

## **APPRAISING THE DYNAMICS OF THE HUMAN RIGHTS JURISDICTION OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA: PROBLEMS AND PROSPECTS**

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### **ABSTRACT**

From the time of its establishment in 1976, the National Industrial Court of Nigeria suffered from a number of constraints and jurisdictional crises. Foremost among these was its non-recognition as a superior court of record as well as the fact that it had no exclusivity of jurisdiction with regards to labour related matters. The passage of the Third Alteration Act to the 1999 Constitution of the Federal Republic of Nigeria came as a ground breaking intervention by firmly entrenching the status of the court as a superior court of record as well as conferring on it exclusive jurisdiction on labour matters. The expansion of the jurisdiction of the court to include among others, human rights issues that have a bearing on labour disputes also carried with it diverse thorny issues that need to be properly addressed and resolved. This paper therefore, attempts to comprehensively identify and analyse these issues bordering on the jurisdiction of the court with special focus on the boundaries of its special human rights jurisdiction as touching on the employer employee relationship. The paper adopts the doctrinal research method in undertaking this research and finds that the expansion of the jurisdiction of the court and the exclusivity of jurisdiction in all such other matters has the potential of restricting access to justice. It calls for the removal of exclusivity of jurisdiction in non-labour related matters, with state high courts having concurrent jurisdiction as well as the creation of additional divisions of the National Industrial Court.

**Keywords:** National Industrial Court, Constitution, Act, Jurisdiction, Human rights, Legal status, Mandate

### **INTRODUCTION**

Before Nigeria's independence, there were in existence some legal instruments which regulated trade disputes. The Trade Disputes (Arbitration and Inquiry) (Lagos) Ordinance of 1941 enabled a non-interventionist model allowing the parties to settle trade disputes by

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any means acceptable to them.<sup>3</sup> The Ordinance also limited the intervention by the appropriate minister though he was granted certain powers.<sup>4</sup> The non-interventionist model was repudiated by the enactment of the Trade Disputes (Emergency Provision) Act No. 21 of 1968 which repealed the 1941 Ordinance. The 1968 Act granted the Minister wide discretionary powers to choose appropriate actions to perform without the parties' consent. The Act brought about an interventionist model within the context of adjudication of trade disputes in Nigeria and conferred on the Minister of Labour the right to mandatorily intervene in trade disputes. The foregoing incidences were the situation of things before the establishment of the National Industrial Court (NIC) in 1976.

The National Industrial Court, since inception in 1976, has had a history of incessant constraints that emerged to hamstring its productive performance for many years to the effect that it suffered unwarranted and inevitable setbacks at various stages of its development. Probably, the situation rests conveniently on the premise that Nigeria embraced the idea of having a separate court to entertain labour matters at a time when such a set-up was absolutely strange to its legal system. The Trade Disputes Act 1976 which established the Court was later amended severally to uphold the supremacy of the National Industrial Court and the specialized dispute resolution process for trade disputes.<sup>5</sup> However, several challenges, for instance, the non-inclusion of the National Industrial Court in the constitutional list of superior courts of record under the 1979 and 1999 Constitution, further worsened the operations of the Court.

Under the Act,<sup>6</sup> a trade dispute was defined to mean any dispute between employers and workers or workers and workers which was connected with the employment or non-employment and physical conditions or work of any person. Under the Trade Dispute Act (TDA),<sup>7</sup> the jurisdiction of the Court included the making of awards for settling trade disputes and determining questions regarding the interpretation of any collective agreement and any award made under an arbitration tribunal.

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<sup>3</sup> Trade Disputes (Arbitration and Inquiry) (Lagos) Act Cap. 201, Laws of the Federation of Nigeria and Lagos, 1958.

<sup>4</sup> The Ordinance gives the Minister of Labour the power to intervene by means of formal inquiry, arbitration in such situations where negotiations have broken down through the application of the parties. This was provided for by Section 4(2), Trade Disputes (Arbitration and Enquiry) Act, 1958.

<sup>5</sup> Trade Disputes Decree No. 7 of 1976 (later the Trade Disputes Act 1976 upon the coming into force of the CFRN 1979, under Part II by virtue of section 20.

<sup>6</sup> *Ibid.* Section 47.

<sup>7</sup> *Ibid.* Section 21.

However, the powers of the National Industrial Court were met with certain limitations with respect to matters outside disputes that qualify as trade disputes under the TDA.<sup>8</sup> The National Industrial Court, though established in 1976, took off in 1978. As an amendment to the TDA, the Trade Disputes (Amendment) Decree No. 47 of 1992 sought to broaden the powers of the court as well as accord it the status of a superior court of record while classifying disputes within and between trade unions as a distinct category of dispute. The Act further expressly provides that the National Industrial Court holds jurisdiction to the exclusion of all other courts. These provisions, though brought the National Industrial Court to the spotlight, still could not bring the National Industrial Court the publicity it needed. Meanwhile, the court continued to suffer neglect by the general public and legal practitioners alike. It was paradoxical that suits for judicial review of National Industrial Court decisions were brought to the Federal High Court as the National Industrial Court was seen as a court inferior to the high courts.

