

THE NATIONAL INDUSTRIAL COURT OF NIGERIA: PAST, PR

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NATIONAL INDUSTRIAL COURT OF NIGERIA

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INTRODUCTION

Given the dynamics of employment interrelationship and the challenges of ever expanding global society, the need to establish a specialized Court to tackle disputes connected with labour and industrial relations has become poignant. This is because labour and industrial disputes are economic issues which need expeditious dispensation and it was felt that the regular Courts which were already saddled with enough duties should be spared the additional duties of handling labour and industrial cases. It was also felt that the procedures at the non-specialized Courts were too slow and cumbersome such that a nation desirous of rapid industrialization and socio-economic development could not afford to be bogged down by such procedures and delays. Therefore, such nations as Trinidad & Tobago, America and India have seen wisdom in establishing specialized Courts to handle labour and industrial disputes. Nigeria has also found it necessary to establish the National Industrial Court (hereinafter called NIC) - a specialized Court - to handle labour and trade dispute matters. The scope of this paper is to examine the past, present and future of the National Industrial Court. Thus, we are going to make a historical legal analysis of the past and the present of the NIC, and a prognostication into its future.

THE PAST

Historically, the (NIC) was established in 1976 pursuant to the Trade Disputes Decree No. 7 of that year, but it actually took off two years later in 1978. It is pertinent to note that prior to the establishment of the NIC, industrial relations law and practice was modeled on the non-interventionist and voluntary model of the British system¹. The statutory mechanism for the settlement of trade disputes was found in the Trade Disputes (Arbitration and Enquiry) Act². The Act gave powers to the Minister of Labour to intervene by way of conciliation, formal inquiry and arbitration where negotiation had broken down. The major features of the non-interventionist model were that it was totally at the discretion of the parties to determine whether or not they would surrender to the jurisdiction of the Minister. Thus, the Minister could not compel the parties to accept his intervention, could only appoint a Conciliator upon the application of the parties and could only set up an Arbitral Tribunal by the consent of both parties. In the second place, there was no permanent institution created to handle and settle labour disputes. An ad hoc body had to be set up for a particular dispute and once it delivered its decision it became *functus officio*³.

The declaration of hostilities between the Biafra and Nigeria in 1968 marked a turning point in the Nigerian approach to settlement of trade disputes. As a result of the hostilities, it became expedient during the state of emergency to make transitional provisions for the settlement of trade disputes arising within the period. Consequently, the Trade Disputes (Emergency Provisions) Act No. 21 of 1968 was enacted and it suspended the Trade Disputes (Arbitration and Inquiry) Act. It for the first time gave the Minister the power of compulsory intervention in trade disputes while still retaining the additional powers of conciliation, formal inquiry and arbitration. Thus, the requirement for consent of the parties before the Minister could act was suspended. The 1968 Act also stipulated the time frame within which the Minister was to act starting from the time that the employers and the employees became aware of the existence of a dispute to the time that the minister was notified⁴.

NIC before the 2006 Act

At this juncture, it is pertinent to make some observations on the NIC under the Trade Disputes Act 1976 (TDA) as amended

by the Trade Disputes (Amendment) Act 1992⁵. As a product of an interventionist mechanism in industrial and trade disputes arena, the NIC was structured in a regimented disputes resolution regime under the firm control of the Minister of Labour. Thus, the NIC at inception was dogged with a lot of problems mainly traceable to the enabling Act. And these problems impacted negatively on the ability of the Court to effectively perform its duties. The identified shortcomings are summarized below:

The non-inclusion of the Court in both the 1979 and 1999 Constitutions was an albatross on the effective exercise of its jurisdiction as the Court was not afforded the needed respect by litigants and counsel. Even though, section 19(2) of the TDA 1990 (now repealed) which was inserted by Decree 47 of 1992 provided that the NIC shall be a Superior Court of Record. Despite this, lawyers disregarded these provisions by asking the Federal High Court to judicially review decisions reached at the NIC in a number of cases. For example, *SGS Inspection Services (Nigeria) Limited v. Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN)*⁶, is one of such cases.

The fact only very few cases which deal with interpretation of agreement could come to the court directly was itself a problem. To confirm, Rule 13 of the National Industrial Court Rules, CAP T.8, LFN 2004 provides that “a trade dispute shall be commenced by reference from the Minister” This was equally against the principle of separation of powers as enshrined in the Constitution of the Federal Republic of Nigeria. In effect, NIC was the only Court in the nation that litigants could not on their own volition activate its jurisdiction. The referral requirement also meant that cases transferred to the Court by other courts could not be heard until clearance had been obtained from the Minister. For example, the NIC had to decline original jurisdiction in the case of *Incorporated Trustees of Independent Petroleum Association V. Alhaji Ali Abdulrahman Himma & 2 Ors*⁷ on the ground that the dispute resolution mechanism set out in Part 1 of the TDA had to be fulfilled before the Court could assume jurisdiction.

