its interpretation of any collective agreement final, have been argued to be unconstitutional as being inconsistent with the status conferred on the Supreme Court as the final Court of Appeal. C.K. Agomo, Nigerian Employment and Labour Relations Law and Practice (Concept Publication Limited, Lagos 2011) 339

[94]The Act is described as 'An Act to alter the Constitution of the Federal Republic of Nigeria Cap23, Laws of the Federation of Nigeria, 2004.

[95]Ibid

[96] <https://nicn.gov.ng/vision> Accessed 19 May 2022

provide the public and other agencies it serves with an accessible, safe, respectful environment in which to conduct business and resolve disputes.

2.1.7 The Role of Industrial Court

In looking at the rationale for the establishment of industrial court, it was postulated that, the need to decongest the regular courts and to ensure efficiency in dispensing justice is therefore one of the main reason behind the establishment of specialised court for the resolution of disputes in sensitive areas, where prompt access to justice assumes greatest significant.[97]

According to a discussion paper, the Industrial Court's proper function is to safeguard and advance social justice and dialogue [98]. It is believed that workers do not have equal bargaining power. Capital is under the control of employers. In terms of writing the employment contract, they are ahead of the game. Because of this, employees need court protection, which the Industrial Court offers. It is important to keep in mind that Industrial Courts were created for" Blue Collar" workers who work in Agricultural Plantations and Industrial Manufacturing Firms, not for White Collar Workers like Chief Executives and Computer Desk Employees.[99]

Trade Unions were not given procedural exceptions when they appeared in court to defend White Collar Employees. The White-Collar Employee was not considered when creating the flexible industrial justice system of the Trade Disputes Act. We must figure out a way to serve both Blue Collar and White-Collar Employees in a

[97] Constitutionality of special courts in Nigeria: focus on the investments and securities Tribunal (IST) <www.greymile.wordpress.com>

[98] Kisumu, The Proper Role and Jurisdiction of the Industrial Court, Being a Discussion Paper,Mid-Year Review and Training Workshop for Judges of the Industrial Court of Kenya.Judiciary Training Institute, Muthaiga North, Nairobi,16th -20th April 2013.James Rika, Judge of The Industrial Court Of Kenya.

[99] Afolasade A Adewumi "National Industrial Court and the Prospects of Efficient Industrial Conflict Resolution in Nigeria" *Nigerian Journal of Labour Law & Industrial Relations* (2013) 20

court that was historically intended to serve Blue Collar Employees only. Never forget that CEOs are considered to have some level of skill, are able to negotiate their own terms, and do not have a weak bargaining position with any employer, making needless legal protection necessary. This kind of worker was not intended for the Industrial Justice System. However, business executives started visiting our Court after the new labour laws went into effect in 2008.[100]

The Industrial Court's duties include promoting workplace harmony, governing interactions between employer organisations, unions, and employees, and arbitrating disputes that result from these interactions.[101] The Court arbitrates the limits of the rights and obligations of employers and employees in accordance with fairness, morality, and the core merits of the controversy. The main objective is to uphold fair labour practises in order to achieve social justice.

A former Permanent Secretary of the Federal Ministry of Communication Technology claims that "one of the unfortunate ironies of our national evolution is that it is from mere speculations that we are informed about what could have been a dimension of our national life".[102] However, how does speculation factor into this study of the National Court of Nigeria's dispute resolution process? We make assumptions regarding the Court's statutes, its authority, and even the existence of a labour-specific court in the nation because of the lack of awareness of its existence. We also make assumptions regarding the Court's judgment's enforceability on parties.

These speculations may also be supported by the following statement made by the former President of the National Industrial Court:

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[100] Ibid
[101] MOY Habeeb and AO Kazeem "Organization Conflict and Industrial Harmony: A Synthesis of Literature". *European Journal of Business and Management*, [2018] (10) (11)
[102]Tunji Olaopa, *Leadership Newspaper*, August 29, 2014

> *Many individuals in Nigeria including a portion of companions at the bar don't have any idea or get what NIC implies or rely on. Some persons have not made careful engagements of looking for the Act laying out the court talkless of locating the Rules of the Court. The few that have caught wind of the Court are having the view that the court is still operating under the Trade Disputes Act 2006 as amended and the Rules of Court made under.*[103]

It was opined there should be intermittent sharpening programs all through the federation to create attention and awareness to the overall population of the jurisdiction and powers of the repositioned NICN through conferences, seminars, meetings, etc, taking into account the degree of illiteracy in Nigeria and absence of information and mindfulness with respect to labour and industrial related matters and dispute.[104]

There should be periodic sensitization programmes throughout the federation to create awareness to the general public of the jurisdiction and powers of the repositioned NICN through seminars, workshops, conferences, and so on, in view of the level of illiteracy in Nigeria and lack of knowledge and awareness regarding labour and industrial related matters and disputes

It has been examined that, the National Industrial Court's exercise of jurisdiction over ancillary matters 'arising from, related to or connected with' subject matters within its core jurisdiction. [105] He argues that despite being empowered in that regard, the NIC, from a review of several cases, appears to have restricted itself strictly to the core subject matters of its jurisdiction enumerated in the Constitution, and excluded adjudication on ancillary subject matters inextricably linked with the underlying

[103] Hon. Justice Babatunde Adeniran Adejumo (Being a lecture delivered at University of Abuja on the18th of September 2008 and entitled "*The Role of National Industrial Court in Disputes Resolution in Nigeria)*

[104] O O. Aforkoghene and A Ifeanyi "The Role of the National Industrial Court in the Promotion of Industrial Harmony in Nigeria", *International Journal of Business & Law Research,*(SEAHI PUBLICATIONS, 2019) <www.seahipaj.org> Accessed June 2022

[105] Offornze Amucheazi **"**A Review of the Procedural Jurisdiction of the National Industrial Court of Nigeria on *Grey Area* Claims" <https://gravitasreview.com.ng/shop/labour/> Accessed 10th April, 2022

labour and employment matters. He concludes that this cautious approach may leave aggrieved claimants without a judicial forum for their grievances, or lead to multiplicity of claims in different courts over issues arising from the same subject matter and the same set of facts.

2.2 Theoretical Framework

A theory is a collection of unifying ideas, explanations, and purposes that present a methodical view of an event by specifying relationships between variables with the intention of understanding the phenomenon and making predictions about it.[106].

According to their relevance to the researcher, the following are the theories of labour relations and dispute resolution that the researcher has identified:

1. Mischief theory
2. Conflict Theory/Pluralism

2.2.1 Mischief Theory

What does the mischief rule actually achieve, and how does it work? It calls attention to the generating issue, which is visible in the real world and is visible to the general public and the legislature. The wrongdoing may be acknowledged in the statute or proven by judicial notice, proof of prior public discussion, or legislative history.[107] However, there is no absolute connection between considering the harm and looking at legislative history. English courts continued to use the mischief rule even though they adhered to the "Hansard rule," which forbade them from taking Parliamentary debates

[106] Peretomode V.F. &Peretomode O. Human Resource Management, Principles, Policies and Practices; Nigeria, (Justice- Jecs printing and Publishing Global, 2011)
[107] Daniel Frost, *Getting into Mischief*: *On What It Means to Appeal to the U.S. Constitution*, (28 INT'L J. SEMIOTICS L. 267 2015).

into account.[108] The mischief rule has two purposes. First, it gives an explanation for why an interpreter chose to read a term or provision in a legal text broadly. Second, it has a function that prevents clever evasion, allowing an interpreter to read a legal text broadly in order to prevent a clever evasion that would continue the harm. Of the two, the stopping-point function is much more frequent. Any, or nearly any, legal text can be read with varying degrees of breadth, making the stopping-point function useful. An infamous hypothetical law from mediaeval Bologna forbade bloodshed inside the city hall.[109] It can be interpreted broadly to outlaw any bloodletting, including when a barber unintentionally cuts a man while shaving his face, or specifically to outlaw violent bloodletting.[110] The interpreter would have reason to select the more specific interpretation if the mischief were a recent uptick in violence within the palace. If the mischief stemmed from a widespread belief that the presence of any blood would render the palace, and thus the city, ritually unclean, the mischief rule would suggest a different scope; in that case, the case of the inept barber would be stopped here rather than pursued further (or stopping short). The mischief rule allows an interpreter to select either a broader or narrower scope. But as time goes on and a law is passed, it is covered. The mischief rule's stopping-point function is as follows: The mischief rule will typically act as a stopping point by providing a narrower reading of the statute, giving the interpreter a reason to enter service to answer questions never imagined at the time of its enactment.

[108] Stefan Vogenauer, A Retreat from Pepper v. Hart? [1992] UKHL 3: A Reply to Lord Steyn, (25 OXFORD J. LEGAL STUD 2005). 629,630. This distinction is recognized in FBI v. Abramson, 456 U.S. 615,638 n.8 (1982) (O'Connor, J., dissenting), albeit with overstatement regarding the "classical English approach" on legislative history. On the complexity of the English tradition. Also, John J. Magyar, Debunking Millar v. Taylor: The History of the Prohibition of Legislative History, 41 STATUTE L. REv. 32 (2020).
[109]R. H. Helmholz, "*The Myth of Magna Carta Revisited*" (94 N.C. L. REV. (2016)1475, 1482.
[110] Ibid

The typical narrative surrounding statutory interpretation is as follows: the predominant strategy in the middle to end of the 20th century was [111], Elizabeth I was aware of the purposive approach outlined by Henry Hart and Albert Sacks because of Heydon's Case[112]. That case cautioned judges to identify the "mischief" that the statute was intended to prevent before interpreting the statute to further the drafters' objectives.[113] William Blackstone supported the mischief rule by equating it to interpreting a law in accordance with its "reason and spirit."[114] The sixteenth century, the twentieth century, and the present day are all connected directly.[115] The conventional narrative is, however, disputed. Here's the pearl of wisdom: Heydon did provide evidence in favour of judicial consideration of the "mischief." However, the reception of that idea does not follow a straight line. This Part begins with Heydon's Case and then examines three instances of mischief rule reception: Blackstone, Hart and Sacks, and Scalia. The mischief rule is summarised in a standard way by Blackstone, who never links it to figuring out the "reason and spirit" of the law. Hart and Sacks' application of the mischief rule is fundamentally transformative because they centralise it in a judge's purpose inference. Additionally, Scalia confuses the purposivism and mischief rule and rejects both, perhaps in an effort to block a route through which legislative history might be incorporated into the interpretation process. This paragraph serves as a preface and an explanation. Instead of explaining the mischief rule and how it operates, it provides an explanation for the rule's ability to take on different forms in legal literature. The mischief rule is misunderstood and is

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[111]T. Alexander Aleinikoff, "*Updating Statutory Interpretation"*, (87 MICH. L. REV. 20, 28 1988) (referring to Hart and Sacks' purposivism as having "three decades of near hegemony" before the textualist resurgence).

[112](1584) 76 Eng. Rep. 63x7; 3 Co. Rep. 7 a (Exch.). <https://www.casemine.com/judgement/uk/5a8ff73460d03e7f57ea9a12 > accessed 10 June 2022

[113]Ibid. at 638, 3 Co. Rep. 7 b.

[114]William Blackstone, "*Commentaries on the Laws of England*" (Oxford, Clarendon Press 1765)61. <http://files.libertyfund.org/files/2140/Blackstone_1387-01_EBk_v6.0.pdf> accessed 10 June 2022.

[115]Robert A. Katzmann," Judging Statutes" 31 (2014) ("This [purposive] approach finds lineage in the sixteenth-century English decision Heydon' s Case."); <https://uniport.edu.ng/Judging_Statutes.pdf> Accessed 10 June 2022

currently disregarded, but this is not due to a change in the fundamental insight that a text should be read in context, including its temporal context. The mischief rule has instead been ignored or treated as equivalent to purposivism by participants in various statutory interpretation debates, as will be shown in the discussion that follows. Purposivists considered it to be superfluous and something that could be done away with by fewer concepts. The confusion of mischief and purpose, according to purposivism's critics, especially textualists, has obscured a crucial facet of legal interpretation.

The canonical source for the mischief rule is the Court of Exchequer's ruling in the Case of Heydon Heydon's Case from 1584.[116] The concept of the mischief is much older and was taught in English law schools, so that case is not where the use of it in statutory interpretation first appeared. The succinct suggestions made by Chief Baron Manwood in Sir Edward Coke's printed report have, however, caught the attention of many interpreters.[117]:

> *For the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law,) four things are to be discerned and considered*: -
>
> *1st. What was the common law before the making of the Act?*
>
> *2nd. What was the mischief and defect for which the common law did not provide?*
>
> *3rd What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth.*
>
> *And, 4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and*

[116]76 Eng. Rep. at 637; 3 Co. Rep. 7

[117]At the time of Heydon' s Case, Coke was a lawyer of increasing prominence; it would be another twenty-two years before he became a judge. Coke's manuscript report is apparently much shorter, and in it Chief Baron Manwood' s main point is that judges should consider the mischief instead of considering whether the statute enlarged or restricted the common law.

> *advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo [which translates to for private benefit], and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico [which translates to for the public good].*[118]

In this context, Heydon's Case's four numbered points are more modest than contemporary interpreters frequently give them credit for being. "(1) the old law; (2) the defect in the old law; (3) the new law; and (4) how the new law connects to the defect in the old law." This is not a purposivism manifesto in and of itself. It insists that laws shouldn't be read "abstractly or in a vacuum."[119]

Judges are instructed on how to resolve options and ambiguities when they are presented with them: Read the statute as a response to the wrongdoing and in light of the wrongdoing.[120] There is a long history to the mischief rule. The rule is regarded as a part of the law of interpretation, even though three reception episodes will be discussed shortly.[121] Federal and state courts have used it frequently,[122] whereas, some states have enacted it in their laws.[123] It is instinctual for legislative drafters.[124] It is instinctive for Executive Branch officials. And it is untaught for judges.[125]

2.2.2 Conflict Theory/Pluralism

[118]Heydon' s Case, 76 Eng. Rep. at 638, 3 Co. Rep. 7 b. in Charles M.G, *Copyhold, Equity, and the Common Law* (Cambridge : Mass., Harvard University Press,1963).
[119]S. E. Thome, *The Equity of a Statute and Heydon's Case*, (31 ILL L. REV. 202, 215 1936); in LON L. FULLER, *The Morality of Law* (rev. ed. 1969)83
[120]Edward Coke, The First Part of the Institutes of the Laws of England (ed) (Steve Sheppard 2003)742.
[121]Wong Yang Sung v. McGrath, 339 U.S. 33, 45 (1950) <https://supreme.justia.com/cases/federal/us/339/33/> Accessed June 2022
[122]State v. Campbell, 429 A.2d 960, 962-63 (Conn. 1980).
[123]N. X-Ray Co. v. State, 542 N.W.2d 733, 736 (N.D. 1996)
[124] Lawrence E. F & Sandra L. S, *The Legislative Drafter's Desk Reference* (2d ed) (Filson published Press 2008)31
[125]Abbe R. Gluck & Richard A. Posner, *Statutory Interpretation on the Bench: A Survey of Forty-Two Judges on the Federal Courts of Appeals,*(HARV. L. REV. 1298, 1327 (2018)131.

The conflict theory is based on two interconnected views of society and labour relations between employers and employees.[126] The first is that although the Western industrialised world is still class-based, it is increasingly institutionally separating political and industrial conflicts within it, making it essentially "post-capitalist." According to hm, the fact that industrial conflict exists has made it less violent. Additionally, its social manifestations have been controlled through ratified constitutional provisions. This theoretical viewpoint is post-capitalist.

The second perspective holds that businesses are miniature versions of society. Therefore, it is argued, those in charge of an organization's operations must also take into account the conflicting values and interests that exist within them. Only by doing this can private or public enterprises operate efficiently.[127] As a result, it is asserted that managing business disputes between managers and their assistants requires acknowledging them as an endemic aspect of professional relationships. This is the pluralism in industrial relations viewpoint. The fact that post-capitalist societies are open systems is the core of the post-capitalist conflict perspective on labour relations. In this society, social, economic, and political power are increasingly distributed. Additionally, industrial and political conflicts are regulated differently in post-capitalist societies due to this necessary separation. According to this strategy, the emergence of trade unionism, employers' organisations, and collective bargaining, along with union representation at the enterprise and workplace levels, effectively regulate the social conflicts that will inevitably arise between management and employees at work. Even in situations where these conflicts appear to have no chance of being resolved, workable solutions can now be found through third-party intervention, typically through state organisations that offer conciliation and

[126] Peretomode V.F. &Peretomode O. Human Resource Management, Principles, Policies and Practices; Nigeria, (Justice- Jecs printing and Publishing Global, 2011)
[127] Ibid

arbitration services. According to the conflict theory of industrial relations' pluralism perspective, society is seen as including different interest groups that are bound together by the authority of the State. Therefore, it is observed that work organisations are maintained in balance by the agency of management.