The National Industrial Court Act came into force in 2006 and by the explanatory notes to the Act; it re-established the Court as a superior court of record. The Act was enacted to create the right atmosphere for the National Industrial Court. The National Industrial Court Act dramatically reviewed the structure of the National Industrial Court and removed the controversies encapsulated in the definition of trade dispute by extending the jurisdiction of the Court beyond trade dispute. A good number of sections of the TDA were to be interpreted with necessary modifications to bring them in conformity with the National Industrial Court Act. In case of inconsistencies, provisions of the National Industrial Court Act prevail over those of the TDA.

The National Industrial Court Act of 2006 also brought along with it its share of problems. Though some decisions of the regular courts upheld the exclusive jurisdiction of the National Industrial Court, the courts generally regarded the restriction of the exclusive jurisdiction conferred on the National Industrial Court by Section 7 of the National Industrial Court Act to 'trade disputes.' Hence, many employment and labour related issues not within the scope of trade disputes were litigated in the regular courts contrary to the provisions of the NIC Act. In the case of *National Union of Electricity Employees and Anor. v. Bureau of Public Enterprise*,<sup>9</sup> the Supreme Court held that notwithstanding the provision of Section

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<sup>8</sup> In *Kalango v Dokubo* (2003) 15 NWLR 32, the court held that National Industrial Court's jurisdiction can only be invoked in matters falling within the scope of the trade disputes as defined by the TDA. Hence, intra and inter-trade union disputes and other strike actions to challenge government's decision do not fall within the jurisdiction of the National Industrial Court.

<sup>9</sup> Unreported Suit No.SC/62/2004.

1(3)(a) & 7 of the National Industrial Court Act, the National Industrial Court was a subordinate court and that the Court has no exclusive jurisdiction over the matters assigned to it by the National Industrial Court Act. This decision dealt a heavy blow on the supposed powers of the National Industrial Court and it propelled the National Assembly to amend the provisions of the 1999 Constitution of the Federal Republic of Nigeria (1999 Constitution of the Federal Republic of Nigeria). In 2011, the President assented to the Constitution (Third Alteration) Bill, 2010 which amended the 1999 Constitution to include the National Industrial Court in the relevant sections of the Constitution such as Sections 84(4), 240, 243, 254, 287, 289, 292, 294, 295, 316 and 318 of the Constitution. In addition, new Section 254A – 254F were added to the Constitution to accommodate the National Industrial Court.<sup>10</sup> Section 245A provides that there shall be a National Industrial Court of Nigeria which shall consist of a President and such number of judges as may be prescribed by an Act of the National Assembly. The Constitution (Third Alteration) Act 2010 (Third Alteration Act) altered Section 6(5) of the 1999 Constitution by inserting after the existing paragraph (c) a new paragraph 'cc' which added the National Industrial Court of Nigeria.<sup>11</sup> The foregoing provisions of the Constitution were altered to synchronize it with the standing of the National Industrial Court as a court directly created by the Constitution like the other superior courts of record and to be duly recognized by it.

Generally, it is safe to submit that the amendment to the Constitution achieved certain goals. It enshrined the exclusive jurisdiction of the National Industrial Court on all matters pertaining to labour disputes in Nigeria. It restated the status of the National Industrial Court as a superior Court of record in Nigeria with all the powers and sanctions reiterated under the Constitution. Furthermore, it conferred criminal jurisdiction on the National Industrial Court arising from any case or matter over which jurisdiction is conferred on the National Industrial Court by the Constitution or any other Act of the National Assembly or by any law. The 2010 Alteration Act to the constitution was a watershed in the development of the National Industrial Court and labour law jurisprudence in Nigeria. A concomitant effect is that National Industrial Court now takes a pride of place in the hierarchy of superior courts in Nigeria today, and the old-time story of subjugation of the National Industrial Court has been brought to an end.<sup>12</sup>

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<sup>10</sup> Sunday Fagbemi 'Jurisdiction of the National Industrial Court of Nigeria: A Critical Analysis' (2014) *Journal of Law Policy and Globalization* 54.

<sup>11</sup> CFRN 1999, section 2 (Third Alteration) Act 2010.

<sup>12</sup> V.O. Ayeni. 'Beyond Labour Law: A Critique of the Role of the NIC in the Promotion and Protection of Human Rights in Nigeria', (2018), 9(2), *Ebonyi State University Law Journal*, 235 – 238.