The President of the NIC was required to preside over all the sittings of the Court by virtue of section 19(4) of the TDA 1990 (now repealed). The practical effect of this is that adjudication on cases was totally at the willed and unwilled discretion of the President. This means whenever for any reason the President was unable to sit, even though the Court could form quorum, the case had to be adjourned. The full import of this anomaly was brought to the fore in 2002 when the Court lost its President. For almost a year the Court could not sit as a successor was not appointed.

There was also the problem of dual procedures for the appointment of the President and other Judges of the Court. The NIC has had the misfortune of being the only Court in the country with dual control over the mode of appointment of its judges. By virtue of sections 19 and 25 of the TDA, the President of Nigeria appoints its President on the recommendation of the Federal Judicial Service Commission while the other members were appointed by the President of Nigeria on the recommendation of the of the Minister of Labour. This appears to be a negation of the principle of separation of powers as enshrined in the 1999 Constitution.

There was also the problem as to the extent and scope of the subject-matter jurisdiction of the NIC. Even though, the Decree No. 47 of 1992 seemed to have brought within the purview of the NIC inter and intra union disputes, the courts have held that for the NIC to have jurisdiction on inter and intra union disputes, the disputes must qualify as trade disputes⁸. The equation of inter and intra union disputes with trade disputes as was done in this case meant that the intendment of Decree No. 47 of 1992 had been negated thus meaning that some of the cases meant for the NIC could not be entertained there.

Case law also created a lot of problems for the court. For example, *Kalango V. Dokubo*⁹ seemed to hold that jurisdiction can only be conferred on a court by sections expressly marked “jurisdiction” in the enabling statute. In arriving at its decision declaring sections 1A and 19 of the TDA invalid and holding that inter and intra union disputes must qualify as trade disputes for NIC to have jurisdiction on them, the Court of Appeal based its decision, amongst others, on the fact that inter and intra union disputes were not

listed in section 20 of the TDA, the only section expressly marked at the side note with the magic words “jurisdiction of Court”.

The third problem created by *Kalango v. Dokubo* supra is that it further reiterated that NIC could not grant declaratory and injunctive reliefs. In arriving at this decision it relied on the case of *Western Steel Works Ltd V. Iron and Steel Workers Union of Nigeria*¹⁰. The implication is that although, the TDA (repealed) established the Court as a superior court, it lacked

the essential powers of a superior court as it could not grant declarative or injunctive reliefs.

The cumulative effect of the confusion created as to the scope of jurisdiction of the NIC was that several courts at the same time had concurrent jurisdiction on the subject matters on which NIC was supposed to have exclusive jurisdiction. Therefore, the Federal High Court, the 36 High Courts of the States of the Federation, the Federal Capital Territory High Court and the NIC were held to have concurrent jurisdiction in the resolution of labour and trade disputes¹¹. The resultant effect was conflicting decisions, absence of clarity and uniformity in the decisions of the various courts on virtually the same issue. For example, at the High Courts, collective agreements were only binding if incorporated into the conditions of service of the employees¹², while at the NIC they were legally binding¹³. Consequently, the culture of forum shopping by litigants was unwittingly created. This totally stalled the ideals for which the NIC was created in the first instance. A good reference point is *FGN v. Oshiohmole*¹⁴. The case was commenced at the FCT high Court and it was held that the Nigerian Labour Congress has power to call workers on strike. On appeal to the Court of Appeal, the Court ruled that the High Court of the Federal Capital Territory lacked the jurisdiction to entertain the matter being matter under item 34 of the Constitution i.e. labour/trade disputes. The Court of Appeal then referred the case to the Federal High Court for determination. The Federal High Court, among others, relying on section 251 of the Constitution held that it lacked jurisdiction. It however heard the matter on other grounds. With these conflicting decisions it became clear that there was a lacuna in the law as to which court would have jurisdiction over trade disputes under item 34 of the Constitution. It therefore became imperative for the National Assembly to find solution to the problem in consonance with section 4(2) of the Constitution. This informed the National Assembly to vest the Court with exclusive jurisdiction.

NIC under the National Industrial Court Act, 2006

A - Innovations

A seeming¹⁵ attempt was made to correct the shortcomings identified above in the National Industrial Court Act 2006 (NICA). The NICA came into force on the 14th of June, 2006 when it was assented to by the President of Nigeria. By the Explanatory Notes to the Act, the NICA re-established the Court as a superior Court of record. We shall now try to see how the Act tried to cure the shortcomings of the previous Act by examining its features.