Above all, the pluralist contends that collective bargaining gives industrial relations more stability and adaptability than restricting and outlawing trade unions.[128] The delegate roles of executives and trade unions are highlighted by the pluralist perspective as an IR theory, which also increases the importance and legitimacy of collective bargaining. Pluralists believe that management's primary function is to coordinate, communicate and persuade, rather than control or demand

In summary, pluralist theory holds the following beliefs:

- Power is distributed among the main interacting groups within the employment relationship; no one dominates.
- Conflict is inevitable due to the competing interests of the parties—labour and management.
- Trade unions are thought to be a means of establishing the legitimacy of employees' workplace bargaining rights.
- The state is viewed as an unbiased organisation whose main goal is to protect the "public interest"

From the foregoing, it is clear that the pluralist perspective places more emphasis on conflict resolution than on generation, or, in the pluralist's words, on the institutions of

[128] Flander A, Industrial Relations: What is wrong with the System? (London, Faber Press 2015).

job regulation. Bray and his colleagues have identified the main objections to pluralism.[129] To comprise the following:

• "Theory is unclear

• Power is not uniformly subtle as experience has shown that it is typically weighted towards management in the work place.

• It places importance upon rational approach to conflict management; a form of management thinking that obscures.

• The emphasis on policy and convention neglects process".

The achievement is collective "by virtue of the individual connotation attached to it by the performing individual....".[130] There is an assertion that social action is behaviour that has a personal significance for each actor, with social action theory emphasising understanding specific actions in industrial relations as opposed to merely observing explicit industrial relations behaviour.[131] The individual responses of social actors, such as managers, employees, and union representatives, to specific situations are emphasised by social action theory. Social action theorists argue that social actors are constrained by the ways in which they create their own social reality by highlighting how social action derives from the personal meanings that individuals attach to their own and other people's actions. "it seems that while society makes man, man also makes society".[132] However, it was emphasised that different actors have different

[129] Bray, D. & Waring, W. Industrial Relations, Power Point Slides, Australian, (McGraw Hill Ltd, 2015).
[130] "The Psychology of Morality: A Review and Analysis of Empirical Studies Published From 1940 Through 2017". *SAGE Journals* [2019]

[131] Peretomode V.F. &Peretomode O. Human Resource Management, Principles, Policies and Practices; Nigeria, (Justice- Jecs printing and Publishing Global, 2011)
[132]Silverman, D. The theory of Organizations. (London Heinemann 1970),

value systems, which means that "individuals attach different meanings to their interaction".[133]

The main influences affecting individual choice and social action in given situations include:

• Goals (personal and organizational)

• Experiences

• Norms, values, attitudes,

• Expectations

• Situations

• Interaction with others

• Subjective meaning

It was opined that perhaps the most useful feature of social action theory in industrial relations is the 'way in which it stresses that the individual retains at least some freedom of action and ability to influence events.[134]

As rightly observed, 'although the structures of industrial relations system may influence the action of its actors, these in turn also influence the system as a whole, including its outputs".[135] It should be noted that much of British thinking in the area of industrial relations has been influenced by conflict theory.

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[133]Kirkbride, P. Industrial Relations Theory and Research Management Decision, 170; 330-335
[134] Social Action Theory (Weber) < https://www.toolshero.com/sociology/social-action-theory/ > Accessed 22 June 2022
[135] O.O Ojo and Adedayo A.M. "Industrial Relations and Labour Management and Productivity: The Imperative for Sustainable Development in Nigeria" (2021) <https://www.researchgate.net/publication/356798342_Industrial_Relations_and_Labour_Management_and_Productivity_The_Imperative_for_Sustainable_Development_in_Nigeria> Accessed 22 June 2022

Chapter Three

The Mandate of The National Industrial Court Under the Trade Disputes Act 1976 and National Industrial Court Act 2006

Disagreement is common in all nations and organizations. It is a part of both national and organizational life, and its effective management is essential for both organizational and national survival.[136] Disputes can be both constructive and destructive. In many organisations, the traditional adversarial relationship of master/servant causes tensions between managers and employees.

Managers frequently put unreasonable pressure on their employees to improve their performance. This frequently leads to conflicts or disputes because employees may fail to meet performance targets, and issues such as redundancy, proper remuneration, employee insurance, and so on arise. The resolution of such disputes is one of labour law's main concerns. Such disputes are frequently resolved in a contentious manner, with challenges arising from the regulatory environment as well as operational logistics. The objective of the first part of this chapter is to examine the various ways for resolving industrial dispute under the Trade Dispute Act and National Industrial Act in Nigeria.

3.1. Meaning of Trade Disputes

Section 47 (1)[137] defines trade dispute as

> "Any dispute between employer and workers or between workers and workers which is connected with the employment or non-employment or the form of employment and physical condition of work of any person".

[136]L. Gordon, "Managing Conflict in Today Organization Management Training and Development," Labour Law Journal, Vol. 1 No. 1 (2007) p. 29. See Beatham v. Trinidad Cement Ltd (1960) A.C. 132 at 143, per Lord Denning.
[137] Trade Disputes Act 2004

Consequently, a trade dispute arises whenever there is a difference of opinion between the parties, i.e., between employers and employees or between employees and other employees, regarding "the employment or non-employment, or the terms of employment and physical conditions of work or any person." As a result, a dispute that is solely between or within unions and has nothing to do with a person's employment, lack thereof, or physical conditions is not considered a trade dispute. By extending the National Industrial Court's (NIC) exclusive jurisdiction over cases involving trade disputes to include disputes between or within unions, the Trade Dispute (Amendment) Decree of 1992 gave the definition of a trade dispute a new dimension.

Trade restraint is perhaps a good illustration of both inter- and intra-union conflict. In this situation, a union threatens to strike if an employer does not agree to hire non-union members. This is a trade dispute because it concerns "the employment or non-employment... of any person."[138] This is also accurate when there is a conflict between two or more unions within the same organisation over which one particular employee should belong to. If the impacted workers are not union members, each union has the right to threaten to withhold its labour. Alternatively, if the impacted employees are not members of one of the unions, the unions may demand that they be fired. This could be interpreted as an inter-union conflict that qualifies as a trade dispute.[139]

The case of Udoh & Ors v. Orthopaedic Hospitals Management Board & Anor[140] involved this issue. As it relates to the employment or non-employment of the affected workers, whose membership was being claimed by both the Non-academic Staff Union of Educational and Associated Institutions and the Medical and Health Workers Union of Nigeria, the issue in Udo's case was an intra-union dispute. This is what led

[138]G.O.S Amadi, Legal Guide to Trade Unions (Nsukka: Afro-Orbis Publishing Ltd, 1999) p. 45
[139]Ibid p. 46.
[140] (1990) 4 N.W.L.R, (Pt. 142) 52

to the high court action being filed.[141] According to the aforementioned logic, the NIC's sole jurisdiction over cases involving trade disputes should be restricted to disagreements involving employment or non-employment, terms of employment, or physical conditions of work of any person, whether between employers and employees, employees and employees, or involving inter and intra-union disagreement.

Therefore, the primary goal of a dispute must be to advance trade union interests in order for it to qualify as a trade dispute, and this remains a factual issue in every situation where the burden of proof is on the party alleging the existence of a trade dispute. If the following conditions are met, it is a trade dispute:

(i) Lawful

(ii) advancing the workers' legitimate interests.

(iii) The dispute must be active at the time, not planned or anticipated.[142]

A mechanism for resolving trade disputes based on a hierarchy of steps was established by the Trade Dispute Act of 1990[143]. At the bottom of the hierarchy is a collective bargaining process, occasionally involving mediators, followed by the National Industrial Court (NIC).

Between these two is where the conciliator and the Industrial and Arbitration Panel are located (IAP). The purpose of creating these bodies is to offer a useful method for resolving disagreements between parties to trade disputes without resorting to strikes and lockouts.[144]

3.1.2 Procedure for Trade Dispute Resolution Under the Trade Dispute Act

[141]G.O.S. Amadi, op. cit
[142]Bodunde Bankole, Employment Law, (Lagos: Libri Service Ltd., 2003) 20
[143] As amended by the Trade Disputes (Amendment) Decree No. 47 of 1992.
[144]G.O.S. Amadi op. cit.

Under the Trade Dispute Act, there are four options for resolving trade disputes, which are:

1.“Resolution by the parties themselves

2. Resolution by a conciliator

3. Resolution by arbitration, and

4. Resolution by court”.

3.1.3 Resolution by the Parties Themselves

The provisions of the act state that any trade dispute that might arise between the employer and the union should always be resolved. As a result, the parties are free to create a collective bargaining agreement with a dispute resolution process.[145] A N100 fine is assessed for failure to file the collective agreement with the Minister of Labour and Productivity as required by the Act.[146] The collective agreement's settlement clause is the basis on which the parties are required by law to resolve their trade disputes.[147]

However, the Act requires the parties to "meet together by themselves or their representatives, under the presidency of a mediator mutually agreed upon and appointed by or on behalf of the parties, with a view to amicable settlement of the dispute," if the collective agreement does not contain a settlement provision or if one does exist but the parties are unable to come to an agreement."[148] Despite the aforementioned, the minister may, on his own initiative, notify the parties or their representatives in writing of his observation and the steps he intends to take to resolve

[145]Trade Dispute Act, s. 2(1).
[146]Ibid
[147]Ibid, s. 3(1)
[148]Ibid, s. 3(2

the dispute if he learns that there is a trade dispute between the parties.[149] In this regard, the minister may choose to designate a mediator.[150] to look into the circumstances and causes of the conflict and try to settle it through negotiation with the parties.[151] Alternately, the minister may suggest that the conflict be settled by the Industrial Arbitration Panel (IAP) or another body.[152]

3.1.4 Resolution by a Conciliator

In two circumstances, the minister may choose to appoint a conciliator. The first is when he names a conciliator to look into the situation without letting the parties resolve their differences amicably. In the second scenario, a conciliator may need to be appointed if the parties are unable to settle their conflict through mutual mediation. The conciliator, whose responsibility it is to mediate a settlement between the parties, must be a suitable individual.[153]The dispute is referred to a conciliation body made up of one or three con ciliators who will be appointed when the other party accepts the request to conciliate.:

a. "In case of one conciliation (jointly by the parties)

b. In case of three conciliators

i. One conciliator by each

ii. The third conciliator jointly by the parties"[154]

Section 41(1) of the Act[155] states that the conciliation body must become acquainted with the facts of the case and obtain any other information necessary to settle the

[149]Ibid, s. 4(1).
[150]Ibid, s. 4(2a).
[151]Ibid, s. 7(2).
[152]6 Ibid, s. 4(2)(b), also see generally G.O.S. Amadi op. cit.
[153] Trade Disputes Act, s. 7(1)
[154]Ibid s. 40.
[155]Ibid

dispute. After reviewing the case and speaking with the parties, the conciliation body will present the terms of the settlement to the parties.[156] The conciliation body is required to create and sign a record of the settlement if the parties are able to agree on its terms. The terms of the settlement will then be forwarded by the conciliator to the minister, and the decision made will become enforceable as of the date the memorandum is signed.

However, the Minister must refer the case to the industrial arbitration panel for resolution if an agreement cannot be reached and the dispute is not settled.[157] On receipt of any objection, the Minister is required by law to refer the matter to the National Industrial Court (NIC),[158] which is the highest court on matters of industrial dispute. This means that, unlike other courts where litigants can sue and be sued directly, in cases other than appeal cases where the party has the right to appeal directly to the court if he objects to the award made out either at the conciliation level or at the Industrial Arbitration Panel, referred to as IAP afterward, only the Minister can refer trade disputes to the industrial court.

However, it should be noted that while a written agreement is necessary for an arbitration agreement made in accordance with the Act, an arbitration agreement made in accordance with the Common Law or customary law is not void. The aforementioned information suggests that trade dispute resolution has a process. The Minister refers it to industrial arbitration if it is unsuccessful at the level of conciliation.

3.1.5 Resolution by Arbitration

[156]S. 42 (1&2).
[157]Y.A. Aauda "Employment of Independent Arbitration in the Management of Trade Disputers and Industrial Law in Nigeria," Labour Law Journal, Vol.1, No. 1 (2000) p. 31
[158]S. 13(1) op. cit

One of the politest ways to settle a disagreement is through arbitration, where the parties agree to have the disagreement heard by a neutral third party they both trust and agree to abide by the outcome of the hearing.[159] Since the beginning of human civilization, there has been arbitration. It is as old as humanity itself. Its illustrious past dates back to the Middle Ages. Many parts of the world are known to have had forms of arbitration much earlier.

In fact, all disputes were resolved through private arbitration in classical Rome with the help and approval of a magistrate known as the pretor who was chosen annually for that purpose.[160] Therefore, what precisely is arbitration? Using an arbitrator to settle a dispute is called arbitration. An arbitrator is a neutral party or organisation that has been formally designated to resolve disputes. This is different from going to court and requesting that the state itself, a company, or someone else be held accountable for a legal claim. Therefore, arbitration is an additional means of enforcing a claim.

According to Halsbury's Laws of England, arbitration is the referral of a dispute or differences in a dispute between at least two parties to a person or persons other than a court of competent jurisdiction for resolution after hearing both sides in a judicial manner.[161] Due to the aforementioned requirements, arbitration hearings must be conducted in a judicial manner by a qualified individual other than the court, and disputes or differences must be referred by two or more parties to the arbitration. However, it should be noted that arbitration is distinct from alternative dispute resolution procedures like negotiation, conciliation, and mediation (ADR).

[159]Ibid.
[160]Ibid.
[161]Halsbury's Laws of England, 3rd Edition, Vol. 2 para. 2, p. 2

When a mediator appointed by the parties under Section 3(2) of the Act is unable to resolve a trade dispute, the Minister may refer the matter[162] to an arbitral tribunal, or to an arbitration tribunal when he becomes cognisant of a pending dispute between or among the parties.[163] This could imply that he refrains from having a conciliator mediate the conflict.

3.1.5.1 Industrial Arbitration Panel (IAP)

A statutory arbitration panel is created by a statute that states that disputes of a specific class must be resolved through arbitration. The Minister has the authority to refer the dispute to the Industrial Arbitration Panel (IAP) under Section 4 (2)(a) of the Act[164]. It is worth noting that the Minister has enormous legal authority, as he can, under Section 32 of the Act[165], appoint a board of inquiry to investigate the causes and circumstances of a trade dispute and make a report on it.

In the event that one or more parties to the trade dispute object, the Minister also has a great deal of control over his options. He could submit such objection to the NIC or, in accordance with section 11(2)(d)[166], choose to send the award back to the IAP for reconsideration. The stages of the statutory arbitration process are hearing, award, and enforcement.