The points needs be made that the gap in the legislation necessitating the constitutional amendment that gave birth to the expansion and exclusivity of jurisdiction of the NIC was brought to the fore by the conflicting decisions of the court that failed to establish categorically that the NIC enjoys exclusive jurisdiction. This conflict was accentuated by the decision of the Supreme Court in *National Union of Electricity Employees and Anor. v. Bureau of Public Enterprise*<sup>13</sup> which denied exclusive jurisdiction of the NIC. It also bears reminding to state here that there is largely a dearth of scholarly works in this area of the law and as such reliance has to be placed on reviewing the decisions reached by the courts. This work is therefore timely and compelling as it serves to close this gap in scholarship. This paper adopts the doctrinal research method in carrying out this research. Resort was had to articles in reputable journals, textbooks and case law as well as review of relevant statutory enactments.

In the light of the foregoing, this paper is divided into eight sections including the introduction. The second section examines the etymology of jurisdiction. This is followed by an examination of the composition of the National Industrial Court as well as its legal status in the third and fourth sections. The next three sections are made up of an analysis of the legal status of the NIC, a discussion of the notion of procedural fair hearing and a critique of the human rights jurisdiction of the NIC with the last part being the conclusion.

## ETYMOLOGY OF JURISDICTION

Jurisdiction is the authority which a court has to decide matters that are being litigated before it.<sup>14</sup> Jurisdiction has been regarded as the very basis on which any tribunal tries a case; it is the lifeline of all trials as a trial without jurisdiction is a nullity.<sup>15</sup> As a result of its great importance to judicial proceedings, it has been submitted that any provision that relates to court's jurisdiction should be unambiguous.<sup>16</sup>

Jurisdiction is fundamental in every proceeding in court for if a court of law adjudicates over a matter in respect of which it has no jurisdiction, its effort is in vain as the proceedings are a nullity. Many a time, the issue of jurisdiction is not raised until the matter is on appeal by which time the plaintiff would have spent time and money prosecuting the claim. The impact

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<sup>13</sup> Note 7 above.

<sup>14</sup> *S.P.D.C. Ltd. v. Bukuma Fisherman Ltd* (2001) FWLR (Pt. 70) 1507 at 1516.

<sup>15</sup> Ogunkorode Oluwayemi Oluwadunsi. 'National Industrial Court: Court with a Difference and the Need to Review its Legal Status' (2018) 9(1) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 59 at 63.

<sup>16</sup> *Ibid.* Ayeni, n.10 p.13,238.

of this on the justice system and the frustration that it could occasion on the litigant is better imagined. Unfortunately, the question of jurisdiction is glossed over by some practitioners who sometimes institute actions in courts that clearly lack jurisdiction in the matter as if it is all a question of choice.

Jurisdiction is a function of law. Every court is established by some law and it is usually the law that establishes a court that also defines its jurisdiction. It may also be used with reference to the subject matters over which the power of the court extends as well as the financial limit of the court over such matters. For example, a particular court may be excluded by the law creating it from entertaining action bordering on certain subject matter like election petition or personal contract cases, etc.; or where the court has jurisdiction over such matter, it may be limited to a certain financial claim so that if an action exceeds that limit, the court will be precluded from entertaining it.

Jurisdiction may be by reference to constitution or composition of the court. For example, the law may prescribe the particular number of judges that must seat in a given matter failing which the court cannot competently entertain the matter.

Jurisdiction may also be determined by reference to the geographical area of operation of the court. For example, a court which is established as a state court will not have jurisdiction to entertain matters outside the state.

Civil jurisdiction connotes the power of a court to hear and determine civil cases or matters. Civil matters, on the other than hand, are matters or disputes in court which result in the award by the court of damages or declaration of rights or compensation or prerogative or equitable remedy. It follows, therefore, that where the result of the action is a sentence of imprisonment or fine, then the jurisdiction is criminal and not civil. In Nigeria, the regular courts with civil jurisdiction are Supreme Court of Nigeria, Court of Appeal, Federal High Court, High Court of the Federal Capital Territory and of a State, Sharia Court of Appeal of the Federal Capital Territory and of a State, Customary Court of Appeal of the Federal Capital Territory and of a State,<sup>17</sup> Magistrates and District Courts, Area and Sharia Courts and Customary Court. There are also specialized courts/tribunals that exercise civil

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<sup>17</sup> The above mentioned courts are listed in section 6(5) of the Constitution of Federal Republic of Nigeria 1999 as the only superior courts of record. The provision, however, authorizes the establishment of other courts but those other courts, irrespective of the law that establishes them, cannot be superior courts of record.

jurisdiction. These include the Election Tribunals,<sup>18</sup> National Industrial Court, Security and Exchange Tribunal, Code of Conduct Tribunal, etc.

It is important before commencing an action in any of these Courts or Tribunals, to look at the law that established it to be sure that it has jurisdiction over the action.<sup>19</sup>

For any Court to exercise jurisdiction in any matter in Nigeria such court must have been specifically clothed with jurisdiction by law, otherwise, such proceeding becomes a total nullity *ab initio*.<sup>20</sup>

The sources of jurisdiction in Nigerian courts are three and they are highlighted hereunder.

