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THE EXPANDED JURISDICTION OF THE NATIONAL INDUSTRIAL COURT: ITS IMPLICATION FOR INDUSTRIAL DISPUTES IN NIGERIA

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Abstract

The National Industrial Court was established by the Trade Disputes Decree, 1976 as a judicial institution responsible for adjudicating trade and industrial disputes, and begun sitting in June 1978. The court did not have a constitutional status as a superior court of record until 2010, hence its long history of jurisdictional uncertainties and clashes with other judicial institutions of the government, notably the Federal High Court. The National Assembly of the Federal Republic of Nigeria, in a bid to resolve the lingering crisis associated with the status and jurisdiction of the National Industrial Court, enacted the Constitution (Third Alteration) Act 2010. This Act contains provisions expanding the jurisdiction of the National Industrial Court and conferring on it the status of a superior court of record, with potential implications for industrial disputes in Nigeria. It becomes apt to examine how these provisions could affect existing laws of the country and other impacts they may have within this jurisdiction. Patent impacts that become apparent are those affecting trade rules and labour rights. While I agree that the expanded jurisdiction appears to have many prospects, I contend that stakeholders may need to clarify some relevant statutory provisions in order to prevent conflicts and complexities arising from the clash between the provisions enabling the expanded jurisdiction and existing statutes. I find that the expanded jurisdiction could enhance human rights and other sustainable development interests. My conclusion is that the National Industrial Courts' recently expanded jurisdiction has solved previous problems associated with uncertainties and complexities in the scope and application of its jurisdiction, but has also heralded the dawn of new similar challenges.

Keywords: expanded jurisdiction; national industrial court; industrial dispute; Nigeria



1. Introduction

Over the years, judges, scholars and public commentators have echoed the need to regulate trade and industrial relations. For example, a Public Affairs Analyst, Odion (2010) said:

No Country aspiring to develop its economy has succeeded without a stable mechanism for settling labour, employment and industrial relations matters. This is even more crucial in a country like Nigeria that is in dire need of foreign investments. No reasonable foreign investor would like to invest in an economy where the relationship between employer and employee is not cordial or peaceful or where mechanisms for speedily resolving labour and industrial matters, when they arise, are not put in place.

At present, it appears that the National Industrial Court is the most laudable institution created by the government to adjudicate industrial related disputes. The jurisdiction of the National Industrial Court, however, has not been dispute-free as cases and academic materials show.

Historically since the early 1940s, the consciousness has been created that trade and industrial relations need to be regulated. For example, statutes such as the Trade Disputes (Arbitration and Inquiry) (Lagos) Ordinance 1941 and the Trade Disputes (Arbitration and Inquiry) (Federal Application) Ordinance 1957 showcase this. By the provisions of these two Ordinances, Government made third party intervention between disputing parties lawful. However, the intervention in industrial dispute by the third party was made optional at the discretion of the disputing parties. At that time, the legal regime which was in place allowed people to elect whether or not they want the intervention of government in their trade disputes and industrial relations. With the passage of time, governments made their intervention in trade disputes mandatory by the enacting laws which prescribed procedures for the resolution of trade and industrial disputes such as the Trade Disputes (Emergency Provisions) Decree 21, 1968 and the Trade Disputes Emergency Provisions (Amendment) No.2 Decree of 1969. Section 16 of the 1968 decree for the first time in Nigeria restricted the right of workers to take part in a strike and of employers to lock out their workers. In the event of a traded dispute, either party was compelled to



declare it to the commissioner of labour who could appoint a conciliator to assist both sides to reach settlement. The 1969 decree totally banned strikes and lockouts throughout the Nigerian Federation.

The National Industrial Court, which is one of the measures put in place by the government, had hitherto generated controversies both in the law courts and the academic environment because its existence as a court of law was not founded on constitutional provisions and its jurisdiction has been very limited. Section 6(5) of the 1999 Constitution of the Federal Republic of Nigeria did not list the National Industrial Court as a Superior Court of Record.

Recently, the National Assembly of the Federal Republic of Nigeria, in order to resolve the lingering crisis associated with the status and jurisdiction of the National Industrial Court, enacted the Constitution (Third Alteration) Act 2010. This Act, especially its provisions expanding the jurisdiction of the National Industrial Court and conferring on it the status of a superior Court of Record and its possible implication for industrial disputes in Nigeria shall be the subject matter of this work.

Before delving into the meat of the Constitution (Third Alteration) Act, a synopsis of the establishment of the National Industrial Court and its development over the years is apt in this paper.