Hearing

In this context, hearing refers to paying attention to the parties to a trade dispute. In accordance with what was previously stated, this disagreement should be settled between the employers and employees, as well as their respective trade unions, either

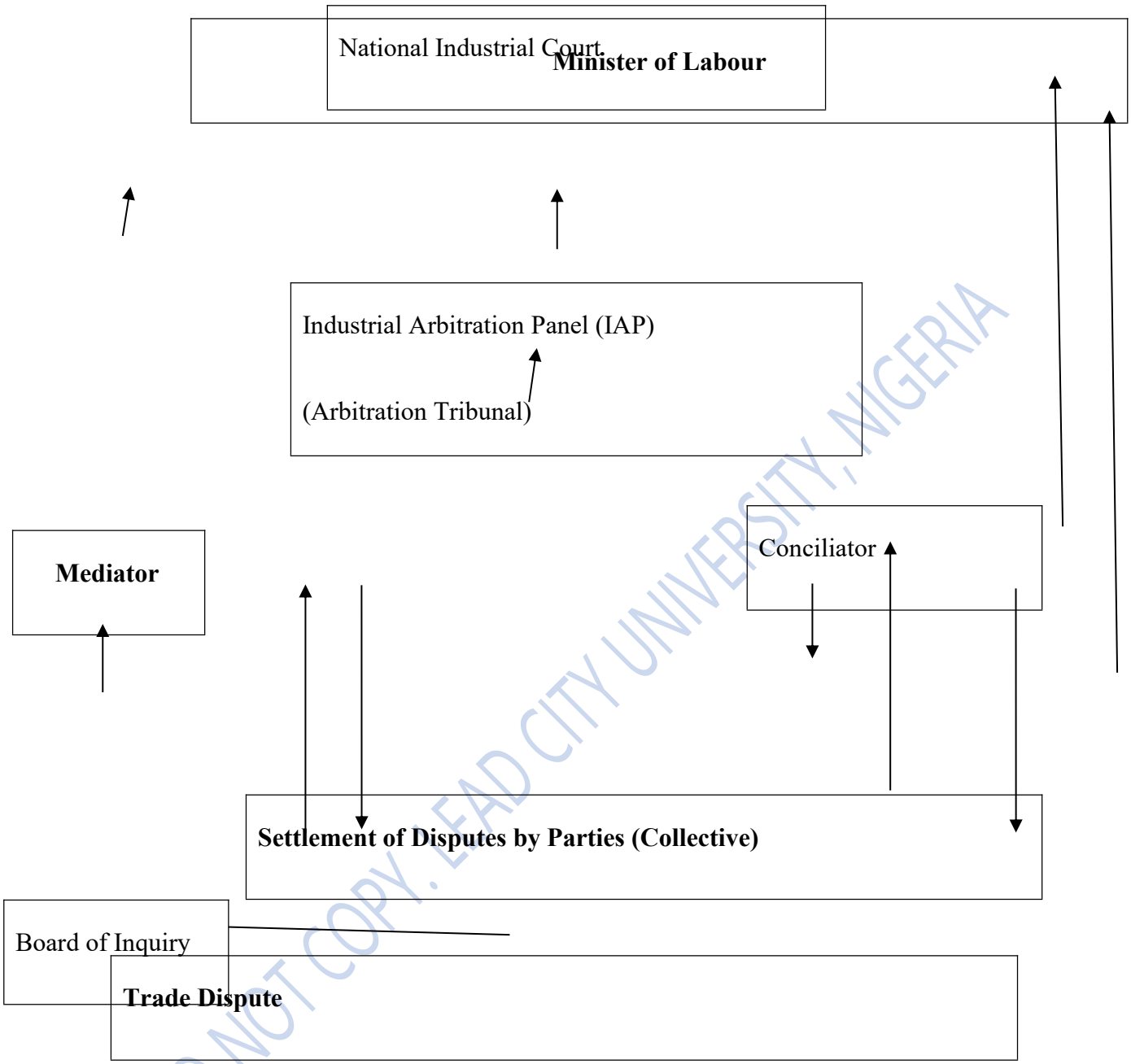
[162]Trade Disputes Act, s. 8(1)
[163]Ibid, s. 4(1)(b).
[164]Cap 432, Laws of the Federation of Nigeria, 2004.
[165]Ibid.
[166] Ibid

singly or collectively. The disagreement should concern any person's employment or lack thereof, as well as their contractual obligations and physical working conditions. A collective agreement's conclusion or modification, as well as any purported dispute, must be at the centre of the dispute.[167] The diagram below depicts the hierarchy of steps

that arbitration hearings conducted under the Trade Disputes Act must take.[168]

[167]National Industrial Court Act (NICA) 2006, s. 54(1). The definition here is wider and supercedes the one in Trade Disputes Act 1990, as amended, S. 47(1)

[168]This is derived from analysis of ss. 2(1), 3(1), (2), 4(1), 2(a), (b), (c), 7, 8, 11, 12, 32. For further reading see G.O.S. Amadi, A legal Guide to trade Unions, presented at a workshop on Alternative Dispute Resolution Organized by Arbitration and ADR in Africa, Abuja, July 6-7, 2009 by G.O.S. Amadi.



Hearings in labour disputes begin at the Industrial Arbitration Panel, as shown in the diagram above (IAP). This is a body that the Minister of Labour established to resolve trade disputes. The Panel for resolution constitutes[169] of the chairman, vice-chairman, and at least ten other members, all appointed by the Minister[170], with the exception of two other members who are designated by the parties representing their individual interests.

The IAP now acts as an Arbitration Tribunal[171], appointing either a Sole Arbitrator[172] or a Single Arbitrator[173] to resolve disputes between the parties. Out of the IAP members, the chairman selects one of the Arbitrational Tribunals. The nature of the dispute and the chairman's discretion will determine the makeup of an arbitration tribunal with a sole or single arbitrator. A Sole Arbitrator is a sole individual, as opposed to a Single Arbitrator who forms the Arbitration Tribunal with the aid of assessors.[174] The Arbitration tribunal may hear any trade dispute, and there are typically no technicalities as one would find in a formal Court:

• require anyone to appear before it and give evidence, on oath or affirmation or otherwise;

• require anyone to furnish any such matter relating to the dispute referred to it as it requires.

• proceed in the absence of a party who has been properly summoned or served with a notice to appear;

[169]TDA, s. 8 (2)
[170] Ibid, s. 8(7)
[171]Ibid, s. 8(7)
[172]Ibid, s. 8(4)(a)
[173]Ibid, s. 8(4)(b)
[174]For further reading, see G.O.S. Amadi, op. cit, pp. 50-52.

• compel the production before it of books, papers, etc. for the purpose of enabling them to be examined or referred to;

• whether to allow or disallow media coverage of any of its meetings.

• In general, give all the instructions and take all the actions that are required or practical for handling the referred matter quickly and fairly.

To summarise, natural justice principles apply to the hearing. This means that the arbitral tribunal must act impartially, in good faith, and fairly toward all parties and must give them a reasonable opportunity to present their cases.[175]

The proceedings of an Arbitration Tribunal may be tainted by the lack of a fair hearing. However, an irregularity in the Arbitration Tribunal's establishment will not be a legitimate ground for contesting its act, course of action, or decision in the matter.[176] The harmed party may still appeal to the Minister, though. Prior to being gazzetted, this has to take place and the tribunal has published the award.

Award

The award is the conclusion or judgement of the tribunal. The tribunal's issues must be covered in the award, which must be in writing. Within 21 days, or for as long as the Minister permits in a particular case, the IAP is required to consider and make an award on a matter that has been brought to its attention.[177] A single arbitrator who is assisted by assessors alone makes the decision regarding the award. If there is a dispute among the arbitrators on the arbitration panel, the majority decides it.[178] While

[175]Osborn's Concise Law Dictionary, 8th ed., p. 225.
[176] TDA, s. 11(4).
[177]Ibid, s. 12(1)(a).
[178]Ibid, s. 8(b)

the IAP is not required to inform the parties of the award, it is expected to send the Minister its decision.[179]

The TDA gives the Minister the authority to examine the decision and, if necessary, send it back to the tribunal for reconsideration.[180] The Minister shall not use his authority to communicate the award to the parties or their representatives or to publish the award as required by statute unless and until the tribunal reconsiders the award.[181] The danger is that bias or favouritism will undoubtedly manifest if the Minister is given sole authority to determine whether an award is correct or incorrect.

The award must be immediately published and given to the parties or their representatives after the Minister receives it from the tribunal.[182] Any resentful party must have seven days following the date of publication in the notice to submit their objection to the award to the Minister.[183] The Minister will publish the notice of objection to the award in the Federal Gazettee if it is not submitted within the allotted time frame. This legally validates the award.[184] Who decides the cases of parties at the IAP is the intriguing question we have before us. Is it the IAP or the Minister? The Minister may decide whether the award is reasonable, as was previously mentioned. The ability of the IAP to perform their duties effectively is hindered or limited as a result, which is a negative outcome. When describing the process at the IA, Prof. Agomo said:

> "The IAP makes a recommendation rather than an award because only the Minister has the authority to confirm an award and thus make it binding on the parties. This reduces the effectiveness of an award

[179]Ibid, s. 12(1)(b)
[180]Ibid, s. 11(3).
[181]Ibid, s. 11(3)(a).
[182]Ibid, s. 12(a).
[183]Ibid, s. 12(2)(b)
[184]Ibid, s. 12(2)(c), see Federal Ministry of Health v. National Association of Nigerian Nurses and Midwives (1980-81) NICLR 18.

and makes the IAP appear to be a government or university arm".[185]

a. Enforcement

The award made by the IAP against the party in violation is only very sluggishly enforced. This is so that the award rendered by an IAP, unlike the formal Court, does not have a structured and workable method of enforcing any court judgement. This observation is made in light of the fact that breaking an IAP award's terms typically does not subject the offending party to criminal prosecution.

The fact that the recipient of an award is occasionally subject to the whims and caprices of the losing party is another drawback of the circumstance. In fact, when the federal government and labour unions disagree on a particular issue, we see this in the United States. The awards are frequently made against the Federal government, so the trade unions that profit from them have no way of enforcing them. It turns into a frustrating situation for unions as they endure a protracted waiting period in the hopes that the federal government will abide by the terms of the award. The government is frequently replaced by another after an interminable wait. Additionally, the successor may make reference to the award and follow its terms if it has a human face.

However, the terms of any award made by the court in connection with an appeal that is before it are now enforceable against the parties. The award must be enforced, just like any other judgment of a court of competent jurisdiction. If the decision is not followed by the parties, it is considered contempt of court. The following methods of enforcement are available:

[185]C.K. Agomo, The Report on the Evaluation of the IAP and NIC, October, 1998, p. 18.

A. By the parties' cooperation, particularly the party who initiates the action. If he does everything required by the right of appeal and wishes to challenge the judgment, the judgment is enforced.

B. The Sheriff and Civil Processes Act mandates that the prevailing party, in this case, the plaintiff, obtain permission from the court to enforce the judgement if the defeated party, let's say the defendant, refuses to comply with it (Law). In order to levy execution against the defendant in this case, the court bailiff will be involved. The latter could even face a contempt of court charge if they disobey the IAP's ruling.[186]

3.1.6 Resolution by the Court

An award made by the Tribunal or taken into consideration by the Minister may be appealed, but this is not explicitly stated in the TDA. According to the law, a party who feels they have been wronged may object after the Minister publishes a notice of the award and within seven days of that publication. The final arbiter in this matter seems to be the Minister.

The National Industrial Court can be referred a disputed award, though, at the Minister's discretion (NIC). To achieve this, the aggrieved party must have submitted his notice of objection within the seven-day window and according to the publication's instructions.[187] The Minister loses all authority once the NIC becomes involved in the conflict. Such disputes are no longer arbitrable once they reach the NIC. It becomes an official court case.

The National Industrial Court was established on January1,1976, pursuant to Section19(1) of the Trade Disputes Decree No. 7 of 1976. The Trade Disputes

[186]Ibid
[187]Ibid, s. 13(1)

(Amendment) Decree No 47 of 1992 amended the Trade Disputes Act (TDA), which later became the Trade Disputes Act (TDA) Cap 432 laws of the Federation 1990. With the approval of the then-President of Nigeria, Chief Olusegun Obasanjo, the National Assembly passed the new National Industrial Court Act (NICA) on June14,2006, elevating the Court's status and extending its jurisdiction to address new labour relations challenges. As a result, the Act is based on the powers derived by the legislators who drafted it from the constitution.[188] It was envisioned to be Nigeria's "ultimate"[189] and "final"[190] court for resolving trade disputes.

The NICA creates a superior court of record with sole jurisdiction over civil cases and trade disputes in this instance.[191] The Minister's authority under the TDA to decide on an Arbitration Tribunal award or refer it to the Court appears to have been nullified by this later Act. According to Section 7(1)(a)[192] of the new Act, an arbitral Tribunal's decisions may be appealed to the Court as of right in matters of dispute. These issues concern labour, including trade union and industrial relations, as well as the environment and working conditions, health, safety, and welfare of workers, and other related issues.[193]

The Federal Republic of Nigeria Constitution of 1999 as amended regulates the court's authority, but it also states that it is the final arbiter of disputes within its exclusive jurisdiction.[194] But only appeals involving fundamental rights as defined in Chapter IV of the constitution are admissible before the court of appeals. [195] In other words, the basis for an appeal against the court's judgement is an allegation by a party that his

[188] The History of the National Industrial Court as posted on the court website: http://nicgov.ng/history.html> accessed on May 8, 2022.
[189]Trade Disputes Act, 1976
[190] Ibid, s. (11)(2), 15(2)
[191]6 NICA, s. 7(1).
[192]Ibid, s. 7(4).
[193]Ibid, s. 7(1)(a)(i)and(ii)
[194]Ibid, s. 9(1).
[195]bid, s. 9(2)

fundamental rights were violated during the hearing of his case. In this case, the Court of Appeal is the final arbiter of the trade dispute.[196].

It should be noted that the TDA's provisions serve as the foundation for the diagram above showing the hierarchy of steps in trade dispute arbitration. It appears that the parties can now directly appeal from the tribunal to the court when we compare this old Act to NICA, the new Act. The award appears to no longer be subject to the Minister's consideration when deciding whether to publish it or refer it to the court.[197]. In the NICA, it is stated that "... 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 for the purposes of an appeal." It would seem that this is implied in the law.[198]

The arbitral tribunal sends the award to the Minister, who then publishes it in a federal Gazette, as per the TDA, thereby ratifying the award.[199]

NICA doesn't, however, seem to take away the Minister's power to seize disagreements between parties and refer them to an arbitral tribunal for resolution. However, without the Minister's involvement, any party who feels wronged can file an appeal with the court. It is important to remember that the 2010 Constitution of the Federal Republic of Nigeria (CFRN) (Third Alteration) Act No. 3 amendment significantly improved the process for resolving trade disputes. It has consistently raised the bar for trade disputes. The court is made up of a president and as many judges as may be required by a National Assembly Act, to start.[200] Most of the controversies surrounding the National Industrial Court's status and jurisdiction have

[196]G. O.S. Amadi, op. cit, above n. 12, also, see Reuben O. Bashorum v. IAP &Ors (1971) LD/105/71.
[197]See p. 6, supra.
[198]NICA, s. 7(4)
[199]NICA, s. 7(5)
[200]S. 6 CFRN (Third Alteration Act), 2010.

been resolved by Section 254(c)[201]. The court has broad authority over "labour"[202] and can "make appropriate orders, decisions, rulings, as well as enforce the award,"[203] as well as "interpretation and application of any - term of settlement of trade union dispute..."[204]

The National Industrial Court's Part IV of the Trade Disputes Act has once more been repealed,[205] and the provisions of the [latter] Act shall take precedence if any provision of the Trade Dispute Act conflicts with the provisions of the [National Industrial Court] Act.[206] To exercise any jurisdiction granted to it by the Constitution or that may be granted by a National Assembly act, the National Industrial Court shall also have all the powers of the High Court.[207] The National Industrial Court's powers are so broad that section 254(d)(2)[208] grants it powers in accumulation to those granted by this section as may appear necessary. According to the Principal Act, the court's jurisdiction extends to the entire country; thus, the president of the court is empowered to create judicial divisions of the court in any part of the federation by instrument and may designate any such judicial division or part thereof by such name as he deems fit[209]. In addition, unlike the Trade Disputes Act, the court "shall be bound by the Evidence Act," nevertheless it may diverge from it in the interests of justice.

Most significantly, the court has been integrated into the Nigerian legal system and removed from the Trade Dispute Act. As a result, the court's jurisdiction has been expanded to include all issues related to trade disputes rather than just those covered by the Trade Dispute Act.

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[201]Ibid.
[202]Ibid, s. 254c(1)(a) –(d).
[203]Ibid, s. 254c(4).
[204]Ibid, s. 254c(1)(j)(i – vi).
[205]NICA s. 36(1) – On Practice and Procedure
[206]NICA, s. 53(2). also see AkintundeEmiola, Nigerian Labour Law, 4 thedn., (Ogbomosho: Emiola Publishers Ltd, 2008) p. 517
[207]S. 254(d)(i) CFRN (Third Alteration) Act No. 3 of 2010
[208]Ibid.
[209]NICA, s. 21.

Finally, it is clear from the discussion above that trade disputes are inevitable. It is challenging for the IAP to effectively carry out its mandate given its current organisational structure. The lack of independence the body possesses in comparison to what is expected of an adjudicatory body is made worse by the Minister's excessive control over the IAP's responsibilities. Despite the fact that the IAP faces a great deal of difficulty, it should be noted that one of the main benefits of arbitration over litigation in regular courts is its simplicity of procedure. This is especially true given that the arbitration has a set amount of time in which to resolve any disputes brought before it. Speed is typically "crucified by unnecessary long standard procedure" in regular courts because there are established procedures that must be followed, which in most cases results in unnecessary bureaucracy.

More so than in a courtroom, the parties to arbitration have more options and are free to choose anyone other than attorneys to represent them. The enforcement of the award is the only obstacle standing in their way of performing their duties, as was already mentioned. In any case, under Nigerian labour law, the NIC's expanded powers are both necessary and historic. The court's favourable effects on the country's security, socioeconomic development, growth, and stability would help to prevent industrial anarchy. In order to significantly enhance the Nigerian dispute resolution process, the NIC of Nigeria was founded, and so far, it has succeeded.

The NIC was upheld in the National Union of Hotels and Personal Services Workers vs. (1) National Union of Food Beverage and Tobacco Employees (2) UAC of Nigeria Plc. case to support its applicability (Owners of Mr. Biggs Restaurants)[210] that the National Industrial Court (NIC) has appointing jurisdiction in inter-union and intra-

[210](2004) 1 NWLR (Pt. 2) 286

union disputes and that the Industrial Arbitration Panel has original jurisdiction to hear such disputes. The application was denied by the NIC.