One major innovation of the NICA is that it took the NIC out of the TDA and gave it a separate enabling law. As fallout of this, the appointment of the President and the other Judges of the Court were normalized and put firmly where they were supposed to be. The National Judicial Council was made the recommending body just as in the case of all the other federal superior courts of record. Thus, what obtain in these courts as regards discipline, tenure, allowances, pension, salaries, status and powers were similarly applicable to the NIC under the NICA¹⁶. In addition, the Court was able to obviate the problem associated with sitting under the TDA when the Court could not exercise its jurisdiction except the President presided as the Court could competently sit with any of the legally qualified Judges presiding¹⁷. Even a single legally qualified Judge of the Court could competently sit under some situations¹⁸. In the third place, the long line of cases (*Kalango case*) that fettered the power of the NIC to grant injunctive and declarative reliefs were made bad laws by virtue of sections 16 – 19 of the NICA. In the fourth place, by virtue of sections 53 and 54(4) of the NICA, Part II of the TDA was repealed while the remaining provisions of the TDA were made subject to the NICA and therefore must be read with such modifications as to bring them into conformity with the provisions of the NICA; and where there was conflict the provisions of the NICA were to prevail.

Another innovation of the NICA was that unlike under the TDA where the NIC could only entertain group employment disputes¹⁹, under the NICA individuals could approach the Court with their grievances once the matter was cognizable under section 7 of the NICA²⁰. By this, the distinction between individual and group employment disputes which held sway under the TDA was nullified²¹.

As a result of the confusion generated in the judicial circle on the scope or the meaning of the term “trade dispute” where the courts have refused to recognize that inter and intra union disputes are trade disputes²² the NICA adopted a more neutral term of “labour dispute” to capture the whole spectrum of trade disputes under section 7 of the NICA. Even though section 54 (1) of the NICA endeavored to give wider meanings to the terms “inter-union and intra-union disputes as against what was contained in section 24 of the TDA 1990, section 7 of the NICA equally introduced the alternative concept of “organizational disputes” to cover a dispute either between organizations or within organizations. The fact that section 54(1) of the NICA defines “organization” to include a trade union or an employers’ association signifies that the term “organizational dispute” would logically take cognizance of an inter or intra-union dispute. This was done to cure the confusion generated over inter and intra-union disputes.

In the same vein, another innovation was created by section 7(1) (a) (i) of the NICA. Ever before the enactment of the NICA and taking cognizance of the definition of the term “trade dispute” in section 47(1) of the TDA, the NIC had held that only

registered trade unions had the right to come before it on behalf of workers. As a result, associations that were not registered as trade unions but had the capacity to sue and be sued were not entertained at the NIC. A typical example of the application of this rule is shown in the case of Senior Staff Association of University Teaching Hospitals, Research Institutions and Associated Institutions and Ors V. Federal Ministry of Health and Anor²³ where the NIC had turned out professional associations in the health sector that were not registered as trade unions from further participating in the case in the Court. Given the wide provision of section 7(1)(a)(i) of the NICA, these bodies were covered and therefore had access to the NIC. However, where the issue is strictly speaking a matter relating to professional regulations, the NIC still lacked jurisdiction to entertain it. This was the case in National Union of Pharmacists, Medical Technologists and Professions Allied to Medicine V. Obafemi Awolowo University Teaching Hospital Complex Management Board and Ors²⁴, supra.

The provisions of section 7(1) (b) of the NICA for the first time gave the NIC the jurisdiction to grant order to restrain any professional body, association or person from taking part in a strike or any industrial action. This is in view of the fact that section 7 is couched in a general term as it relates to “any person or body”.

Another area of innovation is that ever before the passage of the NICA, parties to a suit before the Industrial Arbitration Panel were not allowed access to the decision or award of the Panel in respect of their cases by virtue of the provisions of Part 1 of the TDA. It was only the Minister of Labour who had the right to disclose and it was felt that this practice did not quite accord with the rules of natural justice and fair hearing. Section 7 (4) and (5) of NICA was enacted to rectify this anomaly. In doing this the NICA did not do away altogether with the requirement that some disputes need to undergo arbitration and conciliation before they could be brought to the NIC as prescribed in Part 1 of the TDA. This much would be understood if section 7(1) of the NICA which grants jurisdiction to the NIC is read subject to section 7(3) which provides thus:

Notwithstanding anything to the contrary in this Act or

any other enactment or law, the National Assembly may by an Act prescribe that any matter under the subsection (1)(a) of this section may go through the process of conciliation or arbitration before such is heard in the Court.

The NIC had the opportunity to construe the purport of the word “notwithstanding” introducing section 7(3) of the NICA in *AUPCTRE v. FCDA*²⁵ and held as follows:

...the word, “Notwithstanding”, in section 7(3) is meant to qualify the jurisdiction granted the NIC until conciliation and arbitration, if provided for, have been done. It is to reinforce this stance of the law that section 7(4) of the NIC Act provides that an appeal shall lie from the decision of an arbitral tribunal to this Court as of right in matters of disputes specified in section 7(1)(a) of the NIC Act. In appropriate cases ... the jurisdiction of this court may, by an Act of the National Assembly, be made contingent upon exhausting the processes of conciliation and arbitration. Where this is the case, the position is not that the jurisdiction of the court has been ousted; only that it is contingent upon those processes being exhausted.