2. Industrial Disputes Resolution under the Trade Disputes (Arbitration and Inquiry)

Ordinance 1941

The National Industrial Court was established by the Trade Disputes Decree, 1976 and begun sitting in June 1978 (Uvieghara 2001). It need be stated however, that the efforts of government to create an institution vested with powers to intervene in trade disputes and proffer solution in relation thereto did not start with the Trade Disputes Decree 1976. As far back as 1941, the Trade Disputes (Arbitration and Inquiry) Ordinance of 1941 was enacted, and it vested the power of resolution of industrial disputes in the government (Ogunniyi 2004). According to JK Gadzama and partners (2006), the Trade Disputes (Arbitration and Inquiry) (Lagos) Ordinance 1941 had two fundamental drawbacks, namely:

- i. There was no permanent structure for dealing with industrial disputes, rather ad-hoc bodies in the form of arbitration tribunals were set up to handle trade disputes as they came up. This Ordinance also left the role of the government to be merely discretionary and only at the instance and invitation of parties.



ii. The Ordinance did not cover the whole country and was only applicable to Lagos.

However in 1957, another ordinance known as the Trade Disputes (Arbitration and Inquiry) (Federal application) Ordinance 1957 was promulgated, spreading its jurisdiction to cover the whole country.

This prevailing situation back then which was obtainable under the legal regime ushered in by the 1941 Ordinance was altered with the promulgation of two decrees in 1968 and 1969—the Trade Disputes (Emergency Provisions) Decree 21, 1968 and the Trade Disputes Emergency Provisions (Amendment) No.2 Decree of 1969. The compulsory powers introduced by these two decrees, as opposed to the voluntary option open to the disputing parties under the 1941 and 1951 ordinances, were subsequently re-enacted in the Trade Disputes Act which established two judicial institutions for the settlement of industrial disputes. These two judicial institutions are the Industrial Arbitration Tribunal (IAT) and the National Industrial Court (NIC).

The pre-independence industrial policy in Nigeria, favouring voluntary bargaining between the employers and the trade unions, was a carryover from the colonial administration (Idubor 1999). According to Idubor:

Under this voluntarism doctrine employers and the representative of workers were free to enter into negotiation based on conditions acceptable to them and within the framework established by the state which framework is barely regulatory.

In 1967, the Nigerian civil war broke out and by mid-1968 prices of essential commodities had escalated (Idubor 1999: 148). At that time, calls for increase in wages were considered unpatriotic because of the huge financial demands of the civil war. Workers took advantage of the extant laws and withdrew their service. Employers on the other hand locked out their workers and employed new employees to replace them. These activities led to a reduction in the production of goods and services so much so that, according to Odigie (1993), people feared that the effects of reduction of production resulting from strikes and lockouts is as dangerous as the effects of the “shooting” war itself (Idubor 1999:148).

The response of the government to the unfolding of events was the enactment of the Trade Disputes (Emergency Provision) Decree No. 21 in 1968 and the Trade Disputes (Emergency Provisions) (Amendment No. 2) Decree No. 53 in 1969. While the former statute restricted the rights of workers to



declare strikes and the employers from locking out their employees by compelling them to declare such trade disputes to the Commissioner of Labour who could appoint a conciliator to assist both sides to reach settlement, the latter statute banned strikes and lockouts throughout the Nigeria Federation. Idubor (1999: 46) expresses the view that; “this was a total departure from the Westminster model of voluntarism to a Nigerian model of ‘Voluntarism’ which became known as ‘guided industrial democracy’.”

The apparent justification of Government’s intervention mentioned above is that industrial disputes, by their very nature, are not like any other civil dispute in the sense that they relate to the smooth running of Commerce and Industry as well as the day to day administration of Government. Commerce and day to day running of government could adversely be affected when parties are at liberty to do what they like in relation to industrial disputes which could cripple the economy. It is therefore compelling to, once more, reproduce the Supreme Court’s position in the case, *National Union of Electricity Employees & Anor v. Bureau of Public Enterprise* (2010) 7 NWLR (Pt. 1194) 538 at 575 paras. C – F, per Chukwumah – Eneh, J.S.C.:

The 1st defendant/ appellant is more or less the sole provider of electricity power a crucial essential service to the whole nation. The chaos and total confusion talkless of the economic damage that would be inflicted on the people and the nation as a whole should the 1st defendant/ appellant as the sole provider of electricity power proceeded on an industrial action/ strike could only be imagined. Such an action if not checkmated timeously would bring the entire nation to its economic knees and standstill. To allow that stage of catastrophe to be reached would, with respect, amount to unpardonable naivety. It is in this light that the Trade Disputes (Essential Services) Act had to be promulgated to empower the president to proscribe any Trade Unions or Associations whose members have embarked in threatening industrial unrest/ strike actions that would otherwise tend to disrupt the running of any Essential Services mentioned in the said Act.