- a. **The Constitution:** It is never an exaggeration to label the constitution of the Federal Republic of Nigeria 1999 as the primary source of Jurisdiction of Superior Court in record Nigeria.<sup>21</sup> The Supreme Court in *Ada v. NYSC*<sup>22</sup> confirmed that jurisdiction of courts are conferred by the constitution. In the case of *Osadebey v. A.G. Bendel State*,<sup>23</sup> the Supreme Court also noted that in addition to deriving her powers from the constitution, where there is a constitutional ouster of jurisdiction, this must be strictly complied with by the courts.
- b. **Statutes:** In addition to the Constitution, statutes<sup>24</sup> constitutes another very important source of jurisdiction of courts in Nigeria.<sup>25</sup> In addition to the jurisdiction given to the superior courts of record by the constitution, there are also enabling statutes that confer jurisdiction on them. Such statutes include: the Supreme Court

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<sup>18</sup> There are Presidential Election Tribunal which is the Court of Appeal – CFRN 1999, section 339; National Assembly Election Tribunal – CFRN 1999, section 285(1); Governorship and Legislative Houses Election Tribunal – CFRN 1999, section 285(2) and the Local Government Election Tribunal.

<sup>19</sup> A. F. Afolayan and P. C. Okolie. *Modern Civil Procedure Law* (Lagos: Dee-Sage Nigeria Limited, 2007) 8 – 9.

<sup>20</sup> *Uti v. Onoyiwe* (1991) SCNJ 25 at 49; *Dapialong v. Dariye* (2007) 4 NWLR (Pt. 1036) 332.

<sup>21</sup> See CFRN 1999, s232, 233, 239, 240, 251, 257, 262, 267, 272, and 285 which specifies the jurisdictions of Superior Courts of record in Nigeria.

<sup>22</sup> 1991) 1 SCNJ 162 p. 173; *Ansa v. R.T.P.C.N.* (2008) 7 NWLR (Pt. 1086) 421.

<sup>23</sup> *Ibid.*

<sup>24</sup> In this sense, statutes included Acts of the National Assembly and Laws passed by the State House Houses of Assembly.

<sup>25</sup> *Gafor v. Government, Kwara State* (2007) 4 NWLR (Pt. 1024) 375.

Act, the Court of Appeal Act, the Federal High Court Act, the National Industrial Court Act, the Admiralty Jurisdiction Act, the High Court Laws of different states, to mention but a few.

It must be noted that the jurisdictional provisions of these enactments are subjugated to those of the constitution such that when there is a conflict the jurisdiction conferred by the constitution will prevail.<sup>26</sup>

Similarly, the inferior courts of record such as the Magistrate Courts, the Area Customary Courts, Local Government Election Tribunals etc are all creations of Laws enacted by the State House of Assembly. As such it is clear that statutes are major sources of jurisdiction.

**c. Inherent Powers:** Section 6(6) (a) of the 1999 constitution makes provision for the inherent powers when it provides:

- (6) the judicial powers vested in accordance with foregoing provisions of this section-(a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law.

The term “inherent powers” is quite vague such that no court can rely on it to earn its jurisdiction. However, as a source of jurisdiction, inherent powers gives the court the jurisdiction to: regulate its proceedings, punish for contempt and protect and preserves its integrity and dignity;<sup>27</sup> make incidental or consequential orders not sought;<sup>28</sup> enforce court’s rules of practice and stop any abuse of its powers<sup>29</sup> dismiss an action for want of prosecution,<sup>30</sup> dismiss proceedings that are abuse of its process<sup>31</sup> and protect an

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<sup>26</sup> *Orhiunu v FRN* (2005) NWLR (Pt. 906) 39.

<sup>27</sup> *Leaders & Co Ltd. v. Kusamota* (2004) NWLR (Pt. 864) 517.

<sup>28</sup> *Intermercusa (Nig) Ltd. v. ANAMMCO* (2005) 1 NWLR (Pt. 967) 371.

<sup>29</sup> *Tubonemi v. Dibiko* (2006) 5 NWLR (Pt. 974) 565.

<sup>30</sup> *Echaka Cattle Ranch Ltd v. NACB* (1998) 3 SCNJ 54.