Section 7 (5) strengthens the provisions of section 7(4) by providing that a party to an arbitral proceeding shall be entitled to obtain a copy of the records of the arbitral proceedings and the award from the arbitral tribunal. To complement this, Order 3, Rule 5 of the NIC Rules provides thus:

Where the claimant complains against an award or decision by the arbitral tribunal, board of inquiry, decision of the Registrar of Trade Unions or any other authority in respect of matters within the jurisdiction of the court, the complaints shall be accompanied by a Record of Appeal, which shall comprise:

Certified true copies of all the processes exchanged by the parties at, or the representations made to the lower tribunal;
Certified true copies of the record of proceedings before the lower tribunal (where applicable);
Certified true copy of the award or decision of the lower tribunal; and
Appellant’s Brief or Argument.

In *National Union of Pharmacists, Medical Technologists and Professions Allied to Medicine V. Obafemi Awolowo University Teaching Hospital Complex Management Board and Ors.*, supra the claimant relying on a long line of cases had argued that a law which requires that parties submit to arbitration before access to court is unconstitutional, that is to say section 7(3) of the NICA is null and void. The NIC held thus:

Assuming ... the claims do not actually fall within the ambit of section 7 of the NIC Act, we agree with the respondent that then, by section 7(3) of the NIC Act, the matter would necessarily have to go through the mediation, conciliation and arbitration processes of Part 1 of the TDA before this court can assume jurisdiction. We do not agree with the argument of the claimant that a statutory requirement as to arbitration before access to court is unconstitutional. The cases cited by the claimant particularly *Benin Rubber Producers Co-Operative Marketing Union Ltd V. Ojo* deals with statutory arbitration where the decision of the arbitrator is final and no appeal is permitted to any court of law. This is not the case under the mediation, conciliation and arbitration processes of the TDA. The decisions under these processes are not final as they admit of appeal to this court; and the decision of this court can be appealed against at the Court of Appeal.

An additional novelty introduced by NICA is contained in section 7(6). By the provisions of section 7(6) of the NICA the Court is permitted and even enjoined to take into cognizance international best practices in industrial and labour relations in arriving at decisions in cases before the Court. What amount to international best practices in a particular instance is a question of fact to be proved by the person urging the court. This provision obviously permits the court to borrow from foreign jurisdiction in tandem with the present global village system. The various conventions of ILO which the member states are enjoined to apply come in handy here; and the implication is that NIC will constantly have to take cognizance of these. Under the NICA, by virtue of section 9, only issues relating to fundamental rights could be appealed against. The implication of this is that what the NIC decides to be international best practices might not be appealed against being a question of fact. In *Oyo State Government V. Alhaji Bashir Apapa and Ors.*²⁶, the NIC in construing section 7 (6) held that:

We cannot conclude this judgment without a remark or two on the application of section 7(6) of the NIC Act 2006. The respondent had argued that it is not good international practice to brand all public servants, and teachers specifically, as being on essential services and so cannot embark on strike. Section 7(6) cannot be applied in this general and sweeping form. A litigant that seeks to rely on best international practice must be prepared to establish or prove same as what is best practice in industrial relations is a question of fact.

B - Grey Areas

There is the controversy on the issue of whether the NIC could take cognizance of international convention if it is not ratified and domesticated in Nigeria²⁸ in spite of the provision of section 7(6) of the NICA.

Section 7 (1) of the NICA which deals with the jurisdiction of the NIC cannot be read in isolation of section 7 (2) as it permits the National Assembly to confer additional jurisdiction related to those set out in section 7(1) as it deems fit on the NIC. The Trade Unions Act (TUA) 1990²⁹ as amended, an Act of the National Assembly, has conferred the additional jurisdiction on the NIC to determine appeals against any refusal by the Registrar of Trade Unions to register any trade union³⁰, or refusal by the Minister of Labour to approve an application by a Trade Union³¹ or a "Federation of trade Unions"³² for International affiliation³³. The complication with regard to the additional jurisdiction conferred on NIC by the Trade Unions (Amendment) Act, 2005 is that it would seem that the NIC has been conferred with criminal jurisdiction, even though section 7 (1) of the NICA makes it essentially a court with only civil jurisdiction, except perhaps with respect to the inherent jurisdiction of any court to commit for contempt. The Act prescribes some preconditions to be fulfilled before workers could embark on a strike and the failure to observe these is criminalized. The Act gives the NIC powers to adjudicate on all the matters dealt with in the Act, including both civil and criminal. Whether or not NIC would have criminal jurisdiction and

what procedure to adopt in trying criminal cases were mute points to be decided by the appellate courts.