Adu (year unknown) is also of this persuasion as he opines thus:

The adverse effect of strike to any economy talkless of a developing economy is staggering and affects the socio-economic stability of the nation. Management of trade union and industrial disputes has proved to be a difficult challenge with recurring strikes and lockouts. This challenge led to the establishment of the National Industrial Court with jurisdiction to adjudicate on issues arising from Trade Disputes, industrial relations and labour showdowns.

However, despite the important nature of the National Industrial Court to national development and stability, it was not a superior court of record prior to the enactment of the Constitution (Third Alteration) Act 2010 and its jurisdiction under the Trade Disputes Act and its successor, the National Industrial Court Act 2006, was anemic to say the least. It therefore came as a relief when on the 4th day of March 2011, the President assented to the Constitution (Third Alteration) Act to “alter the Constitution of the Federal Republic of Nigeria Cap. C.23, Laws of the Federation of Nigeria 2004, for the establishment of the National Industrial Court under the Constitution” (Long title of the Constitution [Third Alteration] Act 2010).

Commenting on this development, Etteh (2011) said:

Certainly, the third Constitution alteration Act will not only impact positively on labour law jurisprudence, but in no small measure, expand the horizon of labour law practice in Nigeria. What is even noteworthy is the fact that for the first time in Nigeria, prospective litigants in Labour, employment and industrial disputes are saved the trouble of venue uncertainty or the opportunity of forum shopping.

Note that while the first and second amendments to the 1999 constitution dealt specifically with the electoral reforms, the third amendment focused on labour justice reforms. The thrust of the labour justice reforms is the restructuring of the labour justice administration system in Nigeria. In doing this, the National Industrial Court which is pivotal to the reform, has been elevated



constitutionally to the status of superior court with enhanced powers and enlarged jurisdiction.

This is, indeed, a new dawn for labour law practice in Nigeria.

This “enhanced powers and enlarged jurisdiction” of the National Industrial Court occasioned by the Constitution (Third Alteration) Act 2010 is substantially contained in section 254C (1) which provides that:

- 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, or 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 non payment of salaries, wages, pensions, gratuities, allowances, benefits, and any other entitlement of any employee, worker, political or public office



- holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto;
- (l) 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.

The above provision represents the expanded jurisdiction of the National Industrial Court by the Alteration Act. No doubt, an item-by-item analysis of this subject matter jurisdiction of the court is capable of churning out volumes of academic materials which is far beyond the immediate scope of this paper. The focus here is to look at certain aspects of the above provisions that are likely to generate preventable controversies, as well as, highlight the prospects and perceived problems that may attend the implementation of the constitutional provisions introduced by the Alteration Act.

3. The Constitutional Provisions Relating to the National Industrial Court Introduced by the Constitution (Third Alteration) Act: Areas of Possible Conflict with Existing Legislation.

The Constitutional provision relating to the National Industrial Court introduced by the Third Alteration made certain broad provisions capable of generating controversies during its implementation. Some of these provisions will now be considered.



Firstly, by the provisions of section 254C (1) (b), exclusive jurisdiction is conferred on the National Industrial Court in causes or matters arising from the Labour Act. Section 80 of the Labour Act, however, provides that a Magistrate's Court (or, in a state where a Magistrate's Court has no civil jurisdiction, a District Court) shall have jurisdiction to hear complaints under section 81 of the Act, and that the Chief Judge of a State, with the concurrence of the state authority, may by order confer jurisdiction to hear such complaints on Area Courts or Customary Courts in the state or parts of the state. Section 81 of the Act provides that:

1. Where –

- (a) An employee or worker neglects or refuses to fulfill a contract; or
- (b) Any question, difference or dispute arises as to the rights or liabilities of a party to a contract or touching any misconduct, neglect, ill – treatment or injury to the person or property of a party to a contract.

any party to the contract feeling himself aggrieved may make complaint to a Court having jurisdiction, which may thereupon issue a summons to the party complained against.

From the foregoing, where there is a labour complaint the appropriate forum to ventilate the grievances relating thereto will be-

- i. A Magistrate's Court
- ii. A District Court
- iii. An Area Court; or
- iv. A Customary Court

Section 81(6) of the Labour Act however, excludes a "trade dispute", that is, any dispute or difference between employers and workers (or between workers and other workers) connected with the employment or non-employment, or the terms of the employment, or the conditions of labour of any person from the jurisdiction conferred on the above courts.