The Industrial Arbitration Panel's (IAP) or Ministry of Labour's decision is not final and conclusive, the NIC further stated in its report. If mediation doesn't work, there's always conciliation. If conciliation fails, there will be arbitration; if arbitration fails, there will be NIC adjudication. An appeal to the Court of Appeal is still possible even if adjudication is unsuccessful. The people's ability to file cases directly in court is what gives the NIC relevance and significance. But the reality is that any legal system's foundation is law enforcement. As a result, it is the duty of the government to make sure that laws, including court rulings, are upheld. That demonstrates the presence of the law.

3.2 The Mandate of the National Industrial Court of Nigeria in Trade Dispute Resolution Under the National Industrial Court Act

As stated earlier, Section 20 (1) of the Trade Dispute Act[211] granted the National Industrial Court (NIC) exclusive jurisdiction to issue rulings for the purpose of settling trade disputes and resolving queries about the interpretation of any collective agreements, any awards made by arbitration tribunals or the Court itself under Part I of the Act, or the terms of any trade dispute settlement as recorded in any memorandum under Section 7. No appeal from the NIC's decision may be made to any other court or individual, according to Section 20(3).

Sections 20 (1) and (3) were written with the intention of making the NIC the only court with the power to hear trade disputes. But given that the State High Court has unrestricted jurisdiction under Section 236 (1) of the 1979 Constitution (which is now

[211]Cap. 432, LFN, 1990 later Cap. T8, L.FN, 2004 and now Cap. T8 LFN, 2004 previously known as Trade Dispute Decree No 7 of 1976 (as amended).

Section 272 of the 1999 Constitution as amended), how accurate is this statement? Section 236 (1) states:

> "Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a state shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person."

The State High Courts will have jurisdiction over all civil and criminal matters, including trade disputes, according to Section 236 (1). Two Supreme Court justices disagreed on the topic of whether the State High Courts' unrestricted jurisdiction included matters involving trade disputes in their obiter dicta in Western Steel Works Ltd v. Iron & Steel Workers Union of Nigeria & Anor[212]. Oputa JSC is of the opinion that it does not (as he then was). In his own words:

> "There is no doubt that in all matters within its competence and on a proper reference by the Minister as prescribed by section 10 of the Trade Dispute Act No 7 of 1976, the National Industrial Court is the only Court empowered to handle cases of Trade Dispute properly so called and properly referred to it."[213]

On the other hand, Coker JSC (as he was then) strongly disagreed with Oputa JSC and stated:

> "On the question of jurisdiction of the High Court of Lagos, I will adopt my reasoning in SC. 139/1985, Savanna Bank of Nigeria Ltd. V. Pan Atlantic Shipping and Transport Agencies Ltd &anor. … I

[212] [1987] 1 NWLR (Pt. 49) 284.
[213] Ibid, at p. 303.

> decided that State High Courts by virtue of their unlimited jurisdiction under Section 236 (1) of the 1979 Constitution are competent. No Act of the National Assembly including the Trade Dispute Act, 1976 or the Federal High Court Act, 1973 can cut down or oust the jurisdiction conferred on State High Courts by and under Section 236 (1) of the 1979 Constitution"[214]

The researcher humbly concurs with Coker JSC's obiter maxim. First of all, any law that is inconsistent with the Constitution is void to the extent to which it is inconsistent.[215] Second, neither Decree No. 7 of 1976 nor Cap. 432 designated the NIC as a superior court of record.

The Supreme Court held in ***National Union of Electricity Employees & Anor. v. Bureau of Public Enterprises***[216] that Decree No. 47's main goal was to establish the NIC as a superior court of record. According to the Supreme Court, the Decree:

> "[D]oes not by that token make the said NIC 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 recognized 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."[217]

The National Assembly passed the National Industrial Court Act in 2006 as a result of the NIC's uncertain constitutional status.[218] The NIC was given the status of superior court of record and exclusive jurisdiction over trade disputes under Sections 1(3) and 7 of the Act. According to the argument, neither does the Act establish the NIC as a superior court of record, as required by section 6(3) (5) (a) I of the 1999 Constitution,

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[214]Western Steel Works Ltd & Anor. v. Iron & Steel Workers Unions of Nigeria & Anor., above note 4 at p. 301.
[215]Section 1 (1) (3), 1979 Constitution, now section 1 (1) (3),1999 Constitution (as amended), Cap C 23 LFN, 2004. Military Governor Ondo State v. Adewunmi [1988] 3 NWLR (Pt. 82) 1; A.G. Ondo State v. A.G.F. &Ors. [2002] 9 NWLR (Pt. 772) 222
[216](2001) 41 NSCQR (Pt. 1) 611
[217]Ibid, at p. 649, Ratios F-G, per Chukwuma-Eneh JSC
[218]National Industrial Court Act, Cap N115, LFN, 2004.

nor does it give the NIC jurisdiction over trade disputes to the exclusion of the High Courts of the States and the Federal Capital Territory, as required by sections 272 (1) and 257 (1) of the Constitution.

According to the NIC Act[219], It was agreed that the NIC would have all the authority of a High Court and serve as a superior court of record. This position was not consistent with the Constitution at the time the Act was passed. [220] Section 6 of the Nigerian 1999 Constitution, which deals with the Judicial Power of the Federation, defines which courts qualify as superior courts of record in Nigeria.[221] The National Industrial Court was not included.

It has been established through a plethora of cases[222] that the unambiguous should be construed as they are and given their ordinary plain meaning. Following the literal rule of interpretation of statutes or the latin maxim expression unius exclusio alterus,[223] it can be concluded that the provisions of the National Industrial Court Act 2006 relating to the National Industrial Court being regarded as a superior court of record are void, being inconsistent with Sections 6(3), (5)(a)-(i), 316(1) and 315(1) of the 1999 Constitution. As a result of its inconsistency with Section 1(3) of the 1999 Constitution, the provision of Trade Dispute (Amendment) Decree No. 47 of 1992 designating the NIC as a superior court of record is also void.

[219] National Industrial Court Act, 2006, section 1(3)(a)(b)
[220]The Constitution of the Federal Republic of Nigeria,1999,Cap.C23 Laws of the Federation of Nigeria (LFN) 2004. (hereinafter called 1999 Constitution)
[221]Ibid, sections 6(3) and (5)
[222]International Bank for West Africa Ltd v. Imavo Nig. Ltd &anor (1988) 7 SC (pt III) 114; Attorney General of Ondo State v. Attorney General of Ekiti State (2001) 12 SCM; General Mohammed Buhari v. Alh Mohammed D. Yusuf & Anor (2003) 8 SCM 46; Awuse v. Odili&ors (2003) 12 SCM 27; The Hon. Justice E.O Araka v. The Hon. Justice Don Egbue (2003) 10 SCM 178; Alh Chief Abdul GalajiGafar v. The Military Administrator of Kwara State and anor (2007) 2 SCNJ 44
[223]The express mention of one thing is the exclusion of another

Jurisdiction is fundamental to all legal proceedings.[224] No matter how well a case is handled in court, such proceedings are rendered null and void if the court lacks jurisdiction to hear the case.[225] It is also established that the efforts of legal practitioners and judges involved in a case will be futile if the court lacks jurisdiction to hear and decide the case[226]. The issue of the various contentions over the limit or scope of the NIC's Jurisdiction is a major impediment to the proper functioning and evaluation of the court and its activities. Furthermore, the NIC's alleged exclusive jurisdiction over labour matters became a major source of contention and a major disadvantage to its credibility and operations.

The aforementioned major challenges that became legal concerns demonstrate that, since the enactment of the National Industrial Court Act 2006, its provisions on the status of the NIC and its excessive jurisdiction have been inconsistent with the provisions of the Constitution and thus variously contested by many.

Judicial pronouncement on this issue in controversy came four years after the NIC Act's enactment in the case of National Union of Electricity Employees and 1or v. Bureau of Public Enterprises,[227] where the NIC Act was declared null and void, being inconsistent with section 6 (5) of the Constitution,[228] which enumerates the superior courts of record in Nigeria but avoids stating that the National Industrial Court is one of them.

[224]Abuza A.E. An Examination of the Jurisdiction of the National Industrial Court in Nigeria, Nigerian Journal of Labour Law and Industrial Relations (NJLIR), Vol. 2 No. 4, (2008) p 8 (hereinafter called 'An Examination…'); see also Obande F. Ogbuinya, Understanding the Concept of Jurisdiction in the Nigeria Legal System, Snaap Press Ltd. Enugu 2008, p3.
[225] Madukolu V. Nkemdilim (1962) 2 S.C.N.LR 341; Ndaeyo V. Ogunnaya (1977) 1 SC 11; National Bank of Nigeria V. Shoyeye (1997) 5 SC 181; Tidex V. Maskew& Anor. (1998) NWLR (Pt. 642) 404, 405; and Fulani V. Tumburkai (2005) All WLR (Pt. 29), 1649, 1652. See also Abuza, A.E. "Trade Disputes Litigation in Nigeria: National Industrial court or High Court?" (2004) 1 D.P.L.S. 68
[226]Osipitan, Taiwo "Debt Recovery Litigation: Failed Banks or High Court, "Modern Practice Journal of Finance and Investment Law", Vol. 3 No. 1. 1999 p. 178
[227](2010) 7 NWLR (pt 1194) 538 at 571-572 paras F,E
[228] 1999 constitution as amended

Chapter Four

4.1. The Effect of the Repositioned National Industrial Court on its Composition, Powers and Jurisdiction Under the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act No. 3 of 2010

4.1 Composition and Structure of the National Industrial Court of Nigeria

The National Industrial Court Act of 2006 was the first practical action the Nigerian government took in 2006 to find a long-term solution to the issues with the National Industrial Court of Nigeria. To avoid conflicting issues, the National Industrial Court Act repealed Part II of the Trade Disputes Act and reinstated it as a superior court of record. The Constitution of the Federal Republic of Nigeria (third Alteration) Act, 2010, strengthened and reaffirmed the status of the National Industrial Court in order to end the confusion among litigants.[229] In accordance with Section 254C (1) of the Constitution (as amended), the National Industrial Court now has sole jurisdiction.[230]

The National Industrial Court was made a superior court of record by the National Industrial Court Act of 2006 in addition to being recognised by the Constitution. Unless otherwise provided by enactment or law, the court shall be a superior court of record and shall have the authority of a High Court, according to Section 1(3).

The National Industrial Court Act of 2006 recognised the National Industrial Court as a superior court of record until recently, when the Federal Republic of Nigeria's Constitution was altered. The 1999 Constitution (Third Alteration) Act of 2010's Section 6(5)(cc) designates the National Industrial Court as a superior court of record. The National Industrial Court is made up of the President of the National Industrial Court and however many judges the National Assembly may decide to appoint,[231] but the judges must not be less than twelve.[232]

The specification of the number of Judges to be appointed is one notable difference between these provisions. The number of judges appointed is left to the discretion of

[229]CFRN 1999 s31(a)
[230]S.A Fagbemi 'An overview of the Institutional mechanism for the Settlement of Labour Dispute in Nigeria' (2014)(11) *US-CHINA Law Review*1325 <http://www.davidpublishing.com> accessed 10 June 2022
[231]CFRN 1999 s254(a)
[232]National Industrial Court Act 2006, s1(1)(2)

the National Assembly under Section 254A (1)(2)(b)[233], whereas The National Industrial Court Act of 2006's Section 1(1)(2)(b) sets a minimum requirement of twelve judges. Because the Federal Republic of Nigeria's Constitution is supreme, any inconsistency between these two provisions will be resolved in favour of the 1999 Constitution. The National Industrial Court Act of 2004 contains two separate provisions on the number of judges to be appointed.[234]

Under the Trade Dispute Act of 1976, the president was required to preside over each session, whether it involved a full court or a three-member court. The provision hampered the court's ability to operate smoothly. The Court could not convene whenever the president was absent for any reason. For example, when a sitting president died in 2002, the court did not sit for more than a year. A problem was the small number of members. The number of judges on the court was woefully inadequate given the number of cases it had to handle throughout the Federation.[235] However, the National Industrial Court Act of 2006,[236] addressed this issue. The provisions in the National Industrial Court Act of 2006 govern the appointment of the Court's president and judges. There is one significant difference; In accordance with the current constitution, judges of the Court may only be appointed if they are qualified legal practitioners with extensive knowledge and experience in Nigerian labour law and practise.

The President is in charge of running the Court's operations. According to Section 1(2)(a) of the National Industrial Court Act of 2006, the court is composed of the President, who has overall control and supervision over the Court's administration.

In accordance with Section 2(5), the President of the court shall have all powers and perform all duties incident to the office of President of the court until such time as the

[233] Ibid
[234]Attorney General of Abia State v. Attorney General of Federation (2002)6 NWLR (PT.763)264
[235] Agomo. Chioma. Kanu, Nigeria Employment and Labour Relations law and Practice (Concept Publications Limited, Lagos 2011) 226-227
[236] Ibid

office of President of the court has been filled and the duties of that office have been resumed by the person holding the office, whichever occurs first (of the Federal Republic of Nigeria) shall designate the most senior Judge of the court who meets the requirements to serve as President of the court as described in this section's subsection (3) to carry out those duties. The Court shall consist of not fewer than twelve Judges, according to Section 1(2)(b). The President and the Judges are therefore members of the court's judicial cadre.

Five departments have been established for administrative functions. The Chief Registrar of the court has direct control over how they operate. According to the law, the Chief Registrar is in charge of keeping the court's records and performing any other duties entrusted to him or her by the Rules of Court and the President, who is in charge of the court's overall management, supervision, and control. The court's departments are as follows: Library, Procurement and Stores, Finance and Accounts, Litigation, and Personnel.[237]

4. 2. Judicial Powers of the National Industrial Court

Judicial power refers to the authority vested in a court to make all such orders and grant such reliefs as are necessary for the effective determination of a case that it is empowered to entertain, As stated earlier, judicial power is distinguishable from jurisdiction of a court, as a court only exercises judicial powers in respect of a matter over which it has jurisdiction and in respect of which it is seised.[238]

The fountain of judicial powers in the 1999 Constitution is Section 6(6) (a), which provides that the judicial powers vested in the superior courts under Section 6 shall extend, notwithstanding anything to the contrary in the Constitution, to all inherent

[237]Structure of the Court<https://nicnportal.ng/dept.php> Accessed June 2022
[238] Tukur v. Govt, of Gongola State (1989) 4NWLR (part117)

powers and sanctions of a court of law. Thus, all superior courts of record under the Constitution have inherent powers and sanctions of a court of law.

The Constitution (Third Alteration) Amendment Act 2010 affirms the status of the NIGN as a superior court of record and expressly included the NICN amongst the list of " superior courts of record" under Section 6 of the 1999 Constitution (as amended). Likewise sections 84(4), 240,243, 287, 289, 292, 294, 295, 316, 318, of the Third Schedule to the Constitution and the Seventh Schedule to the Constitution were also altered to reflect the firm standing of the National Industrial Court of Nigeria as a court created directly by the Constitution like other superior courts of record in Nigeria. This effectively put to rest all the controversy surrounding the status of the court in the judicial system in Nigeria and places the NICN on an equal footing with other superior courts of record in terms of judicial powers.

To further emphasize this point, Section 254D specifically provides that, for the purpose of exercising any jurisdiction conferred upon it by the Constitution or as may be conferred by an Act of the National Assembly; the NICN shall have all the powers of a High Court[239] and the National Assembly may, by law, make provisions conferring on the NIGN additional powers to those conferred by the Constitution as this may appear necessary or desirable for enabling the court to be more effective in exercising its jurisdiction.[240] Flowing from this provision, the NICN is conferred with the following powers, amongst others:

- "To confirm a judgment, an award or order made by the Court, tribunal or body mentioned in the matter before it;
- To vary a judgment, an award or order made by the Court, tribunal or

[239] Section 254D (1) 1999 constitution as amended
[240] Ibid section 254D (2)

body mentioned therein;

- To set aside a judgment, an award or order made by the Court, tribunal or body mentioned therein;
- To order a re-hearing and determination on such terms as it thinks just;
- To order judgment to be entered for any party;
- To make a final order or other order on such terms as it may think fit to ensure the determination on the merits of the matter in dispute between the parties;
- To make an order of mandamus requiring any act to be done;
- To make an order of prohibition prohibiting any proceedings, cause or matter; and
- To make an order of certiorari removing any proceedings, cause or matter

into the Court for any purpose;

- To grant urgent interim reliefs;
- To make a declaratory order;
- To appoint a public trustee for the management of the affairs and finances

of a trade union or employees' organization involved in any organizational

disputes;

- To make appropriate order for an award of compensation or damages in any circumstance contemplated by the NICN Act 2006 or any Act of the

National Assembly dealing with any matter that the Court has jurisdiction to hear; and

- To make an order of compliance with any provision of any Act of the National Assembly dealing with any matter that the Court has jurisdiction

  to hear"[241]

Additionally, the NICN has all the authority of a High Court, including the authority to grant general damages and issue restitution orders with any conditions it sees fit.