Another grey area observed is that of the power of the NIC to enforce an award. Because of section 53—(1) of the NICA, section 22 of the TDA has been repealed. With the repeal of section 22 of the TDA, the issue was whether the Industrial Arbitration Panel (IAP) could enforce its award since there was no longer any enabling provision in that behalf to enforce its award. The question was, could the NIC fill in the gap based on section 19 (e) of the NICA? The answer seems to be in the negative because nowhere in the NICA is the NIC empowered to enforce IAP award. The provision of section 8 of the NICA could not be of any assistance in view of the fact that it deals with appeals from the IAP. The provision of section 14 of the NICA would to me appear not to be of any assistance in view of the fact that a construction of section 14 would seem to suggest that the NIC would have to competently assume jurisdiction to deal with the issue and since the issue is not one on appeal and not equally one on which it could exercise original jurisdiction, it would not be able to enforce the award. The only seeming grace is contained in section 13 (4) of the TDA, which provides that any person who fails to comply with a confirmed award shall be guilty of an offence and shall be liable on conviction to either a fine or a term of imprisonment and that further refusal to comply after conviction would also attract a fine³⁴. The awards which the NIC could make under the NICA were diverse and novel by virtue of section 14 of the NICA³⁵. However, inordinate delays attendant on the prosecution of cases did hamper the NIC's latitude in making awards, especially in relation to ordering reinstatement of workers as was ably exemplified in *Nigerian Sugar Company Ltd V. National Union of Food Beverages and Tobacco Employees*³⁶.

There is also the issue of controversy on whether to appoint non-legally qualified persons as judges of the Court. Legal practitioners were vehemently opposed to the appointment of non-lawyers as judges of the Court while labour practitioners were of the view that non-lawyers should be appointed.

Another controversial area is the one having to do with the finality of the decision of NIC. Originally the decision of the NIC on any issue was meant to be final until 1992 when Decree 7 of that year introduced section 20(3) into the TDA granting right of appeal in relation to issues of fundamental rights which provision had been retained in the NICA³⁷. It was thought that with the interposition of mediation, conciliation and arbitration undue delay would be avoided if the decision of the NIC was made final. The view has been expressed in certain quarters that section 9(1) of the NICA is unconstitutional³⁸. There is nothing in the provisions of the 1999 Constitution that makes section 9(i) of the NICA unconstitutional. By virtue of section 246(2) of the Constitution, this controversy appeared not to be well-founded.

Another very significant grey area is that dealing with the power of the NIC to transfer cases over which it had no jurisdiction to the appropriate court. While commenting on similar provision in the Federal High Court Act, Earnest Ojukwu and Chudi N. Ojukwu opine that such a provision is void as it is inconsistent with the basic principle that each court shall be governed by its own rules³⁹. It has equally been held that where a court conceives that it lacks jurisdiction to entertain a matter, the proper order to make is one striking out the matter⁴⁰.

It must be noted that the NICA made a bold attempt for the first time to tackle majority of the shortcomings associated with the NIC before its enactment. However, the Court still suffers from some of the problems. These can be seen as enumerated in the discussion under the sub-heading "Grey Areas". The greatest of these problems is the one touching on the jurisdiction of the court as granted by the NICA. It was a recurring issue until the decision of the Supreme Court in *The National Union of Electricity Employees and 1 Or V. Bureau of Public Enterprises*⁴¹ when the Supreme Court finally confirmed that the NIC is a subordinate Court and that it had no exclusive jurisdiction over the matters assigned to it under section 7 of the NICA and other enabling Acts on that behalf. The Supreme Court held thus:

The least that has changed is that State High Court under section

272 now has power to deal with trade disputes it has previously lacked.

It means therefore that Decree No. 47 of 1992 arrogating to the National Industrial Court a superior court of record without due regard to the amendment of the provisions of section 6(3) and (5) of the 1999 Constitution which has listed the only superior Courts of record 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.

This decision dealt a heavy blow on the existence and operation of the National Industrial Court. The decision in effect meant that all the State High Courts, the Federal High Court and the High Court of the FCT shared concurrent jurisdiction with the

National Industrial Court on the subject-matters on which it sought to have exclusive jurisdiction. It equally meant that all these courts could review the decisions of the NIC on application by either of the parties. In essence, the basis for the establishment of the court was effectively put on hold for the time the decision lasted as lawyers and litigants had a field day employing all the avenues provided by this decision to stall cases.

Consequently, the National Assembly rose up to the challenge by exercising its powers under sections 4 (2) and 9 (1) & (2) of the Constitution of the Federal Republic of Nigeria 1999 by setting in motion the processes of amending the Constitution to cure the problems confronting the NIC.

THE PRESENT

A new dawn came for the NIC on the 4th of March, 2011 when the President of the Federal Republic of Nigeria assented to the Constitution (Third Alteration) Bill, 2010 which amended the 1999 Constitution to include the NIC in the relevant sections of the Constitution. A new section 254A was inserted into the Constitution and it reads thus:

254A-(1) there shall be a National Industrial Court of Nigeria

(2) The National Industrial Court shall consist of:

(a) President of the National Industrial Court; and

(b) such number of judges of the National Industrial Court as may be prescribed by an Act of the National Assembly.