Section 82 of the Labour Act spells out the powers of the courts when dealing with labour complaints while section 83 of the Labour Act details the procedure regulating proceedings in the course of dealing with a labour complaint. Section 84 of the Labour Act empowers the court to order



compensation to be paid by an employer or worker as the case may be, as well as the provision of food for a complainant (being a worker) who in the opinion of the court cannot obtain food while the determination of the complaint is pending. Section 85 of the Labour Act gives the court the discretion to award cost to be paid by either party as it thinks proper in the circumstances.

With the coming into effect of the Alteration Act 2010, it would appear that the above discussed provisions of the Labour Act, that is sections 80 to 85 dealing with the jurisdiction of the court to handle labour complaints, are now null and void as being inconsistent with the constitution by virtue of section 1(3). This is because all civil causes and matters relating to, connected with or arising from the Labour Act are now exclusively placed within the jurisdiction of the National Industrial Court by virtue of section 254 C (1) (b) of the constitution. Therefore, all the parts of the Labour Act and the sections highlighted above are now the exclusive preserve of the National Industrial Court.

Secondly, section 254(1) (d) of the constitution (as altered) provides that the National Industrial Court shall have exclusive jurisdiction in matters relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of the 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. On the other hand, Chapter IV of the constitution which is entitled 'Fundamental Rights' 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 the right to acquire and own immovable property anywhere in Nigeria (section 43). Chapter IV of the constitution also makes provision relating to compulsory acquisition of property and restriction on and 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.



It is 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 right matters. Although, the Alteration Act did not alter this aspect of the constitution, a community reading of section 46 and section 254(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 a contravention of the provisions of Chapter IV in relation to the one who alleges such contravention has to do with employment, labour, industrial relations, 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.

One must not gloss over the fact that there are areas of convergence between the provisions of section 254C (1) (d) and Chapter IV of the constitution. For example, fundamental rights of fair hearing, peaceful assembly and association, freedom from discrimination in respect of which a special jurisdiction is conferred on the High Court by section 46 of the constitution also have connections with or relation to industrial disputes, and for which section 254C (1) (d) confers exclusive jurisdiction on the National Industrial Court.

It is my opinion that section 46 of the Constitution, although unaltered, to the extent that exclusive jurisdiction in respect of certain disputes pertaining to chapter IV has been conferred on the National Industrial Court, stands qualified in relation to the special jurisdiction of the High Courts to hear and determine fundamental rights matters it previously had.

Thirdly, section 254C(1)(i) of the constitution confers exclusive jurisdiction on the National Industrial Court in matters connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto. Child labour refers to the employment of children at regular and sustained labour. Child labour can also be defined as the full-time employment of children who are under a minimum legal age.

The interpretation section of the Labour Act defines a 'young person' as a person under the age of eighteen years. The Child's Right Act has been domesticated by the various states in Nigeria as their state's Child's Right Law. The Child's Right Law of Edo State, 2007 shall be used as a touchstone of the provisions of the Child Rights Act.



Sections 28 to 30 of the Child's Right Law are grouped under the subhead 'Child Labour.' Section 28 which is similar in verbiage and content with section 59 of the Labour Act provides that no child shall be subjected to any forced or exploitative labour. Section 29 makes applicable the provisions relating to young persons in sections 58, 59, 60, 61, 62 and 63 of the Labour Act under the law. Section 30 prohibits the buying, selling, hiring letting on hire dispose of or obtaining possession of or otherwise dealing in a child. It further prohibits the use of a child for the purpose of begging for alms, guiding beggars, prostitution, domestic or sexual labour, practices similar to slavery such as sale or trafficking of the child, hawking of goods, purpose that deprives the child of the opportunity to attend and remain in school as provided under the Compulsory, Free Universal Basic Education Law, etc. Section 31 prohibits the recruitment of children into the armed forces.