<sup>31</sup> *C.O.M Inc. v. Cobham* (2006) 15 NWLR (Pt. 1002) 283.



infringement of the constitution.<sup>32</sup> It must be mentioned that inherent power is only resorted to in the where there is no constitutional or statutory provision on jurisdiction over a matter.<sup>33</sup>

### **COMPOSITION OF THE NATIONAL INDUSTRIAL COURT**

The National Industrial Court upon its creation is mandatorily composed of the President of the Court and such other number of Judges as may be prescribed by an Act of the National Assembly.<sup>34</sup> By this provision, the National Assembly is constitutionally empowered to make enactments as to the number of judges to be appointed to the National Industrial Court. While it is acknowledgeable that section 254A (2) (a) & (b) of the Constitution became part of the provisions of the Constitution via section 6 of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010, it can however be said with certainty that the requirement or duty imposed by the National Assembly via section 254A (2) (a) & (b) of the Constitution of the Federal Republic of Nigeria was, prior to 2010, adhered to upon the enactment of National Industrial Court Act 2006. Accordingly, section 1 (2) of the National Industrial Court Act provides that: The Court shall consist of – a. The President of the Court who shall have overall control and supervision of the administration of the Court; and b. Not less than twelve judges; Provided that in appointing Judges for the Court, One-Third of the Judges so appointed shall satisfy the requirements of the provisions of sub-section (4) (b) of the section 2 of this Act.<sup>35</sup>

From the above provision, it becomes clear that the National Industrial Court shall consist of the President and such other number of Judges not below twelve (12). It is also pertinent to state that the qualification for appointment of Judges of the National Industrial Court is in

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<sup>32</sup> *Adeleke v. Obasanjo* O.S.H.A (2006) 16 NWLR (Pt. 1006) 608.

<sup>33</sup> *Yusuf v. Obasanjo* (2003) 15 NWLR (Pt. 843) 293 at 304 – 304; *Echaka Cattle Ranch Ltd v. NACB* n.27.

<sup>34</sup> CFRN 1999, section 254A (2) (a) and (b) (as amended).

<sup>35</sup> NICA 2006, section 2(4) (b) provides that: A person shall not be eligible to hold the office of a Judge of the Court unless the person is a graduate of a recognized university of not less than ten years standing and has considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria.

tandem with the requirement for appointment of Judges of the High Court of the various States and that of the Federal Capital Territory Abuja. Similarly, the Constitution, as well as National Industrial Court Act makes provisions for the qualification and appointment of a person into the office of the President of the National Industrial Court as well as the qualification for appointment of other Judges.<sup>36</sup>

By the combined provisions of Section 254B(3) and (4) of the Constitution and Section 2(3) and (4) of the NICA, for a person to be eligible to be appointed as the President or Judge of the NIC:

- i. The person must be eligible to practice as a legal practitioner in Nigeria;
- ii. The person has been so eligible to practice as a Legal Practitioner in Nigeria for a period not less ten (10) years;
- iii. The person shall have substantial knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria; and
- iv. With specific emphasis on the provisions of the NICA, the person is a graduate of a recognized university of not less than Ten (10) years standing and has substantial knowledge and experience in the law and practice of Industrial relations and employment situation in Nigeria.

Comparative and content analysis of the provisions//stipulations of section 254B (3) and (b) of the CFRN 1999 (as amended) and sections 2(3) and (4) NICA reveals that the CFRN does not provide for appointment of a graduate of a recognized University of not less than ten (10) years standing which seems to connote that a non-lawyer who is a graduate of a renowned University may be appointed as a Judge of the Court. Therefore, the uphill question is whether or not the intention of the draftsmen/legislators in the course of drafting section 2(4) (b) of the NICA was to allow for the appointment of qualified non-lawyers into the Bench of the NIC, on the one hand and on the other hand, if the question or poser is

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<sup>36</sup> CFRN 1999, section 254B(1)(2)(3) and (4).

answered in the affirmative, in the light of the provisions of section 1(3) of the Constitution which in summary provides that any law which is inconsistent with the Constitution shall be void to the level/extent of its inconsistency, can it be said that section 2(4) (b) conflicts with the provisions of section 254B (3) and (4)?<sup>37</sup> The question will be answered in the negative on the ground that section 254A (2) (b) permits the National Assembly, to (by an Act of National Assembly) prescribe other numbers of Judges that shall constitute the NIC. Upon appointment, the President of the NIC is classed and ranked in the same category with the Chief Judge of the State High Court, High Court of the Federal Capital Territory Abuja and the Chief Judge of the Federal High Court. Similarly, the judges of the NIC are also classed with their counterparts in the State High Courts/High Court of the Federal Capital Territory Abuja and the Federal High Court.

With regards to composition while adjudicating matters, the NIC which hitherto comprises of 20 divisions<sup>38</sup> may be composed by not less than three (3) judges for each particular division but the presiding judge must be one appointed as a Legal Practitioner.<sup>39</sup> Furthermore, for the purpose of exercising any jurisdiction conferred upon the NIC by the Constitution, the NICA or any other law, the NIC is duly constituted, if it consists of a single judge or not more than three (3) judges as the president of the NIC may direct.<sup>40</sup> Similarly, the powers of the NIC for the purpose of exercising any jurisdiction conferred upon it by the Constitution or any other enactment of the National Assembly may by law, make provisions conferring upon the NIC powers additional to those conferred on it by the Constitution desirable for enabling the Court to be more effective in exercising its jurisdiction.<sup>41</sup> It can indeed be asserted that the NIC is by Law required to comprise of the President of the NIC

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<sup>37</sup> *Ibid.*

<sup>38</sup> Namely: Abuja, Akure, Awka, Bauchi, Bayelsa, Calabar, Ekiti, Enugu, Gombe, Ibadan, Jos, Kano, Lagos, Maiduguri, Makurdi, Owerri, Port Harcourt, Sokoto, Uyo and Yola.

