

LABOUR AND INDUSTRIAL RELATIONS

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by

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I want to express my sincere appreciation to the Chairman, Governing Council of the Nigerian Institute of Advanced Legal Studies, His Lordship, Hon Justice A.I Katsina-Alu, GCON, the Chief Justice of Nigeria; Members of the Governing Council of the Institute, Body of Benchers, the Academic Board of the Institute, the Director-General, Professor Epiphany Azinge, SAN, and Academic Staff of the Institute for this singular honour done to me by inviting me to deliver the keynote address for this workshop.

This is a great honour considering the fact that I stand here in the midst of legal intelligentsias, academic erudites, seasoned members of the bench, legal luminaries and practitioners in different legal-scapes, and highly cerebral students of the Institute.

The manner of presentation of the paper has been laid out within the ambit of academic practice. Therefore, I have little or no room to veer; I am constrained to comply with the order of the Institute so that I will not be charged for contempt. However, my job has been made simple because I have only been saddled on with the keynote address, more detailed presentations on each topical area will be done by other legal juggernauts as the workshop progresses.

My Lords and learned friends here present, the theme of this workshop is Labour and Industrial Relations which you will agree with me is broad and open-ended. However, my job has been made easier because I have to set the tone for the workshop through a little preview of the theme. I am very confident that erudite facilitators of this workshop would do good justice to all the topical components of the theme. Notwithstanding, I wish to commence my presentation in a very academic manner using simple fundamentals of learning and comprehension; definition of terms.

Definitions of Terms:

Labour

Labour actively connotes to work, to toil exerting all energy (in a hard way) or to struggle. It can also be defined as to sweat, to strive or to endeavour. It typifies Work, Effort, employment, industry, and personifies workers, workforce and employees. Black Law dictionary refers to it as workers that are considered as economic unit or political element or as "...all wage earning workers". Since labour is synonymous employee, we can adopt the National Industrial Court Act, 2006 interpretation; which defines employee "as a person employed by another under oral or written contract on employment whether on a continuous, part-time, temporary, or casual basis and includes a domestic servant who is not a member of the family of the employer".

While the employer also interpreted in the NICA, 2006 "is the person or individual or body corporate or un-incorporate who entered into a contract of employment to employ any person as an employee or apprentice".

Labour therefore has elements of contract within it. It reveals that a relationship exists between one or more parties, with expectations from each side. There is relationship between persons, individual, corporate or non-corporate.

Industrial Relations

Industrial relations according to Lester involves;

"attempt at arriving at solutions between the conflicting objectives and social gain; between discipline and freedom; between authority and industrial democracy; between bargaining and cooperation; and between conflicting interests of individual, the group and the community".

To the International Labour Organisation (ILO),

“industrial relations deals with either the relationship between the state, employers, and workers, organisation, or the relation between occupational organisation themselves”.

Industrial Relations is a multidisciplinary field that studies employment relationship. Industrial relations has three faces: science building, problem solving, and ethical. In the science building face, industrial relations is part of the social sciences, and it seeks to understand the employment relationship and its institutions through high-quality, rigorous research. Industrial relations seeks to design policies and institutions to help the employment relationship work better.

Industrial relations also contains strong normative principles about workers and the employment relationship, especially the rejection of treating labor as a commodity in favor of seeing workers as human beings in democratic communities entitled to human rights.

Industrial relations has its roots in the industrial revolution which created the modern employment relationship by spawning free labor markets and large-scale industrial organizations with thousands of wage workers.[6] As society wrestled with these massive economic and social changes, labor problems arose. Low wages, long working hours, monotonous and dangerous work, and abusive supervisory practices led to high employee turnover, violent strikes, and the threat of social instability.

However, it transcends the human elements, but includes relationship between institutions and agencies, body corporate, non-corporate or un-incorporate. It exists between government and the governed, and between governments and nations. The relationship, so simply described is germane to the development, growth and building of a nation. As long as each party in this relationship fulfils his side of the agreement or contract there is peace and harmony, which are fundamental to economic transformation of the society. The concern is therefore how to maintain and sustain the peace and harmony for crises are bound to happen. It is in this vein that I will treat this topic in the order prescribed by transversing each sub-topic of the theme to prelude our expectations from our highly cerebral facilitators.

Legal/ Institutional Framework for Labour and Industrial Relations:

Labour law is regarded as the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. Labour law, it is argued covers industrial relations, workplace health and safety, and employment standards.