There is an obvious clash between the provisions of the Child Rights Law and the constitution as altered by the Third Alteration Act 2010. The Child's Right Law provides in section 270, the interpretation section, that the word 'Court' as used in the Law refers to the "Family Court" established under section 146 of the law. Section 146 which established the court provides that the Family Court shall have jurisdiction to hear and determine matters relating to children. Section 147 provides that the Family Court shall be at two levels:

- (a) The court as a Division of the High Court at the high court level; and
- (b) The court as a Magistrate Court, at the magistrate level

Notably, section 29 of the Child Rights Law incorporates sections 58, 59, 60, 61, 62 and 63 of the labour law into the Child's Right Law. Civil causes and matters relating to or connected with or arising from the Labour Act and child labour generally have been placed within the exclusive jurisdiction of the National Industrial Court by virtue of section 254C(1) (b) and (i) of the constitution. It follows that sections 28 to 31 of the Child's Right Law which deals with "child labour" are exclusively within the jurisdiction of the National Industrial Court, and it would appear that sections 146 and 147 of the Child's Right Law are, by virtue of section 1(3) of the 1999 Constitution of the Federal Republic of Nigeria (as altered), null and void to the extent that they vest the power on the Family Court to hear and determine matters relating to children in relation to the Labour Act and child labour generally.



It is also worthy of note that exclusive jurisdiction is conferred on the National Industrial Court in matters connected with or related to child abuse. Different jurisdictions have developed their own definitions of what constitutes child abuse for the purposes of removing a child from his/her family and/or prosecuting a criminal charge. In Nigeria, the various States' Child's Right Laws are the principal legislations regulating the affairs of children. They are laws providing and protecting the rights of a child and related matters (The long title of the Child Rights Law of Edo State, 2007). A typical section 1 of these laws states it all by making a provision covering "every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority." Section 11 of the law which provides for the right to the dignity of a child arguably covers the generally accepted four aspects of child abuse and makes wider provisions covering other areas of child abuse not glaring on the face of the four categories. For the avoidance of doubt, section 11 provides:

Every child is entitled to respect for the dignity of his person. Section 270 of the Child's Right Law provides that a "child" means a person under the age of eighteen years. Accordingly, no child shall be:

- (a) subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse; or
- (b) subjected to torture, inhuman or degrading treatment or punishment; or
- (c) subjected to attacks upon his honor or reputation; or
- (d) held in slavery or servitude, while in the care of a parent, legal guardian or school authority or any other person or authority having the care of a child.

As it has been observed above while discussing child labour, the conferment of exclusive jurisdiction on the National Industrial Court in civil causes and matters relating to 'child abuse' or any matter connected therewith or related thereto is problematic. The wholesale transfer of jurisdiction to hear and determine matters relating to Child Abuse without qualifying it to labour related abuses has occasioned a serious clash between the jurisdiction of the Family Court and the National Industrial Court in so far as the Child's Right Law also confers jurisdiction on child abuse-



related matters on the Family Court. One would have expected Nigerian legislators to know better and not overcrowd the jurisdiction of the National Industrial Court which was meant to be a special court for industrial matters *simpliciter*, as its name suggests.

It is an elementary point which must be re-echoed, as already argued above, that any inconsistencies with the jurisdiction conferred by the Child's Right Law on the Family Court and that conferred on the National Industrial Court by the constitution, the Child's Right Law is null and void to the extent of the inconsistency. Thus by virtue of section 254C(1) (i), all civil causes and matters connected with or related to 'child abuse' or any matter connected therewith or related thereto is within the exclusive jurisdiction of the National Industrial Court. The wisdom in such a wholesale provision is yet to be seen. It could be contended based on the golden rule of interpretation, though, that the "intention" of the legislature is to place only child abuse related to industrial disputes on the National Industrial Court. However, the literal rule of construction of statutes states that where words in a statute are clear and unambiguous, they must be given their literal meaning.

Furthermore, section 254C(1)(i) of the constitution under consideration confers exclusive jurisdiction on the National Industrial Court in matters connected with or related to human trafficking or any matter connected therewith or related thereto. Human trafficking is the illegal trade of human beings for the purposes of reproductive slavery, commercial sexual exploitation, forced labour, or a modern-day form of slavery. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also referred to as the Trafficking Protocol) was adopted by the United Nations in Palermo, Italy in 2000, and is an international legal agreement attached to the United Nations Convention against Transnational Organized Crime. The Trafficking Protocol is one of three protocols adopted to supplement the convention.

The Trafficking Protocol entered into force on 25 December 2003. By June 2010, it had been ratified by 117 countries and 137 parties. Nigeria became a signatory to the protocol on 8 December 2000 and ratified same on 28 June 2001. After the ratification of the protocol in Nigeria, a civil society committee led by the NGO, Women Trafficking and Child Labour Eradication Foundation (WOTCLEF), was set up to draft an anti-human trafficking bill in order to implement the protocol. The bill was subsequently presented to the National Assembly, which was assented to by the then president of the Federal Republic



of Nigeria, Chief Olusegun Obasanjo as the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, on 14 July 2003.