4.3 The Jurisdiction of the National Industrial Court Under the Third Alteration

The Constitution of the Federal Republic of Nigeria (Third Alteration) Act No. 3 of 2010, which altered/amended the Constitution of the Federal Republic of Nigeria1999, conferred special and exclusive jurisdiction on the National Industrial Court with respect to labour and employments matters, welfare, wages, benefits, and compensation of workers/employees, as well as matters pertaining to industrial relations, irrespective of the industry, economic sector, business enterprise, or location of the workers/employees.

The provisions of the amendments will be taken into consideration. There are 14 sections in total, each with a number of subsections and paragraphs. In the Act, the 2006 Act was referred to as the Principal Act. The Principal Act makes clear the areas that have changed. The researcher will focus on areas where the Principal Act has clear provisions to close gaps. The amendment expanded the National Industrial Court's jurisdiction in other areas in addition to giving it exclusive jurisdiction over labour, trade unions, and related issues.

The National Industrial Court's jurisdiction is explicitly and unambiguously provided for in Section 254C (1) - (6) of the Federal Republic of Nigeria 1999 (as amended), which states:

[241] Section 13-20 and 32-34 of the NICN Act 2006

4.3.1 The Provision of Section 254c of the Constitution of The Federal Republic of Nigeria, 1999 (As Amended, 2011)

The National Industrial Court is created by the Third Alteration Act of 2010. Section 6 of the Third Alteration Act, 2010 provides for a new Section 254C of the Constitution of the Federal Republic of Nigeria, 1999 (as amended, 2011).[242]

The National Industrial Court, which has exclusive jurisdiction over issues relating to employer-employee relations, is the appropriate venue for a Claimant whose case is entirely based on an employment contract in light of the aforementioned. Section 254C (1).[243]

All employment-related disputes must be brought before the National Industrial Court, which has sole jurisdiction. [244] The National Industrial Court will have sole jurisdiction over those matters, even if the claims or issues up for adjudication have nothing to do with or are incidental to any labour, employment, health, safety, or worker or employee welfare. In John v. Igbo-Etiti Local Government Area, the court noted as such.[245]that:

> "Following the enactment of the Constitution (Third Alteration) Act, 2010 which gave exclusive jurisdiction to the National Industrial Court on Labour matters, both the State and Federal High Courts including that of the Federal Capital Page 5 of 10, Abuja ceased to have jurisdiction in those matters pending before them."

[242] See Appendix
[243] The Federal Republic of Nigeria 1999 (as amended)
[244]Ibid Section 254C(1)(a)
[245](2013) 7 NWLR (pt. 1352) page 1 at 17 paras. A-B:

More so, concerning the National Industrial Court's expanded jurisdiction under the Constitution (Third Alteration) Act 2010, the court affirmed the provisions in the case of N.U.T Niger State v COSST Niger State[246], where the court held that:

> "Section 254C of the 1999 Constitution as amended by the Third Alteration Act, 2010 expanded the jurisdiction of the National Industrial Court by vesting it with exclusive jurisdiction over all labour and employment matters. In the instant case, by virtue of the new provision, the trial court's jurisdiction completely migrated to the National Industrial Court, which forthwith has exclusive jurisdiction in all matters as enumerated.".

In light of the aforementioned and in accordance with Section 254C (1), subparagraph (f) of the Constitution, the National Industrial Court has exclusive jurisdiction to decide cases and matters "relating to or connected with unfair labour practise or international best practise in labour, employment, and industrial relations matters." Additionally, the National Industrial Court is expressly given exclusive jurisdiction over cases and matters pertaining to, or connected with, benefits and any other entitlement of any employee by section 254C (1), subparagraph (k), of the Constitution (as amended), which is reproduced above.

4.4 Criminal Jurisdiction of the National Industrial Court

According to section 254C (5) of Nigeria's Constitution,

> "The 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 other Act of the National Assembly or by any other law."

[246](2012) 10 NWLR (Pt 1307) 89 at 111, para. E-F, 112-113 para. B-E

The jurisdiction of the Court in criminal causes and matters is not exclusive to it. In other words, it shares it with other courts, for instance the High Courts, the Magistrates' courts and area courts.[247]

The draftsmen of the Constitution intended the High Court to continue to enjoy concurrent jurisdiction with the NIC, otherwise they would have couched the provisions of section 254C (5) of the Constitution clearly and specifically the way and manner they couched section 254C (1).[248] Some of the offences over which the Constitution has conferred jurisdiction over the National Industrial Court are those created under the Trade Unions Act and the Trade Disputes Act. However, the National Industrial Court Act does not provide for the jurisdiction of the Court in criminal causes and matters, as section 7 of the Act impliedly shows

Therefore, it could be argued that the National Industrial Court's exclusive criminal jurisdiction over the causes and matters listed in the Constitution (third alteration) Act 2010 was never intended by its authors. No other conclusion can be drawn from a provision's vagueness than that the law intended the High Court to collaborate with the National Industrial Court on criminal cases.

4.4. Fundamental Human Rights Matters

Human rights primarily work to uphold and promote the inherent dignity of man, which places him above lower animals. These rights are enshrined in the constitutions of the majority of independent states. Man has certain rights that are simply a result of his humanity.[249].

[247]See, for instance, section 254C (1) (l) (iii) and (5) of the Constitution (as altered)
[248]OD Ejere, 'Legal Implications of the Constitution (Third Alteration) Act, 2010 on the Jurisdiction of the National Industrial Court of Nigeria' Labour Law Review (NJLIR) (2013) (7)(4)) 46 47.
[249]C. D. Ogbe, Enforcement of Fundamental Rights in Nigeria, 2017, Chudanog Publishers Ltd. P1

Fundamental rights are enshrined in the Federal Republic of Nigeria's Constitution[250] as well as the Act for Ratification and Enforcement of the African Charter on Human and People's Rights. The importance of fundamental human rights is demonstrated by the fact that the constitution includes a chapter on them. In the case of Hassan v EFCC[251], Abiru JCA emphasised the significance of these rights:

> "Fundamental Rights are those rights without which neither liberty nor justice would exist. They are freedoms essential to the concept of ordered liberty, inherent in human nature and consequently inalienable. They are rights that belong without presumption or cost of privilege to all human beings. They are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and available (sic) as standards of justification and criticism whether or not they are recognised and implemented by the legal system or officials of a country."

The third change gave the National Industrial Court jurisdiction over any dispute over the interpretation and application of the provisions of Chapter IV of the Constitution as they relate to any employment, labour, industrial relations, trade unionism, employers association, or any other matter that the court has jurisdiction to hear and determine.

It is important to note that special enforcement procedures are required for the provisions relating to the National Industrial Court's jurisdiction over labour and labor-related matters bordering on fundamental human rights. In accordance with the 2019 Fundamental Human Rights (Enforcement Rules) Rules, courts with jurisdiction primarily uphold fundamental human rights.

A person must be aware of the National Industrial Court rules of 2016, which went into effect in Nigeria on January 5, 2017, if they wish to enforce the National

[250]The Constitution of the Federal Republic of Nigeria, 1999 as amended.
[251](2014), NWLR (Pt. 1389) 607 C.A

Industrial Court's provisions. The Nigerian Constitution's Section 254F(i), which gives the President of the National Industrial Court the authority to establish rules governing the practise and procedure of the National Industrial Court, is the reason the rules came into effect.

4.5 National Industrial Court as A Final Court on Labour Matters and Rights of Appeal

The National Industrial Court Nigerian has both original and appellate jurisdictions. Its original jurisdiction is defined in the National Industrial Court Act and the Federal Republic of Nigeria Constitution (as altered). The Court's original jurisdiction has not yet caused any hullabaloo, though some legal observers have criticised it as being too broad. There is also no disagreement about appellate jurisdiction. However, the disagreement now is over the finality or otherwise of the Court's decision in civil cases and matters, particularly in light of the Supreme Court's decision in the Skye Bank case under consideration. The research work examines that decision and offers an alternative interpretation that seeks to bring into line with statute interpretation rules and the intent of the drafters of the National Industrial Court Act and the Constitution (Third Alteration) Act.

4.5.1 Criminal Appeals

Appeals from National Industrial Court decisions in criminal cases shall be heard by the Court of Appeal as a matter of right. Thus, section 254C (6) of the Federal Republic of Nigeria Constitution states:

> "Notwithstanding anything to the contrary in this Constitution, appeal shall lie as of right from the decision of the National Industrial Court on matters in sub-section 5 of this section to the Court of Appeal."

In general, there are two appeal rights in civil and criminal proceedings. They are appeal as of right and appeal with leave of court (the leave could be from the lower court or the appellate court, depending on the circumstances). Appeals from NIC decisions in criminal cases do not require permission from the NIC or the Court of Appeal. Does the right to appeal apply to interlocutory criminal appeals as well, or only to final Court decisions? The answer appears to be found in Section 254C (6) of the Constitution. The word 'decision' in that provision is ambiguous; it could thus refer to a NIC's 'judgement' or 'ruling.'

Appeals from NIC decisions in criminal causes and matters shall lie to the Court of Appeal as of right, according to Section 254C (6) of the Nigerian Constitution (as amended).By implication of Section 243 (4) of the Constitution, an appeal from a Court of Appeal decision can be taken all the way to the Supreme Court[252]. Lawyers/litigants have not challenged the Court's (original and/or appellate) jurisdiction in criminal causes and matters. Given the rarity of criminal cases before the Court, there is no debate about the Court's jurisdiction in criminal causes and matters, and whether an appeal as of right or with leave is reliant on whether the case is interlocutory or final.

4.5.2 Right of Appeal in Civil Cases

Hitherto[253], there was no right of appeal to the Court of Appeal from NIC decisions in civil causes and matters, except on grounds or questions of fundamental rights as

[252] OV Ojo, 'The Jurisdiction of the National Industrial Court (NIC) in Nigeria Reviewed' https://viyonlawblog.wordpress.com/2015/08/17/the-jurisdiction-of-the-national-industrial-court-nic-in-nigeriareviewed/ accessed 28 May 2022.
[253]Prior to 30th June, 2017

contained in Chapter IV of the Federal Republic of Nigeria's Constitution[254]. Even so, the appeals must be about issues over which the National Industrial Court (NIC) has jurisdiction. The law is further explained below:

(a) Appeal shall lie from the decision of the NIC as may be prescribed by an Act of the National Assembly.[255] This means that aside appeals bordering on fundamental rights, the right to all civil appeals has to be explicitly prescribed by an Act of the National Assembly; and this must be done with the leave of the Court of Appeal. However, as stated below, the law has changed based on the Supreme Court decision in the Skye Bank case.

(b) 'Without prejudice to section 254C (5) of this Act, the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final.[256]' This means all civil appeals (including those on fundamental rights) terminate at the Court of Appeal. No civil appeal on labour matters will go to the Supreme Court. This would have been naturally continuing to be the law until there comes another constitutional alteration, or, until lawyers successfully challenge the interpretation of that provision[257],which is now the case.

The clause before it makes it unclear whether the Court of Appeal can hear civil appeals from judgments of the National Industrial Court that do not pertain to fundamental human rights. The disagreements between the Court of Appeal's same divisions' positions on the issues raised by the earlier questions can be seen. In four cases from "Ekiti division of the Court of Appeal; Local Government Service

[254]See section 243 (2) of the Constitution of the Federal Republic of Nigeria (as altered) and section 9(2) of the NIC Act
[255]Section 243 (3) of the Constitution; s. 9(1) of the NIC Act
[256]Section 243(4).
[257]On critique of the limited right of appeal against the decision of the NIC, see A.F. Aperua-Yusufet al, 'Non Appealable Decisions of the National Industrial Court of Nigeria: A Critical Analysis' American International Journal of Contemporary Research (2015) (6) 156-164.

Commission, Ekiti State and Anor v. Jegede[258]; Local Government Service Commission, Ekiti State and Anor v. Bamisaye[259]; Local Government Service Commission, Ekiti State and Anor v. Olamiju[260] and Local Government Service Commission and Anor v. Asubiojo[261] (hereinafter, simply, referred to as the Ekiti LGA cases). It was held that decisions were appealable. On the other hand, the judgments of the Lower Court in Coca-Cola Nig Ltd v. Akinsanya[262] and Lagos Sheraton Hotels and Towers v. H.P.S.S.A".[263], Despite this, the trial Court's rulings were upheld as being final, with the exception of those involving criminal cases and fundamental rights.

Therefore, it was imminent that only the Supreme Court could resolve the issue with finality. In light of this, the Supreme Court ruled in SKYE BANK PLC v. VICTOR ANAEMEM IWU [264] considered the National Industrial Court's status as a final court under the provisions of the Constitution (third Alteration) Act, 2010. On February 2, 2012, the respondent filed a lawsuit against the now-defunct bank Afri Bank Nigeria Plc at the National Industrial Court, Lagos Division. His claims included wrongful termination of employment, unpaid accrued wages, and other benefits that he was allegedly entitled to while working for the aforementioned bank. Afri Bank Nigeria Plc's name was changed to Mainstream Bank Ltd. and Skye Bank Plc. In its capacity as Afri Bank Nigeria Plc's successor-in-title, Mainstream Bank carried the burden of the forensic trial. Pleadings were submitted and exchanged in accordance with the trial court's rules. Then, specifically on July 10, 2012, the aforementioned bank, Mainstream Bank Ltd, asked the trial court to rule on the case in limine due to lack of

[258](2013) LPELR-21131 (CA)
[259](2013) LPELR-20407 (CA)
[260](2013) LPELR-20409 (CA)
[261](2013) LPELR-20403 (CA)
[262](2013) 18 NWLR (Pt. 1386) 225
[263](2014) 114 NWLR (Pt. 1426) 45
[264](2017) LPELR-42595 (SC)

jurisdiction because, in accordance with the tenor of the objection, the action was based on an employer-employee relationship.

However, the court, Coram Obaseki-Osaghe, J, delivered a ruling dismissing the objection, holding that the trial court had jurisdiction to hear and determine the matter. The appellant/bank appealed to the Court of Appeal, Lagos Division via its notice and grounds of appeal dated 19/11/2012. The court heard the appeal; but before it could give its ruling, the appellant applied for a case to be stated to the Supreme Court. The Court of Appeal granted the application. In order to resolve the contention, the Supreme Court formulated one issue for determination: Whether the Court of Appeal as an appellate Court created by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) has the jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court of Nigeria.