By the provision of section 254A (1) & (2) a new court called the National Industrial Court of Nigeria (NICN) is created to replace the former National Industrial Court. And the process of creating the Court directly in the Constitution is completed by the amendment of section 6 of the Constitution which lists the superior courts of record to include the National Industrial Court of Nigeria in its new sub-section 5 (cc). 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.

It is noteworthy that the President of the NICN is now a member of the Federal Judicial Service Commission by virtue of paragraph 12 (dd) of the Third Schedule to the Constitution. The President of the NICN is equally a member of the National Judicial Council by virtue of paragraph 20 (ee) of the Third Schedule to the 1999 Constitution.

The controversy about the status of the court as to whether it is a superior court of record has been laid to rest. It is no longer in doubt now that the court is a superior court of record like other superior courts of record in Nigeria. There is no longer room for application for judicial review of the decisions of the NICN as it is now a superior court of record.

We shall now examine the jurisdiction of the Court on the basis of subject-matter.

The new section 254 C- (1) of the Constitution provides thus:

“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 on 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-

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 matter incidental thereto or connected therewith;

Relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Workmen’s Compensations Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;

Relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lockout or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action and matter connected therewith or related thereto;

Relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employers association or any other matter which the court has jurisdiction to hear and determine;

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;

Relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;

Relating to or connected with any dispute arising from discrimination or sexual harassment at the workplace;

Relating to, connected with or pertaining to the application or interpretation of international labour standard;

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

Relating to or connected with trade 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;

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

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

Provided that nothing in this subsection shall preclude the National Industrial Court from entertaining and exercising appellate and supervisory jurisdiction over an arbitral tribunal or 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 the 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 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.

Section 254D- (1) provides further thus:

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

Sub-section (2) of section 254D provides:

Notwithstanding sub-section (1) of this section, the National Assembly may by law, make provisions conferring upon the

National Industrial Court powers additional to those conferred by this section as may appear necessary or desirable for enabling the court to be more effective in exercising its jurisdiction”.

The new jurisdiction of the NICN is perhaps the widest and most elaborate jurisdiction conferred on any court in the 1999 Constitution. This is so as a result of the experience under the NICA 2006 when a lot of subject-matters of the jurisdiction granted the court were enmeshed in controversies as to their extent and consequently hampered from effective fruition. It is abundantly clear that the present approach has retained all the good innovations associated with the NICA, 2006 while it also tries to avoid the pitfalls associated with it. The couching of the present jurisdiction of the Court has created innovations to tackle the problems associated with the NICA, 2006 as enumerated under the sub-heading “Grey Areas” above.

Appointment of the President and other Judges of the NICN and the Powers of the Court

Section 254B of the 1999 Constitution provides the procedure and modes of appointment of the President of the Court and other judges of the Court. It is pertinent to note that the requirements and the procedures are similar to those applicable to the members of the various High Courts created under the 1999 Constitution of the Federal Republic of Nigeria. There is the additional requirement that such persons must have considerable experience and knowledge in the law and practice of industrial relations and employment in Nigeria. The appointing and disciplinary authorities are the same and likewise the conditions of service.

It must be added that the Court has all the powers of a High Court by virtue of section 254D of the 1999 Constitution as amended. The President of the Court has the power to make rules for the practice and procedure of the Court by virtue of section 254F of the 1999 Constitution as amended.

Innovations under the Current Dispensation

The very first of these innovations is in firmly making the court a superior court of record⁴². The problem relating to taking cognizance of international best labour practices in arriving at decision by the court has been laid to rest as the Constitution now directly mandates the court to take cognizance of international best labour and industrial practices in arriving at decisions⁴³.

The NICN can now effectively apply or enforce an IAP award and other similar awards without any hindrance⁴⁴. The Court has now been expressly conferred with criminal jurisdiction on some matters such that the controversy surrounding the circuitous manner by which the Trade Union’s (Amendment) Act, 2005 conferred criminal jurisdiction on it and the attendant uncertainty have been removed⁴⁵.

The causes of inordinate delay in trial of cases associated with pre-2011 dispensation whereby lawyers were able to take advantage of the various loop-holes abounding as a result of the status problems have been removed such that the court is now put in a vantage position to realize the dreams of its founding fathers. The controversy on the finality of the decision of the National Industrial Court has been clarified as section 243 (3) of the Constitution provides that an appeal shall lie from the decision of the NICN to the Court of Appeal as may be prescribed by an Act of the National Assembly. And even when an Act is enacted dealing with a right of appeal on the decisions of NICN, the appeal shall be with the leave of the Court of Appeal.