By the provisions of sections 1 and 4 of the Act, the National Agency for Prohibition of Traffic in Persons and other Related Matters (NAPTIP) is the body corporate responsible for, amongst others, the enforcement and the due administration of the Act. Section 33 (1) of the Act provides that the High Court of the Federal Capital Territory or the High Court of a State shall have jurisdiction to try offences under this Act, while subsection (2) of section 33 provides that the High Court has powers to impose the penalties provided for in this Act, notwithstanding anything to the contrary in any other enactment.

It is clear from the provision of section 33 of the Trafficking in Person's Act, the High Court of the Federal Capital Territory or the High Court of a State is the Court hitherto vested with jurisdiction in matters connected with or related to human trafficking. However, with the coming into effect of the Constitution (Third Alteration) Act, section 254C (1) (d) now vests exclusive jurisdiction on the National Industrial Court in matters connected with or related to human trafficking or any matter connected therewith or related thereto.

It would appear that section 33 of the Trafficking in Person's Act will be null and void to the extent that it is inconsistent with the provisions of the constitution by virtue of section 1(3) of the constitution. Again, this wholesale conferment of exclusive jurisdiction on the National Industrial Court, a court with focus on industrial disputes, in human trafficking matters appears to be an unnecessary distraction and legislative embarrassment to the purpose for which the court was established. By way of an aside, it may not be totally out of place to point out that by virtue of section 243(4) of the constitution which provides that 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. This is a laudable provision aimed at tackling the evil of protracted litigation which has bedeviled the process of dispute resolution.

In sum, the above obviously do not represent the entire areas of possible conflict of the Constitution (Third) Alteration Act with existing legislation, it only goes to show that there may be need to further streamline and/ or clarify the constitutional provisions relating to the jurisdiction of the National Industrial Court to avoid situations where litigious legal practitioners take undue advantage of the areas of possible conflict to stall the trials of otherwise meritorious cases deserving of urgent attention by



raising unnecessary and avoidable preliminary objections. Having said the above, it is admitted that there are prospects of the Constitution (Third) Alteration Act and some perceived problems that may attend the implementation of the Act. These will be considered hereunder.

4. Prospects and Perceived Problems of the Expanded Jurisdiction of the National Industrial Court

A. The Prospects of the Expanded Jurisdiction of the National Industrial Court

The expanded jurisdiction of the National Industrial Court appears to be a laudable development. As it has been shown above, the jurisdiction of the National Industrial Court in section 254C (1) of the 1999 Constitution of the Federal Republic of Nigeria (as altered), has been expanded and the status constitutionally elevated.

Having come this far in tracing the antecedents of the National Industrial Court of Nigeria and showing how its present status and jurisdiction have been enhanced, I believe that the court is poised to do justice to all. The obstacles and setbacks which bedeviled the court from inception have, to a large extent if not completely, been removed. The prospects of the expanded jurisdiction of the National Industrial Court are plentiful, but a few will be examined hereunder to illustrate the advantages of the expanded jurisdiction of the National Industrial Court.

B. Access to Justice

Justice is the cornerstone of human togetherness. It is the only sure foundation on which to build peace and progress (Jaja 2005). Justice is an essential condition for peaceful co-existence. Without it, human existence and society would be in chaos, the kind that the political philosopher, Thomas Hobbes, describes as the state of nature where the life of man is short and brutish, where might is right. The 9 January 2012 nationwide strike in Nigeria in reaction to the removal of subsidy on premium motor spirit (PMS), which the National Industrial Court sought to restrain, is a fresh point of reference. In the incident under reference, the Federal Government had announced the removal of subsidy on PMC while consultation and negotiations were still ongoing. The Nigerian Labour Congress (NLC) and the Trade



Union Congress (TUC) threatened to cripple the economy by embarking on an all-encompassing industrial action if the decision was not immediately rescinded.

To avoid situations like this which could lead to anarchy if left unregulated, societies and people through the years have built structures and principles to uphold justice, knowing that upholding justice would ensure peaceful co – existence and continued existence of such societies.

One of such structures that evolved as a result of mankind's search for justice is the court. The court is the temple of justice. It is the sanctuary of laws of the land, and the place where aggrieved citizens could seek justice. It is the refuge for the weak and powerless. However with time, it was observed that merely providing courts for citizens was not enough to ensure justice in society. This is because the mere creation of structures for the administration of justice would be meaningless if citizens could not have access to justice.