Section 35 (1) of the Constitution of the Federal Republic of Nigeria provides as follows that, “Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law”

Section 40 of the 1999 Constitution also provides that:

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any association for the protection of his interests.

These provisions guarantee the right of association of persons which may be exercised by associating to collectively pursue issues of common interest, using the strength of number to face perceived stronger oppositions.

These sections empower the establishment of trade unions, or labour organisations.

In order to ensure best practice of labour and industrial relations, the 1999 Constitution vests in the legislative the power to make laws that establish agencies for regulation and control of industrial relations matter, as well as the establishment of adjudicatory institutions for dispute resolutions.

Arising from this, Section 4 (2) of the Constitution of the Federal Republic of Nigeria, 1999 provides that, 4. (1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives.

(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

Part I Item 34 of the Second Schedule of the Exclusive Legislative List of the Constitution of the Federal Republic of Nigeria, vests on the legislature the power to legislate on labour, including trade unions, industrial relation, conditions, safety and welfare of labour, industrial disputes, prescribing on national minimum wage for the Federation or any part therefore; and industrial arbitrations.

Based on these provisions the National Assembly enacted the Trades Union Law 2005 making provisions with respect to the formation of, registration and organisation of trade unions, federations of trade unions and the Central Labour Organisation.

34. (1)(a) Every individual is entitled to respect for the dignity of his person, and accordingly -
(b) no person shall be held in slavery or servitude;

Consequently, every employed citizen of the nation should be paid the right sum of such money and other entitlements agreed with his employer.

The Trade Dispute Act, 1976, was also enacted to make provisions for the settlement of trade disputes and of the matters ancillary thereto. In addition, the National Assembly is working towards the enactment of the Worker's Compensation Act.

In the spirit of the provisions of the Constitution, and to further enhance peace and harmony in the workplace, the National Assembly enacted the National Industrial Court (NICA), 2006 which provides that

(3) The Court shall –

(a) be a superior court of record; and

(b) except as may be otherwise provided by any enactment or law, have all the powers of a High court.

Section 7 (1) empowers the Court to with jurisdictional power as follows;

7-(1) The Court shall have and exercise exclusive jurisdiction in civil causes and matters- relating to labour and industrial relations.

To adequately ensure and sustain peace and harmony in the workplace the government also constitutes the Industrial Arbitration Panel (IAP) which provides an informal hearing for amicable settlement of disputes arising from labour and industrial matters.

Ministry of Labour

On the part of the Executive, the Ministry of Labour (MOL) is established and charged with responsibility of promoting the best interest of wage earners, job searchers and retirees. It is expected to do this by promoting their working conditions, advancing their opportunities for profitable employment, protecting their retirement and health care benefits, helping employers to find workers strengthening free collective bargaining, tracking changes in employment, prices and other national economic measurements.

The questions that arise are;

Are there enough legislations that address labour and industrial relations?

How effective have they been especially in the present democratic circumstance?

Is there need for review or improvement of the legislation?

How far have these various institutions established by legislations fared in the dispensation of their services?

These and some other answers we hope to get from other papers and discussions on this salient topic?

The Right to Strike

Trade Disputes Act, 2005 interprets strike as cessation of work by a body or persons employed acting in combination or concerted refusal or a refusal under common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as means of compelling their employer or any person or body of persons employed, or to aid other workers in compelling their employer or anybody or body or persons employed, to accept or not to accept terms of employment and physical conditions of work.

Cessation of work includes deliberately working at less than usual speed or with less than usual efficiency.

The issue of right to strike might have been invoked in the minds of the judiciary for point made by Lord Wright that:

“Where the rights of labour are concerned, the rights of the employers are conditioned by the rights of the men to give or withhold their services. The right of workmen to strike is an essential element in the principle of collective bargaining. It is...a necessary sanction for enforcing agreed rules.”

The questions that may agitate our minds are:

Is there a right to strike?

Is it Constitutional?

How effective has strike been in the realisation of a demand?

Are there better ways of pressing home a demand?

How democratic are unions at arriving at a decision to proceed on strike action?

How many types of strike action are there and for which agitation?

Can a worker/employee opt out if not convinced about it?

These and some other questions I am convinced we would be thoroughly answered by the end of this workshop.