The problem created when the Factory Act, 1990 and the Workmen Compensation Act, 1990 (now repealed) simultaneously conferred jurisdiction on occupational health and safety issues on both the Federal High Court and the State High Court respectively alongside the jurisdiction conferred on the same issues by section 7(1)(a)(ii) of the NICA, 2006 and the attendant confusion has been effectively resolved. Section 254 C- (1) (b) of the 1999 Constitution (as amended) expressly makes the NICN the Court with jurisdiction on these issues.

In addition to the above, other innovations could be found in the new jurisdiction hitherto lacked by the Court now granted it. These are contained in sub-sections (b), (d) – (e), (g) and (i) and sub-section (j) (vii), (k), and (I)(ii) of section 254 C-(1) of the Constitution and section 254 C- (2) and (3) of the Constitution. They deal with issues ranging from fundamental rights provisions of the Constitution in relation to labour, national minimum wage, discrimination in workplace and sexual harassment at place of work, child labour and human trafficking, payment or non-payment of salaries, matters pertaining to application of any international convention or treaty which Nigeria has ratified and the power to establish ADR Centre.

The innovations under the current dispensation have as far as foresight could go taken care of all the hitherto problems confronting efficient functioning of the NIC. With this new vigour in place, the NICN is clearly poised to effectively assume its allotted place in the hierarchy of courts in Nigeria. However, this is not to say that there are no challenges to grapple with: innovations by their natures create new challenges. The challenges envisaged are the subject of discussion in the last segment of this paper.

THE FUTURE OF THE NICN

It is certain that the NICN now has enormous burdens and responsibilities to shoulder given the very wide jurisdiction conferred on it. For it to be able to rise up to expectation, the following measures need be taken:

There is the need for expansion of the court. As the jurisdiction of the court has been tremendously increased, the need arises to appoint more judges to handle the deluge of cases that are bound to ensue. More courts have to be built to cover all the States of the Federation as the services of the court will now be needed dearly in all the states of the Federation in view of the subject-matters covered by the court's jurisdiction, some of which are highly litigious matters. To complement the appointment of more judges, more supporting staff needs to be appointed to service the additional Judges and the additional courts to be created. It is also necessary to establish Registries in those States where the Court is yet to be cited to enable litigants file processes without much hassles, stress, risk and cost.

The Rules of the Court needs to be reviewed to accord with the present innovations.

It is also necessary to embark on serious training programmes for the staff of the court in order to acquaint them with the necessary skills needed to effectively assist the court to achieve its objectives.

The court also needs to embark on aggressive enlightenment campaigns to bring the court into the consciousness of the people. This could be done by organizing lectures involving stake-holders in the administration of justice particularly those connected with the subject-matters of the court.

When the above challenges are met, it is my view that the NICN would have a robust opportunity to effectively perform its duties in the hierarchy of courts in Nigeria. NICN is expected to place labour, industrial relation and employment matters on the fast track and decongest regular courts of such matters.

CONCLUSION

I have attempted to give an historical legal background of the tortuous but rewarding journey of the NICN from 1976 to date. There is no gainsaying the fact that NICN has made giant strides in reshaping the way in which employment, labour and industrial relations matters are to be resolved throughout the Federation, particularly with the amendment of the Constitution for the inclusion of the court and the subsequent enlargement of its jurisdiction. The intendment of the law makers and all those who participated in ensuring the passage of the Constitution (Third Amendment) Act, 2011 was to create a specialized superior court of record that would expeditiously resolve employment, labour and industrial relations disputes, thereby creating a harmonious industrial relation. This would definitely usher in a new era of certainty, reliability in employment and labour issues. It would also produce the additional advantage of ensuring cordiality and harmony in the work place and create a conducive atmosphere which would in turn encourage foreign investors to be interested in investing in the country. This is bound to create confidence in the minds of foreign investors desirous of investing in Nigeria. This is borne out of the fact that a medium for quick and efficient resolution of disputes now exist. Employment disputes are recurrent decimals between employers/employees throughout the world.

I have no doubt in my mind that given the present status of the NICN, the Court is now better placed to tackle effectively the challenges posed by the emerging trends in labour, employment and industrial relations which are contemporary issues for the Court to tackle.

The movement into specialized courts is the in-thing in most advanced economies all over the world and Nigeria cannot be an exception. Exclusive jurisdiction is given to the Court in areas critical to the economy and such issues must be handled timely in line with international best practices.

Once again, I thank the Administrator of the National Judicial Institute and his management team for giving me this golden opportunity to deliver this paper.

Thank you all for listening.

NOTES

1. See C.K. Agomo, 'Nigeria', in *Labour Law and Industrial Relations in the International Encyclopedia of Law* (Prof. Dr. Blanpain ed.) 2000 at pp.38 – 39.
2. See s. 3, CAP. 201, *Laws of the Federation of Nigeria and Lagos*, 1958.
3. See s. 4 (2), *Trade Disputes (Arbitration and Enquiry) Act*, 1958.
4. See ss. 2 – 7 of the *Trade Disputes (Emergency Provisions) Act*, 1968.
5. See Decree No. 47 of 1992.
6. See unreported Suit No. NIC/3/2000 (summarized at pp. 428 – 430 of the *Digest of Judgments of the NIC (1978 – 2006)* –

Oluwole Kehinde ed. - hereinafter referred to as the Digest).