The National Industrial Court in Abuja had on Friday, 6 January 2012, ordered that the planned nationwide strike by the organized labour and civil society groups against removal of PMS subsidy by the Federal Government be stopped. The federal government had brought a *motion ex parte* asking the National Industrial Court to stop both the Nigerian Labour Congress (NLC) and the Trade Union Congress (TUC) from embarking on the nationwide strike which had been scheduled to kick off on Monday, 9 January 2012. Delivering its ruling, the National Industrial Court restrained the defendants from embarking or inciting the general public to embark on a general strike, street protests, mass rallies or any other action that would be inimical to the economic affairs of the Federal Republic of Nigeria. It should be noted that the Attorney-General had prayed also for an order restraining the defendants from interfering with the exercise of the constitutional powers of the executive arm of the Federal Government of Nigeria in the allocation and use of scarce resources of the Federal Republic of Nigeria, including but not limited to the transfer of resources previously allocated to the subsidy of PMS among others for the medium and long term socio-economic benefit of present and future generations of Nigerians, and an order restraining the defendants from interfering in any way with the executive implementation of the 2012 Appropriation Act and other connected duties of the executive arm of the Federal Government in the management of the economic affairs of the country. Both prayers were struck out by the court on the premise that they were not labour related but policy issues, which the court



lacked jurisdiction to entertain. Such is the role that the courts could be put to avoid anarchy in the contemporary society and promote justice.

In recent times therefore, focus has shifted to the provision of access to justice as an essential condition for the creation of sustainable development, peaceful co-existence and eradication of poverty (Jaja 2005). Increased attention has been given to how to ensure that the justice sector is responsive to the needs of the citizens particularly the poor who for a myriad of factors could be denied access to justice. This clamour for increased access to justice has resulted in the drafting of legislations such as Equal Access to Justice Act 2010 in Australia and Access to Justice Act in Canada.

This rising flood of attention to access to justice is not confined to western jurisdictions (thanks to globalization). It has extended to many other jurisdictions. In recent times, the concept of access to justice in Nigeria has been popularized by the British Governments Department for International Development (DFID) "Access to Justice Programme". The main goal of the programme is to focus on research and awareness raising and building institutional capacity, to advocate changes within the justice sector by providing justice for the poor.

I submit that the developments and advancements, innovations, institutional breakthroughs and laudable achievements within the justice delivery mechanisms in the Industrial sector through the mechanism of the National Industrial Court is one of the fallouts of the Access to Justice Programme that this paper has discussed.

C. Certainty of Forum

The wordings of section 254(c) of the Nigerian constitution as introduced by the Constitution (Third Alteration) Act have made it clear the appropriate forum to adjudicate on industrial disputes subject to the overlaps highlighted above in subject matters that are not strictly industrial disputes requiring streamlining and clarification. The prevailing confusion which visited the activities of the court, and the judicial decisions which left litigants confused as to the proper court to go when they have industrial issues to thrash, have all been settled. To put it mildly, the Constitution (Third Alteration) Act 2010 has settled finally the issue of forum in industrial disputes.



D. Problems Inherent in the Expanded Jurisdiction of the National Industrial Court

In the words of the President of the National Industrial Court, Justice Adejumo, “in all human endeavors, you have frustration” (Adeoti 2009). I now turn to look briefly at two areas where the expanded jurisdiction of the National Industrial Court may have negative fallouts.

i. Inadequate Venues.

At present, there are only eight divisions of the National Industrial Court across the country. These divisions are the Lagos zone, Abuja zone, Kano zone, Enugu zone, Calabar zone, Jos zone, Maiduguri zone, and the Ibadan zone. With the expansion of the jurisdiction of the National Industrial Court, the cases coming to the court will no doubt increase and there will be an influx of litigants. To that end, the present divisions of the National Industrial Court are inadequate to accommodate the pressure occasioned by its expanded jurisdiction.

ii. The Floodgate Problem

As mentioned above, the wholesale provision of the constitution in section 254(c) in respect of the jurisdiction of the National Industrial Court is apt to generate unnecessary traffic in the National Industrial Court. By the provisions of the said section 254(c) (1) (i), the National Industrial Court has been given exclusive jurisdiction to try cases related to child abuse. It was submitted that:

The wholesale transfer of jurisdiction to hear and determine matters relating to Child Abuse without qualifying it to labour related abuses has occasioned a serious clash between the jurisdiction of the Family Court and the National Industrial Court in so far as the Child's Right Law also confers jurisdiction on Child Abuses related matters on the Family Court. One would have expected Nigerian Legislators to know better and not overcrowd the jurisdiction of the National Industrial Court which was meant to be a special Court for industrial matters *simpliciter*, as its name suggests.