The Supreme Court took into account the provisions of sections 36 (2) (b), 240, 243 (2) and (3), and 254C (3) (4) (5) (6) of the Constitution in deciding the appeal. The trial Court (NIC) and the High Court were determined to be courts of coordinate jurisdiction by the court, and as a result, the Court of Appeal has exclusive jurisdiction in Nigeria to hear and decide appeals from those courts. Therefore, under section 243 and 254C (5) and (6), there is a right of appeal to the Court of Appeal in matters involving fundamental rights as well as criminal law (2). However, pursuant to section 240 read disjunctively with section 243 (1) and with the permission of the Court of Appeal, appeal is permitted in all other civil causes and matters in which the NIC has exercised jurisdiction (4). Specifically, the Supreme Court endorsed the decision (the position of the law and finding thereof) in the case of Local Government Service Commission, Ekiti State and Anor v Mr. M.A. Jegede (cited above). Moreover, the

apex court held that the right to fair hearing guaranteed under section 36 of the Constitution includes procedures for achieving the right of appeal. In his words, Nweze, JSC said:

> "Suffice it to say that an appeal is a continuation of its litigation process. It is akin to the right to access to Court which is constitutionally guaranteed under Section 36 of the Constitution. In other words, the right to access to Court does not end with access to trial Court only. The right so guaranteed is substantive and continues right through to the appeal process. The right is not dependent on whether the appeal is of right or with leave. See also the case of Local Government Service Commission, Ekiti State and Anor. v. Mr. M. A. Jegede (2013) LPELR-21131 at ..."[265]

The Supreme Court further said that section 243 (2) (3) of the Constitution, though clumsily and inelegantly drafted, seems to prescribe the procedure for exercising the right of appeal or accessing the appellate jurisdiction of the Court of Appeal over decisions of the NIC. It added that section 243 (2) merely prescribes the procedure for exercising the right of appeal – appeal as of right. The court opined that the problem actually was with section 243 (3), where the problem of interpretation had arisen before the Court of Appeal. The court then employed the use of side (marginal or explanatory) notes as a subsidiary aid to interpretation to show that the intendment of the draftsman was not to create a right of appeal but it was on how the right of appeal was to be exercised. The court cited authorities to justify its reliance on marginal notes as signpost. In that regard, it said that although they are generally not aids to interpretation, they could be useful for the court to find general purpose and the mischief at which the statement in the notes aimed to achieve.[266] The Supreme Court reiterated its status as 'the highest Court in the land, while all other Courts are

[265]Skye Bank case (n 14) 116 -117 paras D-B

[266]It cited the cases of Idehen v Idehen (1991) 7 SCNJ 196; [1991] 6 NWLR (Pt 198) 382, per Karibi-Whyte, JSC. It also cited the cases of FRN v Ibori&Ors. (2014) LPELR – 23214 (CA, per Saulawa, JCA, relying on some English decisions), and of Uwaifov A. G. Bendel State (1982) NSCC 221 at 242.

subordinate to it. The Constitution cannot be interpreted to create by implication (NIC) as another Supreme Court.'[267] The Court further said that:

> "Court is to be divested of its conferred jurisdiction, it is done expressly and not impliedly. A Court of law can be clothed with power of finality only by express provision to that effect and not by implication. The substantive power vested in the Court of Appeal to hear and determine appeals, either as of right or with leave, from decisions of subordinate Courts, cannot be caged, confined, curbed or curtailed. Courts must be wary not to foreclose the right of access to Court. See section 36 of the Constitution. No Court can therefore be a final Court by mere implication. In support of this is the provision of Section 243 (4) of the Constitution which unequivocally and expressly made the Court of Appeal the final Court in respect of any civil appeal from the decision of the NIC. In the absence of express provision of an Act from the National Assembly, appeal in civil matters other than as of right on questions of fundamental right shall be to the Court of Appeal."[268]

Kudirat Kekere-Ekun, in his word said the Court said:

> "[H]aving been granted the status of a superior court and having regard to the hierarchy of courts as exists in our constitutional arrangement, the National Industrial Court must fall in line with other courts of coordinate jurisdiction. There is nothing in Sections 240, 241 or 242 of the 1999 Constitution that suggests that decisions of any of the courts referred to in Section 240 shall be final. Section 240 has clearly given a right of appeal from decisions of all the courts subordinate to the Court of Appeal and this includes the National Industrial Court. If that right is to be curtailed in any way, the Constitution must expressly say so. It would be absurd in my view to interpret Section 243(3) of the Constitution as restricting the right of appeal from decisions of the National Industrial Court to questions of fundamental rights alone. To construe the provision to mean that the decisions of the court in any civil

[267]Skye Bank case (n 14) 118.

[268]Ibid 118-119, per Nweze, JSC. Words in italics are for our emphasis. There was an Act, the NIC Act, which prescribed the finality of the decision of the NIC in specified matters; however, for inexplicable reasons, the Supreme Court ignored it. In fact, the Court did not consider that Act, at least in its lead judgment. That Act has an equal status to the Court of Appeal Act.

> proceeding are unappellable would place the court at par with the Supreme Court, which is the only court in the land whose decisions cannot be appealed against irrespective of the subject matter. That cannot be the intention of the Legislature."[269]

The Court concluded that unlike the Federal High Court and other categories of High Courts, the decisions of the NIC are deliberately made appealable to the Court of Appeal, there being no further appeal beyond that court (the Court of Appeal): section 243 (4) of the Constitution. On the strength of the above, the Supreme Court allowed the appeal. It undertook to transmit its judgment to the Court of Appeal, Lagos Division for its guidance and action.

The National Industrial Court clearly has exclusive jurisdiction over labour and employment issues in light of the aforementioned. Decisions made by the National Industrial Court regarding criminal matters and fundamental rights are automatically appealable to the Court of Appeal, whereas other issues require permission from the Court of Appeal. In conclusion, the National Industrial Court's ruling is not final because to hold it to be so would elevate it to the rank of the Supreme Court, which was against what the legislature intended.

However, it is important to note that only one Justice, Kumai BayangAka'ahs, JSC, dissented.[270]In dissenting, Aka'ahs, JSC opined, that aside from the decisions of the NIC not concerning criminal matters and fundamental rights cases in which appeals are of right, the decision of the NIC should be final. He gave a fundamental reason for the legislative limitation or restriction to the right to appeal:

> "Specialized Courts of limited and exclusive jurisdiction are seen as fulfilling a growing need for expertise in increasingly complex areas of law. The resolution of labour and employment disputes is

[269] Ibid *Pages 176-178*.
[270]See pp 124-156 paras E- A of the judgment. However, see our reservation in note 23 on an aspect of the dissenting opinion

> guided by informality, simplicity, flexibility and speed. Specialized business Courts will no doubt play an important role in the economic development of the country."[271]

Aka'ahs, JSC concludes:

> "I am of the firm view that decisions of the National Industrial Court in relation to matters spelt out in Section 254C (2), (3) and (4) of the Constitution should be final since it is a specialized Court and is meant to cater for special interests and foster economic development... In conclusion I answer the questions formulated by the Court of Appeal in the following manner: 1. The Court of Appeal has jurisdiction to the exclusion of any other Court in Nigeria to hear appeals from the decisions of the National Industrial Court where such decisions touch on questions of fundamental rights enshrined in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended). 2. The Court of Appeal is divested of its appellate jurisdiction in the decisions of the National Industrial Court in respect of Section 254C (2) (3) and (4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). 3. The Court of Appeal has jurisdiction to hear appeals from the decisions of the National Industrial Court in respect of other matters apart from questions of fundamental rights but the exercise of such jurisdiction must be with leave of the Court of appeal."[272]

Justice Aka'ahs interpretation seems to be more in line with the provisions of the Constitution (as altered) and in consonance with the literal rules of interpretation.

4.6. Analysis of the Repositioned and Jurisdictional Problems Associated with the National Industrial Court of Nigeria

The National Industrial Court of Nigeria has indeed gone through many stages of development and has surpassed many problems and confusions associated with its

[271]See dissenting opinion at p 146 paras D-F.
[272]Ibid 156-157 paras A-A. However, the third point in the learned Justice's conclusion seems unclear. It seems to suggest that there are other avenues for appeal with the leave of the Court of appeal. This writer thinks that position is incorrect as there was no and there is no Act or a constitutional alteration allowing this. There is no room for an implied or imaginary right of appeal in this context – the law has couched the provisions on right of appeal in civil cases, in absolute terms.

jurisdiction. The regime of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 is believed to have repositioned the court to meeting the challenges of the present-day industrial relations with the settlement of the long controversies and uncertainties over the true status and powers of the Court. However, the narrow interpretation of the provisions of section 243(2) and (3) of the Constitution has raised a problems, which perhaps, were never envisaged by the legislators, that is, by construing the NICN as a court of first and last resort, and thereby attempting to deprive the Court of Appeal of its appellate jurisdiction.

Many writers and the Courts are unanimous in their opinion that it is wrong for the National Industrial Court to be vested with such authority. They have however suggested an amendment to the Constitution or the National Industrial Court Act, 2006. In as much as it is agreed that there is need for such amendment so as to remove any form of doubt or ambiguity, it is recommended here that it will be better for the Court of Appeal and Supreme Court to adopt a purposeful and liberal interpretation of the provisions of the Constitution so as to achieve the fundamental aim of justice.

A cardinal rule of statutory interpretation requires that a legislative instrument be read as a whole for its proper interpretation and it is not legally valid for a provision to be read, interpreted, and applied in isolation. Regarding this, Uwais CJN (as he was then, now retired) of the Supreme Court declared the following:

> "It is settled that in interpreting the provisions or section of a statute or indeed the Constitution, such provisions or section should not be read in isolation of the other parts of the statute or Constitution. In other words, the statute or Constitution should be read as a whole in order to determine the intendment of the makers of the statute or Constitution."[273]

[273] PDP v INEC, (1999) 11 NWLR (Pt 626) 200 at 142; see also Ojukwu v Obasanjo & 3 Ors, SC 199/2003 (deliveredon 2 July 2004),

To be sure, the propriety of that exclusive enacting clause in the face of seeming inconsistency with the constitutional provision situating such exercise of judicial power within superior courts of record listed in the nation's organic law, soon became a subject of disputation in legal circles. And, as easily discernible from the unanimity in a few reported cases, the exclusive jurisdiction *supposedly* conferred on the National Industrial Court (NIC) by legislation needed an *insertion* in the nation's organic law to make good law[274].

The foregoing paved way for the legislative intervention in the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010. Regrettably, this legislative intervention might have imported, perhaps inadvertently, an incongruous provision in the enabling statute and, the sad part of it, elevated same into a constitutional provision. This being that the NIC is a final court! Well, except in very limited (and, given the prescribed jurisdiction of the court, almost impossible) circumstances. It is pertinent to examine the relevant provision.

In almost an exact lettering as Section 9(1) & (2) of the NIC Act, Section 243(2) and (3) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 provide that appeal "shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights". Further that, "an Appeal shall only lie from the decision of the National Industrial Court to the Court of Appeal as may be prescribed by an Act of the National Assembly". The latter category (of appeals), it further says, shall be with the leave of the Court of Appeal. Finally, it provides that the NIC is a final court in respect of any appeal arising from any civil jurisdiction of the National Industrial Court.

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www.nigerialaw.org/LawReporting/2004/July%202004/Chief%20%20Chukwuemeka%20Odumegu%20Ojukwu%20v%20Chief%20Olusegun%20Obasanjo%20&%20Ors.htm> Accessed 12 July 2022

[274] National Union of Electricity Employees v Bureau of Public Enterprise (2010) LPELR-SC.62/2004.

It would appear, something to cheer about. Given our not-so-peculiar circumstances, it is worth articulating that making the NIC a final court would check the incidence of long gestation resolution of otherwise simple labour and industrial disputes. It is a well-worn fact that the present situation of (unrestricted) access (of prospective appellant(s) to the appellate court to lodge notice(s) of appeal against every decision coming from the High Court and the attendant grim prospects of having such matters drag indeterminably from the intermediate appellate court to the nation's apex court within a horrendous timescale of anything between 5 to 10 years, does not augur well for the administration of civil justice in the country. It does make sense (and, good law) to check the unfortunate incidence by endowing the employment dispute resolution tribunal with ultimate power to hand down judgments, once-and-for all, and the Justices (of NIC) also able to echo the famous sentiments of the much revered Justice Oputa when he declared of the Supreme Court: "We are final not because we are infallible, rather we are infallible because we are final."

A further point to note, almost in passing, is that Section 240 of the Constitution provides for right of appeal from the Federal High Court, National Industrial Court, the High Court of the Federal Capital Territory, Abuja, Customary Court of Appeal of a State to the Court of Appeal.

The National Industrial Court being a constitutionally prescribed superior court of record with co-ordinate status with the Federal High Court and other enumerated courts in Section 240, the arguments commend itself that the intention is to have *unrestricted* right of appeals from the NIC to the Court of Appeal. Yes, the converse is equally potent. The literal interpretation brooks of no ambiguity: the right of appeal in Section 243 relates solely to appeals touching on question(s) of fundamental rights.

The number of labour-related human rights cases that would arise from time to time across the country cannot, by any imagination, be predicted. Again, when the 1999 Constitution left open the possibility for the victim of any human rights violation to approach any High Court in any State where the violation arises,[275] it offered quick aid and easy access to courts for human rights enforcement. Therefore, the vesting of exclusive jurisdiction in the NIC to entertain labour-related human rights matters may have the consequence of delaying human rights enforcement, a problem recently sought to be addressed through the enforcement rules procedures.[276] It is arguable that that the NIC has, by this arrangement, been saddled with more responsibilities than it could probably bear. This is because employment and industrial cases, by their very nature and centrality to the economy, are prone to being numerous and being frequently instituted in the courts. Ousting the jurisdiction of the High Courts in this area will therefore appear to be a bad idea as the NIC may not be able to manage the resulting workload.[277] With regard to the workload that the NIC would have to manage in the coming years and decades, it should be noted that there are 36 States and a Federal Capital Territory (FCT) in the country.[278] Yet this limited number of national court (the NIC) now has the sole responsibility of handling all of the labour-related human rights matters emanating from all the states of the Federation and the FCT.

Other than the massive delays this will likely occasion or make worse, the first major challenge posed by this situation is that the NIC has not yet established divisions in all the states of the Federation. In fact, the additional divisions currently created by the court are not spread evenly around the country so as to give easy access to its justice in

[275] Section 46(1) of the 1999 Constitution as amended. It states the following: "Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress".
[276] FREP Rules, 2009 at Preamble (3(a)-(b))
[277] Ifeoluwa Olubiyi, "Jurisdiction and Appellate Powers of the Nigerian National Industrial Court: Need for further Reform" *The Gravitas Rev of Business & Property* (2016) 44
[278] Section 3(1) & Part I 1999 Constitution as amended.

all States. This makes the court rather inaccessible to applicants. Unlike High Courts that constitutionally exist in every single State in Nigeria,[279] there is just one "National Industrial Court" established for the entire Federation. However, the recent appointment of many more judges to the NIC may ameliorate this as well as the "delay" problem. In other words, there is a shortage of manpower in the number of judges and judicial divisions of the court available to handle labour and employment disputes arises in different parts of the federation, some of which are highly litigious states. Although new judges were recently appointed to the NICN,[280] the total number of judges in the court still falls below that required to handle the deluge of cases coming before the court in view of its expanded jurisdiction under the 1999 constitution.[281] This shortage of judicial officers in the NICN means the overburden of current judges of the court which may have an adverse effect on the ability of the court to thoroughly adjudicate cases before it. Presently, although considerable efforts have been made to expand the reach of the NICN to all parts of the country, there are only 26 judicial division of the court, to cover the 36 states of the federation and the federal capital territory, which fall far short of the required numbers of division for a court saddled with the responsibility of resolving labour disputes throughout the federation.[282] Hence, it is the researcher's opinion that, for the purpose access to justice in labour matters, there is need for NICN to be situated in all states

Furthermore, although the Fundamental Right (Enforcement Procedure) 2009 now urges the courts that hear human rights cases to work towards the speedy and efficient

[279] Section 270 of the 1999 constitution as amended
[280] Osinbajo approves 19 judges for National Industrial Court, *Punch newspaper* (11th July 2017) < https://punchng.com/breaking-osinbajo-approves-19-judges-for-national-industrial-court/> 10 new justice justices of the NICN were sworn in on the 15th July 2013 and New judges were sworn in on 14th July 2017, raising the number of judges of the NICN from 20 to 39
[281] As amended
[282] Appendix XI for the Judicial Divisions of the Court.

enforcement of such rights,[283] the grant of exclusive jurisdiction to the NIC may, for the reasons already offered, impede the realization of this goal.[284] Certainly, the expeditious determination of fundamental matters before the court must be a major concern.[285]

It is on this note that the emerging judicial trend of recognising and affirming the exclusivity of the jurisdiction constitutionally conferred on the National industrial Court has become of remarkable significance.[286] However, one of the conflicting issues despite the enactment of the 1999 Constitution confirming the exclusive jurisdiction of National industrial Court is section 254C (1) (d) of the Constitution (as amended) provides that the National Industrial Court shall have exclusive jurisdiction in matters relating to or connected with any dispute over interpretation and application of the provision of Chapter IV of the Constitution as it relate to any employment, labour, industrial relations, trade unionism, employer's association, or any other matter which the court has jurisdiction to hear and determine. On the other hand, Chapter IV of the Constitution which is entitled 'Fundamental Right' contains provisions on fundamental rights guaranteed in the Constitution. Chapter IV of the Constitution guarantees right to life(section 33), dignity of human person (section 34), personal liberty (section 35), fair hearing (section 36), private and family life (section 37), freedom of thought, conscience and religion (section 38), freedom of expression and the press (section 39), peaceful assembly and association (section 40), freedom of movement (section 41), freedom from discrimination (section 42), and to acquire and own immovable property anywhere in Nigeria (section 43). Chapter IV of the

[283] FREP Rules, 2009 at Preamble (3(f))
[284] Justice Babatunde Adeniran Adejumo, "The National Industrial Court: Past, Present and Future" (Paper delivered at the Refresher Course Organized for Judicial Officers of Between 3-5 Years Post Appointment, Otutu Obaseki Auditorium, National Judicial Institute, Abuja, 24 March 2011), online: .
[285] Ibid
[286] B.A Adejumo, The Relevance of the National industrial Court of Nigeria in the Scheme of things in Contemporary Nigeria: what is the Future for Litigation and Advocacy in the Court? (2014) http://www.nicn.gov.ng.pdf accessed 19 June 2022

Constitution also makes provision relating to compulsory acquisition of property and restriction on derogation from fundamental rights (section 44). Of particular note is section 46 of the Constitution, the last section of Chapter IV, which provides, inter alia, that any person who alleges that any of the provisions of the chapter has been, is being or likely to be contravened in relation to the person may apply to a High Court in that State for redress.[287]