<sup>39</sup> NICA 2006, Section 2(4).

<sup>40</sup> CFRN 1999, section 254E (as amended)

<sup>41</sup> *Ibid.* Section 254D.

and such other number of Judges not below twelve (12) who shall be appointed by the President of the NIC and such other number of Judges not below twelve (12) who shall be appointed by the President of the Federal Republic of Nigeria on the recommendation of the National Judicial Council and in the case of the President of the NIC, subject to confirmation of the Senate.<sup>42</sup>

## LEGAL STATUS OF THE NATIONAL INDUSTRIAL COURT

Prior to the 4<sup>th</sup> day of March, 2011 being the commencement date of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010, which was an Act to alter the Constitution of the Federal Republic of Nigeria 1999, for the establishment of the NIC under the Constitution, the status of the NIC was shrouded in controversy. However, the era of 14<sup>th</sup> June, 2006<sup>43</sup> brought a new twist to the argument for and against the NIC being a superior court of record. The twist became unavoidable when the NIC was by virtue of Section 1(2) proviso (a)<sup>44</sup> proclaimed a superior court of record without the amendment of Section 6(5) of CFRN (1999) as amended which lists the superior court of in Nigeria.

Hitherto, the argument for or against the status of the NIC was permanently settled by Section 2 of the CFRN (Third Alteration) Act<sup>45</sup> when in line with Section 9 of the CFRN 1999 (as amended), Section 6(5) of the said Constitution was altered to include the NIC as a superior court of record in Nigeria.<sup>46</sup> Furthermore, the NIC was also by virtue of the Third Alteration Act, equated with the status of a High Court and accordingly conferred on it powers of a High Court. In essence, the status of the NIC as we have it today in Nigeria is

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<sup>42</sup> CFRN 1999, section 254B(1) and (2); NICA 2006, section 2(1) and (2) (as amended); S.N. Didia. 'Rethinking the Status, Jurisdiction and Right of Appeal of Decisions of the National Industrial Court: Digest of the Case of *Skye Bank Plc v. Anamem Iwu*' (2018) 4(1) *Port Harcourt Journal of Business Law*, 121–123.

<sup>43</sup> Commencement date of the NICA No.1, 2006.

<sup>44</sup> NICA 2006.

<sup>45</sup> No. 3 of 2010.

<sup>46</sup> CFRN 1999 (as amended), section 6(5) (c).

that of Superior Court of Record. The President and Judges of the NIC also enjoy the status and ranking with their counterparts in the various High Courts.<sup>47</sup>

## **NATURE OF THE HUMAN RIGHTS JURISDICTION OF THE NATIONAL INDUSTRIAL COURT**

Human rights in their multifaceted dimensions are the inalienable rights of the people. Human rights range from civil and political rights, socio-economic rights to solidarity rights which include the right to environment, right to peace, right to development, among others.<sup>48</sup> In different jurisdictions, the different categories of human rights have relative levels of recognition and enforcement. These rights would be in abeyance and with little or no significance if there are no extant legal and institutional frameworks established to protect them. This accounts for the recognition of certain rights in the 1999 Constitution of the Federal Republic of Nigeria (as amended). Furthermore, to facilitate the realization of human rights, the judiciary has been given the powers to adjudicate on all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to their civil rights and obligations.<sup>49</sup>

There is no controversy as to the jurisdiction of the High Courts of states, High Court of the Federal Capital territory and the Federal High Court to entertain matters brought pursuant to Chapter IV of the Constitution. The rights protected by chapter IV of the Constitution includes the right to life,<sup>50</sup> right to dignity of human person,<sup>51</sup> right to personal liberty,<sup>52</sup> right

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<sup>47</sup> See generally E.A. Oji and O.D. Amucheazi. *Employment and Labour Law in Nigeria* (Enugu: Mbeyi and Associates Nigerian Limited, 2015) 253 – 287. S.N. Dida. 'Rethinking the Status, Jurisdiction and Right of Appeal of Decisions of the National Industrial Court: Digest of the Case of *Skye Bank Plc v. Anamem Iwu* (2018) 4(1) *Port Harcourt Journal of Business Law* 121 – 123.

<sup>48</sup> See provisions of the African Charter on Human and Peoples' Rights (1981).

<sup>49</sup> CFRN 1999 (as amended) section 6(6)(b).

<sup>50</sup> *Ibid.* S. 33.

<sup>51</sup> *Ibid.* S. 34.