General Principles of Industrial Relations

As earlier explained by the International Labour Organisation,

“industrial relations deals with either the relationship between the state, employers, and workers, organisation, or

the relation between occupational organisation themselves

A little preview of scholastic evolution of industrial relations might help us to appreciate its advancement into the field of academia. However, the underlying import is to ensure the sustainability of harmony and peace in the workplace, which is pursued through dialogue, negotiation, bargaining, concession or compromise as the need may arise.

Industrial relations has three phases: science building, problem solving, and ethical. In the science building face, industrial relations is part of the social sciences, and it seeks to understand the employment relationship and its institutions through high-quality, rigorous research. In this vein, industrial relations scholarship intersects with scholarship in labor economics, industrial sociology, labor and social history, human resource management, political science, law, and other areas.

In the problem solving face, industrial relations seeks to design policies and institutions to help the employment relationship work better.

In the ethical face, industrial relations contains strong normative principles about workers and the employment relationship, especially the rejection of treating labor as a commodity in favour of seeing workers as human beings in democratic communities entitled to human rights.

Industrial relations scholarship assumes that labour markets are not perfectly competitive and thus, in contrast to mainstream economic theory, employers typically have greater bargaining power than employees. Industrial relations scholarship also assumes that there are at least some inherent conflicts of interest between employers and employees (for example, higher wages versus higher profits) and thus, in contrast to scholarship in human resource management and organizational behaviour, conflict is seen as a natural part of the employment relationship. Industrial relations scholars therefore frequently study the diverse institutional arrangements that characterize and shape the employment relationship—from norms and power structures on the shop floor, to employee voice mechanisms in the workplace, to collective bargaining arrangements at a company, regional, or national level, to various levels of public policy and labour law regimes.

When labour markets are seen as imperfect, and when the employment relationship includes conflicts of interest, then one cannot rely on markets or managers to always serve workers’ interests, and in extreme cases to prevent worker exploitation. Industrial relations scholars and practitioners therefore support institutional interventions to improve the workings of the employment relationship and to protect workers’ rights.

What we may want to know are the advancements made in this field of study as we pursue our vision 20:2020. There is no gainsaying that our positive contributions to this important mechanism will advance the course of industrial harmony and economic growth. Further exposition on this subtopic will surely widen our horizon of knowledge and create more platforms for research.

Due to the exigency of time, kindly indulge me to skip some of these components of Labour and Industrial Relations, I believe capable facilitators invited for this workshop will expound them further’0.

Trade Union and Collective Bargaining

Trade Unions Act, 2005 defines

“as a combination of workers or employees, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of the employment of workers, whether the combination in question would or would not, apart from this Act, be an unlawful combination by reason of any purpose being in restraint of trade, and whether its purpose do or do not include the provision of benefits for members. This provides the right of association of worker to make collective demands”.

Union provides employee representation which is the right of employees to seek a union or individual to represent them for purpose of negotiating with management on such issues as wages, hours of work, benefits and working conditions.

In the workplace workers are represented by their union;

On disciplinary and grievance matters;
On works councils or other consultative bodies;
For the collective bargaining of terms and conditions;
For making workforce agreements; and
On joint working groups.

In view of the above one is tempted to inquire into the relevance of Trade Unions in a democracy,

How democratic are the unions?

What interest do they represent and how are they pursuing it?

Are they meeting the expectations of the members?

What is the public perception of unions?

Are they agents of change and what changes have they brought?

Which type of relationship should exist between unions and bodies of employers and how can industrial relations help to achieve same?

Are unions more dues minded than the needs of the members?

What do unions do to alleviate the needs of the members during critical period of prolonged strike actions?

Should unions engage in programmes that can improve lives of their members beyond the issue of improvement of earnings?

These are questions that we will proffer answers to as we progress in the few days of this workshop.

Collective Bargaining

Collective bargaining is the process of joint decision making and basically represents a democratic way of life in industry. It is the process of negotiating between the firm's and worker's representatives for the purpose of establishing mutually agreeable conditions of employment. It is a technique adopted by two parties to reach an understanding acceptable to both through the process of discussion and negotiation.

ILO defines collective bargaining as negotiation about working conditions and terms of employment between an employer and a group of employees wherein the terms serve as code of defining the rights and obligations of each party in their employment/ industrial relations with one another.

It is a mechanism used to ensure industrial harmony with many other advantages. I am sure that at the end this workshop, we would have increased in our understanding of the process of collective bargaining, its preference to unilateral policy, and the benefits parties and the society derive from this mechanism. Are independent agencies engaged in the collective bargaining?