Apart from the provisions of section 254C (1),[288] which confers exclusive jurisdiction on the National Industrial Court in civil causes and matters, there are few other innovations introduced in section 254C of the Constitution (third alteration) Act, 2010, which has far reaching effect on the jurisdiction of National Industrial Court. Such provisions include section 254C (2) which provide thus: 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. With the provision, it is observed that National Industrial Court now has jurisdiction relating to application of nay international convention relating to labour, employment, workplace and industrial relations which has being ratified by Nigeria. This provision further gives momentum to the National Industrial Court to promote and protect international labour standards and best practices in labour and industrial relations.[289] The constitution and convention of the International Labour Organisation is binding on Nigeria because Nigeria has ratified it.[290] It is however

[287] O. Edigue 'The Expanded Jurisdiction of the National Industrial Court: Its Implication for Industrial dispute in Nigeria' *Journal for Worldwide Holistic Sustainable Development* (2015) (2)
[288] Constitution (Third Alteration) Act, 2010
[289] Ibid
[290] S. E. Mbah and C.C. Ikemefuna. 'Core Conventions of the international labour organisation: Implications for Nigerian Labour Law' *International Journal of Business Administration* (2011) (2)(2) 130

clear that what is intended by Chapter IV of the Constitution, especially section 46 thereof, is to confer a special jurisdiction on the High Courts in respect of fundamental rights matters. Although, the amendment of the 1999 constitution did not alter this aspect of the Constitution, a general reading of Section 46 and Section 254C(1)(d) of the Constitution suggests that where there is any dispute as to the interpretation or application of Chapter IV or where any allegation of contravention has to do with employment, labour, industrial relation, trade unionism, employer's association or any other matter which the National Industrial Court has jurisdiction to hear and determine, the National Industrial Court will have exclusive jurisdiction to hear and determine such dispute.[291]

Chapter Five:

Conclusion

5.1 Summary of findings

[291] O. Edigue 'The Expanded Jurisdiction of the National Industrial Court: Its Implication for Industrial dispute in Nigeria' *Journal for Worldwide Holistic Sustainable Development* (2015) (2)

For decades, employee-employer conflicts have reached unprecedented proportions. Public policy, which had been designed to deal with conflict situations in the workplace, became more interventionist and revolutionary. These conflicts frequently arise from the inherent opposing interests of employers and employees in workplace relationships. Given that conflict in the workplace is unavoidable, the actors, particularly the government, must devise methods and means to address the resulting grievances. Dispute resolution mechanisms offer a meaningful approach to conflict resolution between employers and their employees.[292]

The National Industrial Court (NIC) was established in response to the desires of industrial relations actors for the establishment of effective labour dispute resolution machinery. The court has sole jurisdiction over awards in the settlement of trade disputes; and decide the interpretation of its own award, a collective award of the IAP (Industrial Arbitration Panel) or the terms of settlement of any trade dispute.[293]

The NIC has exclusive jurisdiction over disputes arising from essential services and those referred to it directly by the Minister of Employment. In the latter case, the court acts as an appellate court. Even so, except in cases involving the interpretation of an award or the terms of a collective agreement, the parties to a dispute cannot directly appeal to it. However, unlike the IAP, the National Industrial Court makes its own final awards.

The law that established the National Industrial Court (the Trade Dispute Act (TDA) Cap. 432 LPN 1990) made it difficult for the court to deliver judgement freely. When reviewing the state of the court at its inception, the researcher discovers some of the logjams that hampered the court's smooth operation, which include:

[292]Fashoyin, T. Industrial Relations in Nigeria, 2nd ed. (Lagos: Longman, 2002).
[293]Fajana, S. Industrial Relations in Nigeria: Theory and Features. (Lagos: Labofin and Company.

(i) Originally, the court was not listed in the section 6 of the 1999 constitution.

(ii) The Minister of Labour's referral and other discretionary powers over matters pertaining to the National Industrial Court meant that the Minister of Labour's influence was excessive, and the only court of law in the nation where litigants could not approach the court on their own initiative, except when exercising the court's interpretation jurisdiction, to air their grievances.

(iii) Even when cases were transferred to the National Industrial Court by other courts, the requirement of referral prevented the court from hearing matters directly, with the exception of interpretation disputes.

(iv) The Trade Disputes Act (TDA) of 1990 stipulated in Section 19 (4) that the court's president was to preside over all proceedings. The implication of this is that the court cannot convene if the president is otherwise occupied. For instance, the court was unable to meet when the President of the court passed away from illness in 2002 because a replacement President wasn't named for almost a year.

(v) The National Industrial Court was the only court of law with a dual system of appointing those who would decide on matters before it, according to Sections 19 and 25 of the TDA 1990.

(vi) The members of the court were chosen by the President of the country on the recommendation of the Minister of Labour, whereas the President of the court was chosen based on the recommendation of the Federal Judicial Service Commission. Both the Labour Minister and the National Judicial Council have authority over the court as a result of the appointment and recommendation of members by various bodies.

The new National Industrial Court (NIC) Act became effective on June 14, 2006. The Act was approved and signed on this date by Chief Olusegun Obasanjo, the outgoing president of Nigeria. The National Industrial Court is a superior court of record established by the National Industrial Court Act, which also gives the court jurisdiction over matters relating to labour and industrial relations. The Act reinstates the National Industrial Court and gives it precedence in resolving labour disputes.[294]

The Act's provisions establish a separate enabling law for the National Industrial Court and remove it from the Trade Disputes Act (TDA). In this way, it has dealt with some of the concerns brought up before the court during the TDA era. As is the case with the Federal High Court or the High Court of the Federal Capital Territory, where the National Judicial Commission continues to serve as the recommending body, the appointment of the President and Judges of the Court has been streamlined under a single system.

Prior to the passage of the new Act, the President of the Court must preside over all court sessions. However, any of the Judges who is a legal practitioner can now preside over the court's sittings (Section 21(4) of the National Industrial Court Act). The plethora of cases that held that the National Industrial Court could not grant injunctive and declaratory orders are no longer applicable under the new law, which is contained in Sections 16-19 of the National Industrial Court Act.

Decree No. 47 of 1992 and the NIC Act of 2006 both attempted to give the NIC the status of a superior court of record in an effort to end the NIC's inferiority to the High Courts, but all of these efforts failed. In addition to addressing the gaps in the NIC's jurisdiction that Decree No. 47 of 1992 and the 2006 Act unsuccessfully attempted to fill, the Third Amendment to the 1999 Constitution also granted it a very broad range

[294]Adejumo, B. Obstacles to Effective Discharge of Labour Matters of the National Industrial Court. A paper presented at a stakeholders forum in Lagos on January 4,2007. pp.2 & 3.

of authority. This jurisdiction covers issues relating to international best practises and/or the interpretation of international labour standards, as well as industrial, employment, trade, and labour relations. Article 251 (1)[295], which, particularly its sub-sections (p), (q), and (r), previously gave the Federal High Court broad jurisdiction, is now restricted to civil causes and matters bordering on trade disputes by Section 254 C (1).[296]

Undeniably under section 254 C (1), the NIC has exclusive jurisdiction to the exclusion of all other courts in civil matters and cases connected with or arising from Factories Act,[297] Trade Dispute Act,[298] Trade Unions Act,[299] Labour Act,[300] Employees Compensation Act,[301] Trafficking in Persons (Prohibition) Law Enforcement and Administration Act,[302] sexual harassment at workplace,[303] dispute over the interpretation and application of the provisions of Chapter IV of the 1999 Constitution (as amended) as it relates to any employment, labour, industrial relations, trade unions, employer's associations.[304] Specifically, the NIC has been upgraded to a superior court of record.[305]

It is important to note that the NIC now has criminal jurisdiction over matters over which it has sole civil jurisdiction under section 254C (5). It's also important to remember that the criminal jurisdiction of the NIC is automatically appealable to the Court of Appeal under section 254 C(6). In addition, a decision on a matter involving

[295]1999 Constitution (as amended)
[296]Ibid. In view of the above, most cases decided at the High Courts in the past are now undoubtedly within the constitutional jurisdiction of NIC. Examples Institute of Health, Ahmadu Bello University Management Board v. Mrs. Jummai R.I. Anyip (2011) 45 NSCQR (Pt. 11) 408; Mobil Producing Nig. Unlimited v. Udo (2009) ALL F WLR (Pt. 482) 1177; Akinyanju v. Unilorin [2005] 7 NWLR (Pt. 323)87.
[297]Factories Act, Cap FI, L.FN, 2004
[298]Cap. T8, L.FN, 2004.
[299]Trade Unions Act, Cap. T14, LFN, 2004
[300]Labour Act, Cap. L1, LFN, 2004
[301]Employees Compensation Act, Cap.E7A, LFN, 2004
[302]Trafficking in Persons (Prohibition) Law Enforcement and AdministrationAct, Cap. T23, LFN, 2004
[303]Section 254 (1) (g), 1999 Constitution (as amended).
[304] Ibid Section 254 (I) (L) (i)
[305] Ibid Section 6 (5) (C C)

fundamental rights by the NIC may be appealed to the Court of Appeal under Section 243 (2) of the 1999 Constitution (as amended). According to Section 243, Subsection 3, "An appeal shall only lie from the decision of the National Industrial Court to the Court of Appeal as may be prescribed by an Act of the National Assembly." However, Skye Bank Plc v. Victor Anaemem Iwu's case has now settled the issue of Appeal from the National Industrial Court

Sections 254C (3) and (4) of the Constitution (Third Alteration) Act, 2010 contain novel but commendable provisions that allow the Court to establish an alternative dispute resolutions centre within the court premises on matters over which the Court has jurisdiction and to hear any application for the enforcement of an arbitral award from an arbitral tribunal, commission of inquiry, or administrative body. These provisions are noteworthy and will assist the court in quickly resolving industrial and labour disputes in a friendly environment. However, if the court's decision is unsatisfactory to any of the parties, the issue of appeal will rear its ugly head, reducing the positive effect that the provision to establish an alternative dispute resolutions centre within the court premises may have.

5.2 Conclusion

Human relationships frequently end in disputes, and the employer-employee relationship is no different. As a result, the Trade Dispute Decree established the National Industrial Court in 1976 to offer a special forum for the resolution of employer-employee disputes and other related issues. In accordance with Part I of the Act's 1976 amendments, the National Industrial Court had exclusive jurisdiction over trade disputes, awards, and questions pertaining to the interpretation of any collective

agreement.[306], and the terms of settlement of any trade dispute by a conciliator as provided in section 8.[307]. The Court's award on any matter must be made within thirty days of the hearing date.[308] The Trade Disputes Act of 1976 was passed under the authority of the 1963 Constitution, and there was no issue with the court's status because the 1963 Constitution had been amended to provide it with legal support. However, section 6 of the 1979 Constitution, which granted the court the judicial powers of the federation, expressly stated that the only superior courts of record in Nigeria were those that were listed in the section. Unfortunately, the National Industrial Court was not one of them.

This regrettable oversight left a hole that parties exploited to contest the National Industrial Court's jurisdiction, reducing its efficacy. The Trade Disputes (Amendment) Decree, which was passed in 1992 and explicitly designated the National Industrial Court as a superior court of appeals, fixed this flaw.[309]. By removing all inter- and intra-union disputes from the regular courts and giving them sole jurisdiction over the National Industrial Court, it broadened the court's jurisdiction.[310] The development did not, however, achieve its intended goal because, according to lawyers, academics, and jurists, only the constitution can reposition the National Industrial Court. In the cases of Kalango v. Dokubo[311], A. G. Oyo State v. Nigerian Labour Congress[312], and Bureau of Public Enterprise v. National Union of Electricity Employees[313], the constitutionality of the National Industrial Court was questioned.

[306]Trade disputes Act, 1976
[307]Ibid
[308]Agomo(n 28) 226-227
[309]Trade Disputes Act, 1976, s19(2)
[310]Agomo (28) 226-227
[311](2003) 15 WRN 32
[312](2003)8 NWLR 1
[313]Ibid

Part II of the Trade Dispute Act of 1976 was repealed by section 53(1) of the National Industrial Court Act of 2006, and any discrepancy between the provisions of the Trade Dispute Act and the National Industrial Court Act of 2006 will be resolved in the National Industrial Court Act of 2006's favour.[314] Additionally, the National Industrial Court is the first and last resort in cases involving other labour disputes and related issues, whereas only cases involving fundamental rights may be appealed to the Court of Appeal.

However, the 1999 Constitution (third amendment) Act, 2010, which has been the focus of numerous discussions and criticisms, has confirmed the status of the National Industrial Court.

It is crucial to support efficient institutional processes for resolving labour and industrial disputes as a means of preserving goodwill between employers and workers.[315] The purpose of the court was to establish a specialised court to handle special cases involving government-formulated labour policies, industrial relations, development, and peaceful coexistence between and among labourers and employers. Without a reliable industrial mechanism for resolving labour disputes, no developed economy has ever been able to expand throughout history.

The jurisdictional dispute that the NIC was embroiled in was the subject of this research project. It has been established that the Third Amendment to the 1999 Constitution gave the NIC broad constitutional criminal and civil jurisdiction over every conceivable labour and industrial-related issue, as well as making it a superior court of record. The NIC's founding public policy was ensured to be carried out by the third amendment to the 1999 Constitution.

[314]Agomo (n 28) 226-227
[315]S.A Fagbemi 'Jurisdiction of the National Industrial Court of Nigeria : A Critical analysis'(2014) (28), Journal of Law Policy and Globalisation 54

5.3 Recommendations

Despite a number of challenges, the passage of the CFRN (Third Alteration) Act is a bold step in the right direction. Challenges must be transformed into stepping stones or springboards for greater accomplishments. The Nigerian Industrial Court sector may have been plagued by problems or controversy in the past, but it is now on a positive trajectory. All that is required is well-guided and monitored navigation. This is simple to accomplish if the following recommendations are followed.

i) The provision of Section 254C (1) is incompatible with Nigeria's federalist principles. For example, all labour, employment, pension payment, trade dispute, trade union matters, and industrial matters across the country, both in the public and private sectors, have been subsumed under the jurisdiction of the National Industrial Court, which means that no State High Court can adjudicate these matters, even when the disputes involve state workers and their governments or cases involving private sectors and their workers. As a result, federal and state industrial courts should be established.

ii) The legislature should work hard to ensure that there are no apparent contradictory or ambiguous provisions in the Constitution, such as sections 240 and 243(1) to (4) of the Constitution, as well as sections 9(1) and (2) of the NIC Act. As a result, the National Assembly should amend the Constitution further to resolve these seemingly contradictory provisions. One way to ensure this is to actively involve experts and experienced legal practitioners in bill drafting processes especially in the area of the proposed law/bill.

iii) Persons with expertise in the theory and practise of labour law and industrial relations should be included among the Justices of the Court of

Appeal and the Supreme Court. This will be extremely beneficial in the event of critical constitutional/statutory interpretations pertaining to labour law and industrial relations issues.

iv) The case of Skye Bank V Iwu (2017)[316] should be reviewed. This researcher applauds the dissenting opinion for providing a more accurate interpretation of the law. While the researcher respects the Supreme Court as the country's highest court, the researcher disagrees with the majority decision. In dissent, Aka'ahs, JSC stated, correctly in my opinion, that aside from NIC decisions not involving criminal matters and fundamental rights cases in which appeals are permitted, the NIC's decision should be final. He provided a fundamental reason for the legislative limitation or restriction on the right to appeal, with which the researcher also concurs.

If the intendment of the drafters of the Constitution was to outspread the appeals in all matters, what then was the purpose of establishing the NIC in the first place? Instructively, section 9(1) of the National Industrial Court Act provides, unmistakably, that subject to subsection (2), '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.' Subsection (2) - the provision on appeal as of right to the Court of Appeal on questions of fundamental rights - says 'An appeal from the decision of the Court shall lie only as of right to the Court of Appeal only on questions of fundamental rights as contained in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999.' The researcher thinks that the mention of the adverb 'only' in two places is

[316] supra

deliberate, in order to underscore the absoluteness of the provision and to clear a possible ambiguity.

v) More courtrooms should be built across all states. Nigeria is a large country with considerable wealth. It is recommended that, given the fact that labour issues are quite robust and will remain so, even if the NIC's jurisdiction is whittled down, more court rooms for the NIC be established in all Nigerian states. The judiciary is the common man's last hope, and since many people are involved in labour and labour-related matters, more courtrooms should be built and distributed across the country on a state-by-state basis.

vi) It is proposed that many more Judges be appointed. There are many capable legal practitioners who may be willing to take on the task of socially engineering Nigeria's labour legal landscape. These should be brought into the NIC in order to meet the demand for speedy justice and avoid court congestion.

5.4 Contribution to Knowledge

The primary aim of the researcher in this study is to relook at the repositioned status of the National Industrial Court of Nigeria from a new perspective. The study gives an in-depth discussion and explanation to the repositioned status of the National Industrial Court. So far, most studies on National Industrial Court of Nigeria have focused on its jurisdiction and power alone.