<sup>52</sup> *Ibid.* S. 35.

to fair hearing,<sup>53</sup> right to private and family life,<sup>54</sup> right to freedom of thought,<sup>55</sup> conscience and religion,<sup>56</sup> right to peaceful assembly and association,<sup>57</sup> right to freedom of movement,<sup>58</sup> right to freedom from discrimination,<sup>59</sup> right to acquire and own immovable property anywhere in Nigeria.<sup>60</sup>

By virtue of section 46 of the Constitution, jurisdiction to entertain all matters in Chapter IV of the Constitution vests in any High Court in the State where the violation took place. High Court in this sense includes the various High Courts of the 36 states of the federation, High Court of the Federal Capital Territory (FCT Abuja) and the Federal High Court.<sup>61</sup> To a large extent, the jurisdictional powers of the three courts listed above are concurrent except where the subject matter of the disputes involves the Federal Government or any of its agencies or the subject matter relate to issues listed in Section 251 of the Constitution.<sup>62</sup> In such cases, the Federal High Court has exclusive jurisdiction. However, the provisions of the Constitution (Third Alteration) Act 2010 introduced far-reaching changes to the courts that have human rights jurisdiction as well as the extent of the jurisdiction of the various courts. Importantly, the NIC has been incorporated into the league of courts that have 'special jurisdiction' as regards Chapter IV of the Constitution. However, the extent of the human rights jurisdiction of the NIC is not so clear, and this is the foremost preoccupation of this paper.

One of the fundamental consequences of the Constitution (Third Alteration) Act is the readjustment of the jurisdictional powers of courts in the area of human rights. Thus, in

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<sup>53</sup> *Ibid.* S.36.

<sup>54</sup> *Ibid.* S. 37.

<sup>55</sup> *Ibid.*S. 38..

<sup>56</sup> *Ibid.*S.39.

<sup>57</sup> *Ibid.* S. 40.

<sup>58</sup> *Ibid.* S. 41..

<sup>59</sup> *Ibid.* S. 42.

<sup>60</sup> *Ibid.* S. 43.

<sup>61</sup> See I. David Efevwerhan. *Principles of Civil Procedure in Nigeria* (Enugu: Chenglo, 2007)p 340 – 344.

<sup>62</sup> *Ibid.*, p. 344. See also *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) p. 517.

addition to the three courts listed earlier which have original jurisdiction in the enforcement of human rights as prescribed in Chapter IV of the Constitution, the NIC was now vested with jurisdiction albeit in a limited way to enforce certain human rights.<sup>63</sup> In recognition of the role of human rights in the realization of labour justice, the Constitution (Third Alteration) Act vests exclusive jurisdiction on the NIC in human rights or human rights related cases that arise out of employee/employer relationship including all human rights issues arising from industrial relations, trade unions and all workplace related human rights issues.<sup>64</sup> Below, this article reviews the various aspects of the human rights jurisdiction of the NIC as stipulated in the Constitution (Third Alteration) Act 2010.

### ***Limited Jurisdiction over Chapter IV of the Constitution***

Section 254C(1)(d) of the Constitution (as amended) provides that the NIC shall have and exercise jurisdiction to the exclusion of any other court in civil causes and 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. The Constitution recognizes the connection between human rights and labour justice. This provision is expressly with respect to civil causes and matters. However, considering the provision of subsection 5 of Section 254C of the Constitution, criminal jurisdiction of the NIC may arise in respect of fundamental human rights under chapter IV since civil jurisdiction has been conferred on the NIC by the Constitution in relation to matters under the same chapter. The consequence of the provision of section 254C (1) (d) of the Constitution (as amended) is that the NIC may be called upon for the

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<sup>63</sup> CFRN 1999 (as amended), s254C(1)(d); s6, Third Alteration Act.

<sup>64</sup> Abdullahi Saliu Ishola, Adekumbi Adeleye and Dauda Momodu. 'Rethinking the Jurisdiction of the National Industrial Court in Nigeria Rights Enforcement in Nigeria: Lessons from South Africa', (2016) 3, *Transnational Human Rights Review*, p. 18. See also Abdullahi Saliu Ishola, Adekumbi Adeleye and Dauda Momodu. 'A Critique of Jurisdiction of the National Industrial Court in Nigeria Rights Enforcement in Nigeria' (2016) 2(4), *Journal of Asian & African Social Science & Humanities*, p. 103.

interpretation and application of any of the rights in chapter IV of the Constitution in so far as the right relates to or is connected with a labour dispute. This is the first category of human rights jurisdiction of the NIC.<sup>65</sup>

Under the provision of section 254C (1) (d) of the Constitution (as amended), the NIC has jurisdiction to protect workers' freedom of association. Freedom of association implies among others, that an individual should be free to join an organization and to act in association with others as long as no harm is caused. This right is protected in the various jurisdictions of the world and Nigeria has its own provision included under section 40 of its 1999 Constitution. The concept of freedom of association in labour relations entails the rights of workers to join or belong to a trade union or engage in collective bargaining. As an extension, it also covers the right to go on strike when necessary. For instance, workers may go on strike where the employers refuse to pay wages. The NIC has the jurisdiction to entertain disputes that concerns the contravention of these fundamental human rights.