Settlement of Industrial Disputes

My learned friends and participants at this workshop, as I stated in the early part of this lecture, the legal and institutional framework for settlement of industrial dispute through the instrumentality of industrial relations have been highlighted. Further deliberations may dwell on their accessibility, effectiveness, capacity to meet evolving global challenges and the responsiveness to labour and industrial matters.

National Industrial Court

This National Industrial Court is established via the National Industrial Act, NICA 2006, and empowered as follows;

(3) The Court shall –

(a) be a superior court of record; and

(b) except as may be otherwise provided by any enactment or law, have all the powers of a High court.

Section 7 (1) empowers the Court to with jurisdictional power as follows;

7-(1) The Court shall have and exercise exclusive jurisdiction in civil causes and matters-

(a) relating to-

(i) labour, including trade unions and industrial relations; and

(ii) environment and conditions of work, health, safety and welfare of labour, and matters incidental thereof; and

(b) relating to the grant of any order to restrain any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of strike, lock-out or any industrial action;

(c) relating to the determination of any question as to the interpretation of-

(i) any collective agreement

- (ii) any award made by an arbitral tribunal in respect of a labour dispute or an organizational dispute;
- (iii) the terms of settlement of any labour dispute, organizational dispute as may be recorded in any memorandum of settlement,
- (iv) any trade union constitution, and
- (v) any award or judgment of the Court.

The Court which commenced business over thirty three years ago has made landmark contributions to industrial harmony and engendered peace in the workplaces, through its many decisions. The Court operates in eight judicial Divisions of Abuja, Lagos, Ibadan, Enugu, Kano, Maiduguri, Calabar and Port Harcourt. Its operational modalities would be expatiated in future lectures.

A recent decision judgement of the Supreme Court pronounced that the National Industrial Court is not a superior court of records for been not listed on the Exclusive Legislative List of the Constitution of the Federal Republic of Nigeria, as one of those Courts having the status of superior court of records.

The decision also mandated the National Assembly to expressly and directly list the Court on its Exclusive Legislative List in the ongoing amendment of the Constitution. By so doing, the provision made in for the Court as a superior court of records in National Industrial Court Act, 2006 will thereby enjoy Constitutional backing. Compliance to this decision has reached advance stage as the Bill towards this listing had passed second reading at National Assembly.

Notwithstanding this challenge, the Court has contributed in many significant ways to ensuring industrial harmony in all labour related matters.

Employee Compensation

The Employees Compensation Bill which is currently awaiting passage by the National Assembly we hope will ensure better treatment of workmen injured in the course of job performance. The bill when passed becomes the extant law in the area-The Workmen's Compensation Without attempting to evaluate the Workmen's Compensation Act, it suffices to observe that the law is not only archaic, but it is grossly inadequate to deal with the challenges of contemporary complex industrial relations practice in Nigeria.

Issue such as the quantum of compensation to be paid in the event of accidents must be adequately addressed. In the same vein, it is necessary to carefully resolve issues relating to the competence and efficiency of the managers of the Fund to be established under the proposed law. Issues having to do with maintenance of the integrity of the process of compensation, and how ensure strict compliance with the proposed law must be addressed and resolved bearing in mind the need to enthrone a sound and enduring industrial relations.

Conclusion

This workshop is crucial and relevant to the present dispensation of our country. It is timely and proactive in nature. The Nigeria we are looking towards needs concerted efforts and contributions of all and sundry especially from institutions like the Nigerian Institute of Advanced Legal Studies. The output of our research findings and deliberations at such fora will go far in assisting our Legislative, Executive, Judiciary and other sections to make the workplace a haven. Our economic, social, political growth and development are predicated on good governance, which is the responsibility of all. Our observations and opinions towards the improvement of the labour and industrial relations are awaited and we can achieve this by further engagement. I am expectant that the outcome of this Workshop will usher in the much desired glorious era in the spheres of labour and industrial relations in Nigeria.

Once more, I thank the organizers of this Workshop for inviting me to deliver this Address.

Thank you all for your kind attention.

WIKIPEDIA, "Labour Law" at [www.http://en.wikipedia.org/wiki/Labour_law](http://en.wikipedia.org/wiki/Labour_law)

Human Resources and Skills Development Canada, "Labour Law" at [www.http://en.wikipedia.org/wiki/Labour_law](http://en.wikipedia.org/wiki/Labour_law)

See Crofter Hand Woven Harris Tweed Co. v. Veitch [1942] 1 All E.R. pp 158-9.