7. See Unreported Suit No. FHC/ABJ/CS/313/2004, ruling on it was delivered on January 23rd 2004 by NIC.

8. See *Kalango v. Dokubo* (2003) 15 NWLR 32.

9. See Foot Note 8.

10. (1987) 1 NWLR (Pt. 49) 284.

11. See of Attorney-General Oyo State v. Nigeria Labour Congress, Oyo State Charpter & Ors (2003) 8 NWLR 1 at pp.33-34.

12. *Nwanjagu v. Baico* (2000) 14 NWLR (Pt. 687) 356, *Afribank (Nig.) PLC v. Kunle Osisanya* (2000) 1 NWLR (Pt. 642) 598 and *Federal Government of Nigeria v. Adams Oshiomhole* (2004) 1 NLLR (Pt.2) 339 at 355.

13. See *National Union of Civil Engineering Construction, Furniture and Wood Workers V. Beten Bau Nigeria Ltd and Anor*, Unreported Suit No. NIC/8/2002. The NIC held that the decisions referred to by the respondent to justify that collective agreements are only binding in honour when not incorporated into the condition of service were common law decisions and as such distinguishable from the present case based on statutory provisions of the TDA, a law the NIC is bound to give effect to.

14. (2004) 1 NWLR (Pt. 678) 339 at 355.

15. The word “seeming” is used as subsequent discussion shows that nearly all these short-comings re-occur as a result of the non-inclusion of the NIC in the constitution.

16. See sections 1 – 5 and 16 – 19 of the NICA, 2006.

17. See section 21 (4) *ibid*.

18. Section 21 (5) *ibid*.

19. See *Chemical and Non-Metalic Products Senior Association V. BCC* (2005) 2 NLLR (Pt. 6) 446 at 474 -475.

20. See *Godwin Tosanwumi v. Gulf Agency and Shipping Nig. Ltd*, Unreported Suit No. NIC/14/2006, which ruling was delivered on 14th of November, 2007.

21. See *Nigerian Union of Pharmacists, Medical Technologists and Professions Allied to Medicine v. Obafemi Awolowo University Teaching Hospital complex Management Board, in Re: Medical and Dental Council of Nigeria and Nigeria Medical Association*, Unreported Suit No. NIC/8/2006 delivered on 22 May, 2007.

22. See *Kalango* case *supra*.

23. Unreported Suit No. NIC/12/2000.

24. See Foot Note 20.

25. Unreported Suit No. NIC/17/2006 delivered on 23rd May, 2007.

26. Unreported Suit No. NIC/36/2007 delivered on 18th July, 2008.

27. See section 12 of the 1999 Constitution.

28. Unreported Suit No. SC/202/2005 delivered on 11th January, 2008.

29. See CAP. 439 LFN.

30. See section 2 of the Trade Unions (Amendment) Decree No. 1 of 1999.

31. See section 3 *ibid*.

32. Section 7 of the Trade Unions (Amendment) Act, 2005 amended the Trade Unions Act, CAP. 437, LFN, 1990, by substituting the phrase ‘Central Labour Organization’ with ‘Federation of Trade Unions’.

33. See section 2 of the Trade Unions (International Affiliation) (Amendment) Decree No. 2 of 1999.

34. See section 13(4) of the TDA.

35. See *Industrial Cartons Ltd v. National Union of Paper and Products Workers* (1980 – 81) NICLR 54 (summarized at pp. 71 – 72 of the Digest), *Establishments Department Office of the Head of Service of the Federation v. Nigeria Union of Civil Service Typists, Stenographic and Allied Staff* (1980 – 81) NICLR 34 (summarized at pp. 67 – 70 of the Digest), and *Nigerian Bottling Co. Ltd v. National Union of Food, Beverage and Tobacco Employers* (1992) NICLR 1.

36. (1978 – 79) NICLR 69 (Summarized at pp. 23 – 25 of the Digest).

37. See section 9(2) of the NICA, 2006.

38. *SCHIMBERGER ANADRIL LTD V. PENGASSAN*, Unreported Suit No. CA/L/38/2008 delivered on 10th February, 2009.

39. See E. Ojukwu and C.N. Ojukwu, *Introduction to Civil Procedure*, Helen-Roberts, Abuja, 2005, p. 64.

40. See *Okoye v. Nigerian Construction and Furniture Co. Ltd* (1990) SCNJ (Pt. 2) p.365.

41. Unreported Suit No. SC/62/2004.

42. See sections 6 (CC) and 254A (1) of the 1999 Constitution.

43. See section 254 C – (1) (f) of the 1999 Constitution.

44. See section 254C (4) of the 1999 Constitution.

45. See section 254C (5) of the 1999 Constitution.