The National Industrial Court is also given wholesale jurisdiction to adjudicate in cases dealing with traffic in persons generally without qualification by the same section 254C (1) (i) of the constitution. It is submitted that the court, being a specialized one, is not cut out for such broad scope of adjudication



and I submit that it is one of the plagues that will likely cause unnecessary hardship that will require judicial activism to ameliorate, and that will make legislators revisit the jurisdiction of the National Industrial Court in no distant time. The submission was also made that:

...this wholesale conferment of exclusive jurisdiction on the National Industrial Court in human trafficking matters, a Court with focus in industrial disputes is an unnecessary distraction and legislative embarrassment to the purpose for which the Court was established.

5. Conclusion

This paper is aimed at examining the expanded jurisdiction of the National Industrial Court under the Constitution (Third Alteration) Act 2010. The paper has attempted to identify the benefits and problems that this constitutional alteration may bear. The paper has thus identified the prospects and perceived problems that could attend the enactment of the constitutional provisions in respect of the expanded jurisdiction of the National Industrial Court, putting them in proper legal perspectives and interdisciplinary context. The paper has also attempted to identify the implications arising from attempts at implementing the provisions enabling the expanded jurisdiction of the National Industrial Court.

The central lesson this paper has offered is that the National Industrial Courts' recently expanded jurisdiction has solved previous problems associated with uncertainties and complexities in the scope and application of its jurisdiction. The provisions enabling this expanded jurisdiction have resolved conflicts and clashes that previously existed between the powers of the National Industrial Court and other relevant judicial institutions including Federal High Courts and State High courts.

Nonetheless, new challenges have emerged as the Constitution (Third Alteration) Act 2010 has addressed most of the old ones. The new challenges include unrealistically broad jurisdictions given to the court which have not been met with increase in manpower and infrastructures. Also, the expanded jurisdiction that the Alteration Act has brought also has potentials to create further clash as its provisions erode existing legislations and the powers such legislations give other institutions. As I have analysed in the paper, the provisions of the Constitution (Third Alteration) Act 2010 would render the provisions of some other statutes null and void. For these reasons and many others that scholars might have addressed,



legislators and policy makers may need to revisit the Constitution (Third Alteration) Act 2010 in order to identify specific provisions with potentials for causing problems, and make necessary adjustments. Alternatively, legislators and policy makers may revisit other existing statutes in order to bring them in harmony with the Constitution (Third Alteration) Act 2010.

References

- Adeoti, F. (2009). National industrial court: Our journey from obscurity. Retrieved from <http://nicn.gov.ng/history1.php>.
- Adu, D. (year unknown). Appraisal of the role of the National Industrial Court in resolving labour dispute. Retrieved from http://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB0QFjAA&url=http%3A%2F%2Fwww.bloomfield-law.com%2Fpublications%2FEMPLOYMENT%2520LAW%2FThe%2520National%2520Industrial%2520Court-%2520Trade%2520Dispute%2520Resolution.pdf&ei=ESVBVeeoJImigwT2z4GQBw&usq=AFQjCNGfd9Y_EAtA1J2mzo2s_xFv-nkjrA&sig2=yT2WgNvszhjv0Z7Cj7TKnA&bvm=bv.91665533,d.eXY.
- Child Rights Law of Edo State 2007.
- Good Practices Database - Labour migration policies and programmes. Retrieved from <http://www.ilo.org/dyn/migpractice/migmain.home>.
- Idubor R. (1999). *Employment and trade dispute law in Nigeria*. Benin City: Sylva Publications Ltd.
- J.K. Gadzama & Partners. (2008). National Industrial Court Act, 2006 – A short appraisal. Retrieved from http://www.gadzama.com/publications/3rdquarter_newsletter_2008.pdf.
- Jaja T. C. (2005). *Access to justice in Sharia Courts*. Sokoto: Kass Printographics Productions.
- Odigie, S. A. (1993). *State intervention in industrial relations in Nigeria*. Warri: Exco-sivo Press.
- Odion, C. (2010). 1999 constitution and the National Industrial Court. Retrieved from http://www.theNigerianvoice.com/news/4106811/1999.constitution_and_the_national_1.
- Ogunniyi, O. (2004). *Nigerian labour law and employment in perspective*, 2nd ed. Lagos: Folio Publishers Ltd.
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000.
- Trade Disputes (Emergency Provisions) Decree 21 1968.
- Trade Disputes Emergency Provisions (Amendment) No.2 Decree of 1969.
- Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003.



Trafficking in Persons (Prohibition) Law Enforcement and Administration (Amendment) Act 2005.

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

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