In this study the researcher has tried to shift the focus to a more contemporary issues on National Industrial Court especially the effect of the third alteration of the 1999 Constitution and the judgment in the case of Skye Bank Plc v. Victor Anaemem Iwu on its status.

Finally, the study has provided answers to the research questions/objectives, and has added to the existing literature of the National Industrial Court of Nigeria.

5.5 Suggested Areas for Further Research

1. The National Industrial Court of Nigeria Civil Procedure rule.
2. The National Industrial Court of Nigeria Alternative dispute resolution mechanism

Appendix

Section 254C of the Constitution of the Federal Republic of Nigeria, 1999 (as amended, 2011)

"(1) Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;

b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees' Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;

c) relating to or connected with the grant of any order restraining 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 and matters Connected therewith or related thereto;

d) 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, employer's association or any other matter which the Court has jurisdiction to hear and determine;

e) 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;

f) relating to or connected with unfair labour practice or international best practices in labour employment and industrial relation matters;

g) relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;

h) relating to, connected with or pertaining to the application or interpretation of international labour standards;

i) connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;

j) 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) term 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 work place

(vii) dispute relating to or connected with any personnel matter arising from any free trade zone in the Federation or any part thereof;

k) relating to or connected with disputes arising from payment or nonpayment 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;

i) 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;

m) 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 or any

international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relation or matters connected therewith.

3. The National Industrial Court may establish an Alternative Dispute Resolutions Centre within the Court premises on matters which jurisdiction is conferred on the court by this Constitution or any 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 commission, administrative body, or board of inquiry in respect of any matter that the 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 jurisdiction to entertain.

5. The 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 other 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 sub-section 5 of this section to the Court of Appeal as of right.*

Bibliography

Textbooks

Abel K. U, Industrial Relations in Developing Countries: (The Case of Nigeria (London:

Agomo C. K, Nigeria Employment and Labour Relations law and Practice (Concept Publications Limited, Lagos 2011)

Bodunde .B, Employment Law, (Lagos: Libri Service Ltd., 2003)

Bray D. & Waring, W. Industrial Relations, Power Point Slides, Australian (McGraw Hill Ltd, 2015).

Brown H. and Marriott A., ADR Principles and Practice. 1999 (2nd edn) (London: Sweet & Maxwell 2019).

Chaudhry A M and Asif C. H Organizational Conflict and Conflict Management: a synthesis of literature" (2015) Accessed 10th January, 2022

Coke E, The First Part of the Institutes of the Laws of England (ed) (Steve Sheppard 2003).

Esan R.S.M; Legal Framework of Industrial Relations in Nigeria; in Otobo D. and Omoole M. (ed.) *Readings in Industrial Relations in Nigeria. (*Malthouse Press Ltd. Lagos, 1987).

Fajana, S. Industrial Relations in Nigeria: Theory and Features. (Lagos: Labofin and Company, 2017).

Fashoyin, T. Industrial Relations in Nigeria, (2nd ed). (Lagos: Longman, 2002).

Flander A, Industrial Relations: What is wrong with the System? (London, Faber Press 2015).

Helmholz R. H, "*The Myth of Magna Carta Revisited*" (94 N.C. L. REV. (2016).

Lawrence E. F & Sandra L. S, *The Legislative Drafter's Desk Reference* (2d ed) (Filson published Press 2008)

Obande F. O, Understanding the Concept of Jurisdiction in the Nigeria Legal System, (Snaap Press Ltd. Enugu 2008

Offornze and Paul, *The National Industrial Court of Nigeria: law, practice and procedure*, 2nded (Kraft book Limited, Sango, Ibadan, 2019)

Ogbe C. D, Enforcement of Fundamental Rights in Nigeria (Chudanog Publishers Ltd. 2017)

Peretomode V.F. &Peretomode O. Human Resource Management, Principles, Policies and Practices; Nigeria, (Justice- Jecs printing and Publishing Global, 2011)

Roo A and Robb J, "Settling Labour Disputes in Europe" (Kluwer Law Publishers 1994)

Thome S. E. *The Equity of a Statute and Heydon's Case*, (31 ILL L. REV. 202, 215 1936); in LON L. FULLER, *The Morality of Law* (rev. ed. 1969)

Uvieghara E.E. and Abugu, J.E.O. "Trade Unions Law, in Commercial Law in Nigeria", E.O. Akanki (ed.) (University of Lagos Press, Lagos 2007).

Uvieghara E.E., Labour Law in Nigeria (1st ed. Malthouse Press Limited, Lagos, 2001)

Uvieghara, E. E., *Labour Law in Nigeria*. (Malthouse Press Ltd, Lagos 2001)

Articles/Journals

Aauda Y.A. "Employment of Independent Arbitration in the Management of Trade Disputers and Industrial Law in Nigeria," Labour Law Journal, Vol.1, No. 1 (2000)

Abuza A.E. An Examination of the Jurisdiction of the National Industrial Court in Nigeria, Nigerian Journal of Labour Law and Industrial Relations (NJLIR), Vol. 2 No. 4, (2008)

Afolasade A Adewumi "National Industrial Court and the Prospects of Efficient Industrial Conflict Resolution in Nigeria" *Nigerian Journal of Labour Law & Industrial Relations* (2013)

Aforkoghene O O and Ifeanyi A "The Role of the National Industrial Court in the Promotion of Industrial Harmony in Nigeria", *International Journal of Business & Law Research,*(SEAHI PUBLICATIONS, 2019)

Al-Tabtabai H. and Thomas V. Negotiation and resolution of conflict using AHP: an application to project management'. Engineering, Construction and Architectural Management, Vol. 11, No. 2, 2004.

Aperua A.F. Non-Appealable Decisions of the National Industrial Court of Nigeria: A Critical Analysis, American International Journal of Contemporary Research (2015).

Daniel F, *Getting into Mischief*: *On What It Means to Appeal to the U.S. Constitution*, (28 INT'L J. SEMIOTICS L. 267 2015).

Edigue O. 'The Expanded Jurisdiction of the National Industrial Court: Its Implication for Industrial dispute in Nigeria' *Journal for Worldwide Holistic Sustainable Development* (2015) (2)

Ejere O.D 'Legal Implications of the Constitution (Third Alteration) Act, 2010 on the Jurisdiction of the National Industrial Court of Nigeria' Labour Law Review (NJLIR) (2013) (7)(4).

Eme-Worugji I.N, Archibong .J.A and Alabo E. "The NIC Act (2006) and the Jurisdictional Conflict in Adjudicatory Settlement of Labour Disputes in Nigeria: An Unresolved Issue." *Labour Law Review* [2007]

Fagbemi S.A 'Jurisdiction of the National Industrial Court of Nigeria: A Critical analysis'(2014) (28), Journal of Law Policy and Globalisation.

Gordon L, "Managing Conflict in Today Organization Management Training and Development," *Labour Law Journal*, (2007) (1) (1).

Habeeb MOY and Kazeem AO "Organization Conflict and Industrial Harmony: A Synthesis of Literature". *European Journal of Business and Management*, [2018] (10) (11)

Ifeoluwa O, "Jurisdiction and Appellate Powers of the Nigerian National Industrial Court: Need for further Reform" *The Gravitas Rev of Business & Property* (2016)

Kurt Lewin's change model: A critical review of the role of leadership and employee involvement in organizational change" *Journal of Innovation & Knowledge" [2018] (3)*

MAUREEN.C and KALMAN.K, "*Thinking Disputes: An Essay On the Origins of the Dispute Industry",* Law & Society Review, 1981 - 1982, Vol. 16, No. 3 (1981 - 1982).

Mbah S. E. and Ikemefuna C.C. 'Core Conventions of the international labour organisation: Implications for Nigerian Labour Law' *International Journal of Business Administration* (2011) (2)(2)

Opara L.C 'The Legal Frame Work of Trade Union Activism and the Role of National Industrial Court (NIC) in Handling Trade *Disputes' International Journal of Humanities and Social Science* [2014] (4).

Osipitan T "Debt Recovery Litigation: Failed Banks or High Court, "Modern Practice Journal of Finance and Investment Law", Vol. 3 No. 1. 1999

Prospects for Industrial Peace" (2008) 2(1) Nigerian Journal of Labour Law and Industrial Relations

The Psychology of Morality: A Review and Analysis of Empirical Studies Published From 1940 Through 2017". *SAGE Journals* [2019]

Internet Sources

Adejumo B.A, The Relevance of the National industrial Court of Nigeria in the Scheme of things in Contemporary Nigeria: what is the Future for Litigation and Advocacy in the Court? (2014) http://www.nicn.gov.ng.pdf accessed 19 June 2022

Alison. D, Conflict Resolution: Definition, Process, Skills, Examples (2022) <https://www.thebalancecareers.com/conflict-resolutions-skills-2063739 > Accessed 12 May 2022

Burton, Conflict: Human Needs Theory, https://link.springer.com/content/pdf/bfm%3A978-1-349-21000-8%2F1.pdf>Accessed 12 January, 2022

Conflict analysis and resolution <https://www.researchgate.net/publication/306154183_Conflict_analysis_and_resolution>Accessed 12th January, 2022

Fadi S, ''*Leadership Guide to Conflict and Conflict Management''* <https://ohiostate.pressbooks.pub/pubhhmp6615/chapter/leadership-guide-to-conflict-and-conflict-management/ > Accessed 22 December 2021

Fagbemi S.A 'An overview of the Institutional mechanism for the Settlement of Labour Dispute in Nigeria' *US-CHINA Law Review 1325* [2014] (11) < http://www.davidpublishing.com > accessed 10 January 2022.

Fisher and Ury's Four Principles of Negotiation<https://www.atlas101.ca/pm/concepts/fisher-and-urys-four-principles-of-negotiation/>Accessed 12th January, 2022

Herman S, Peace Research and Politics <https://journals.sagepub.com/doi/10.1177/002234336800500301> Accessed 11th January 2022

Jacob B, Social Conflicts and Third Parties: Strategies of Conflict Resolution (Boulder, Colorado: Westview Press 1984), <https://journals.sagepub.com/doi/abs/10.1177/003231878703900215>Accessed 12 January 2022

Juliet E. Kele and Catherine M. Cassell, *"The Face of the Firm: The Impact of Employer Branding on Diversity"* (24 March 2022) https://onlinelibrary.wiley.com/doi/10.1111/1467-8551.12608 Accessed 11th July 2022

Kriesberg, Constructive Conflicts: From Escalation to Resolution <https://books.google.com.ng/books/about/Constructive_Conflicts.html?id=H0W8SAAACAAJ&redir_esc=y> Accessed 12 January, 2022

McClelland K. A, "Cycles of Conflict: A Computational Modeling Alternative to Collins's Theory of Conflict Escalation" (2014) <https://www.researchgate.net/publication/261503001_Cycles_of_Conflict_A_Computational_Modeling_Alternative_to_Collins's_Theory_of_Conflict_Escalation> Accessed 10th January, 2022

Offornze A "A Review of the Procedural Jurisdiction of the National Industrial Court of Nigeria on *Grey Area* Claims" <https://gravitasreview.com.ng/shop/labour/> Accessed 10th April, 2022

Ojo O.O and Adedayo A.M. "Industrial Relations and Labour Management and Productivity: The Imperative for Sustainable Development in Nigeria" (2021) <https://www.researchgate.net/publication/356798342_Industrial_Relations_and_Labour_Management_and_Productivity_The_Imperative_for_Sustainable_Development_in_Nigeria> Accessed 22 June 2022

Oliver S, Conflict – a literature review <https://www.researchgate.net/publication/323847788_Conflict_-_a_literature_review> Accessed 11th January 2022

Pathways for Peace; Inclusive Approaches to Preventing Violent Conflict https://openknowledge.worldbank.org/bitstream/handle/10986/28337/9781464811623.pdf Accessed 10 June, 2022

Reimann M A, Background and threshold: Critical comparison of methods of determination <https://www.researchgate.net/publication/7749856_Background_and_threshold_Critical_comparison_of_methods_of_determination> Accessed 10th January, 2022

Tracy K, The Soul of a New Machine <https://www.researchgate.net/publication/249909172_Tracy_Kidder_The_Soul_of_a_New_Machine> Accessed 10th January, 2022

Reports, Plans, Policy and Documents

Adejumo B.A, "The National Industrial Court: Past, Present and Future"

Adejumo, B. Obstacles to Effective Discharge of Labour Matters of the National Industrial Court. A paper presented at a stakeholders forum in Lagos on January 4,2007.

Agomo C.K., The Report on the Evaluation of the IAP and NIC, October, 1998.

Halsbury's Laws of England, 3rd Edition, Vol. 2

Kisumu, The Proper Role and Jurisdiction of the Industrial Court, Nairobi,16th - 20th April 2013.

Oddiri, E.R. Alternative Dispute Resolution, Abuja on the 22-27th August 2004.

Bio-Data

1. **FULL NAME**: Solomon Osereme AGBATOR

2. **DATE OF BIRTH**: 11th September 1983

3. **MARITAL STATUS**: Married (with three children)

4. **NATIONALITY**: Nigerian

5. STATE OF ORIGIN: Edo State

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6. **ADDRESSES:**
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7. **EDUCATIONAL INSTITUTION ATTENDED WITH DATES**:

(i) Lead City University, Ibadan (2020-2022)

(ii) Houdegbe North American University, Cotonou, Benin Republic (2011-2014)

(iii) Kwara State Polytechnic, Ilorin, Kwara State, Nigeria (2004-2007)

(iv) St Joseph Boys Secondary School, Surulere, Lagos, Nigeria (1994-2001)

8. **QUALIFICATIONS HELD**:

(i) Master of Law (LLM in view) –2022

(ii) Bachelor of Laws (LL. B Hons.) -2014

(iii) National Diploma (Public Administration) 2007

(iii) West African School Certificate (O Levels) -2001

9. **RESEARCH THESIS**:

(i) Examining the Repositioned Status of National Industrial Court of Nigeria in Trade Dispute Resolution (LLM), 2022

10. **RESEARCH INTERESTS**:
International Law; Labour Law; Constitutional Law; International Humanitarian Law and Human Right Law

11. **EMPLOYMENT HISTORY**:

Date	Position	Employer	Reason for Leaving
2015-	Refugee Status Determination Officer	United Nation High Commissioner for Refugee/ National Commission Refugee	
2014-2015	Ligation Assistant	Remi Alli & co	New Role

12. OTHER MAJOR ACHIEVEMENTS TO DATE:

1. Legal Adviser, Podo Landlord Association;
2. Legal Adviser, St Joseph Boys Secondary School, Old Student Association;
3. Guest legal Analyst on 32 FM 94.9;
4. Trainer at UNHCR/NCFRMI on Refugee Status Determination;

13. OTHER QUALIFICATION

- Protection Induction Programme (UNHCR learn and connect certificate)
- United Nations Course on Prevention of Harassment, Sexual harassment and Abuse of Authority (UNHCR learn and connect certificate)
- Prevention of Sexual Exploitation and Abuse (UNHCR learn and connect certificate)
- Basic Security in Field (UNHCR learn and connect certificate)
- AGD-Implementing the AGD Approach (UNHCR learn and connect certificate)
- AGD- What does an Age, Gender and Diversity mean
- AGD e-learning- Knowledge Test
- IPSAS-Introduction to IPSAS
- COI e-learning (UNHCR learn and connect certificate)
- Peace Operations Training Institute (Principles and Guidelines for UN Peacekeeping Operations)
- Peace Operations Training Institute (Ebola Virus Disease: Awareness and Precautions for Peacekeeping Personnel) 2015
- World Intellectual Property Organization (Worldwide Academy)
- Negotiation and Conflict Resolution (Macquarie Graduate School of Management)
- Strategic Management (Open2Study)
- Management for Competitive Edge (International College of management)
- Leadership: Identity, Influence and Power (Macquarie Graduate School of Management)
- Amnesty International (Human Rights Academy) Freedom of Expression- A fundamental right
- Commercial Mediation for the 21st Century Lawyer (Certificate of Professional Development)

14. SKILLS ACQUIRED

Good communication, planning and organization skills.; Ability to work under pressure with little or no supervision; Highly personable with the ability to work well in a team; Ability to take to corrections and make effective use of them; Ability to lead others with positive impacts; Ability to impact knowledge with ease; Ability to formulate new policies and ideas from old ones and Computer skills

15. **MEMBERSHIP OF PROFESSIONAL BODIES**

- International Council for Commercial Arbitration 2021 to Date;
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University Compliance Certification

This is to certify that this thesis by Solomon Osereme AGBATOR in the Department of Private and Business Law, Faculty of Law, Lead City University, Ibadan is in full compliance with the approved University Format and Style.

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Name **Date**