### ***Discrimination and Sexual Harassment at Workplace***

The second class of human rights related jurisdiction granted to the NIC by virtue of the Third Alteration Act is contained in Section 254C (1) (g) of the Constitution (as amended). The provision vests exclusive jurisdiction on the NIC in matters relating to or connected with any dispute arising from discrimination or sexual harassment at workplace.<sup>66</sup> Section 17 of the 1999 Constitution stipulates that the state social order is founded on the ideals of freedom, equality and justice. It further provides that every citizen shall have equality of rights, obligations and opportunities before the law. Section 42 of the 1999 Constitution recognizes the right of every person to freedom from discrimination because of his community, ethnic group, place of origin, sex, religion or political opinion. A worker is said to have been discriminated against when he is treated somewhat different from other

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<sup>65</sup> CFRN 1999 Section. 254C(1)(d) (as amended).

<sup>66</sup> *Ibid.* Section 254(C)(1)(g).



employees on grounds that are indeed not in consonance with the law.<sup>67</sup> Furthermore, the Trade Unions Act provides that a person who is eligible to belong to a trade union cannot be denied membership of the trade union on the ground that he or she is of a particular community, tribe, place of origin, religion or political opinion. Section 12 of the Act makes it an offence for the union and all its officials to refuse the admission of the person as a member of the union on discriminatory grounds.<sup>68</sup> The NIC has exclusive jurisdiction in the foregoing matters.<sup>69</sup>

The International Labour Organization (ILO) advocates that member states are to respect the right of their workers to freedom from discrimination and the elimination of discrimination within the spheres of employment as a fundamental principle. Nigeria, a member of the ILO, has ratified the ILO Equal Remuneration Convention, 1951 and the Discrimination (Employment and Occupation) Convention, 1958. It is however, a question of fact to establish if these provisions have been violated. Nevertheless, the NIC possesses the power to adjudicate on matters caught by these provisions.<sup>70</sup>

The protection of the human rights of workers with disabilities is also at the mercy of the NIC. The level of abuse of disabled persons' rights in Nigeria is weighty. The NIC's role in the protection of rights of disabled persons in labour related matters cannot be disparaged. Section 2 of the Nigerians with Disability Act 1993 ensures that they are accorded equal treatment due to other persons. Equal treatment is a corollary to freedom from discrimination and both are within the ambit of the fundamental human rights recognized in the Constitution. Also, Section 6 of the Act saddles the government with the responsibility to take measures to promote the employment of the disabled. Hence, a disabled person

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<sup>67</sup> Bamidele Aturu. 'Discrimination in the Workplace' *Vanguard* (Lagos, March 6, 2010).

<sup>68</sup> Another relevant provision is Section 9(6) of the Labour Act which prohibits contracts of employment that results in the dismissal of a worker on the grounds of either belonging to or not being a member of a trade union or participating in trade union activities.

<sup>69</sup> CFRN 1999, section 254C(1)(b) (as amended).

<sup>70</sup> *Ibid.*

must not be subjected to any disability or conditions by his employer on grounds of disability. Matters that arise from such incidences are labour related matters and are within the jurisdiction of the NIC.

### **Child Abuse, Child Labour and Human Trafficking**

Pursuant to section 254C (1) (g) of the Constitution (as amended), another area of human rights jurisdiction of the NIC is child abuse, child labour and human trafficking. This provision has further reiterated the very important role of the NIC in the protection of human rights in Nigeria and in this case the rights of the child. Child labour and child abuse are not just human rights problems but are multifaceted, hazardous and apparently a flagrant contravention of the best interest of children. In labour related matters, the NIC must ensure that it exercises its jurisdiction in eradicating any form of child abuse, child labour or child trafficking. Given the various forms of child abuse<sup>71</sup> in Nigeria, the need to ensure that social justice is achieved becomes more pressing.<sup>72</sup> Although work is essential to life and it has its attendant benefits, it becomes dangerous when, among other incidences of child labour, children are compelled to work on end for sometimes sixteen hours or more as early as the age of four.<sup>73</sup> As succinctly said by Admassie,<sup>74</sup> the plight of many millions of children working under conditions harmful to their development cries out for action. The NIC must see to it that it protects the best interest of children in labour related matters since its jurisdiction under the Third Alteration covers this sphere of human rights.

The question may however be asked also been raised whether family court is more appropriate than the NIC to handle issues of child abuse. Apart from the fact that family courts are more private and their constitution more suitable to handle such issues, there is

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<sup>71</sup> Example include incidences of street trading, domestic servitude, among others.

<sup>72</sup> J. Ogunsakin. 'A Legal Prognosis of Child Labour Under the Nigerian Child's Rights Act', (2015), *International Affairs and Global Strategy*, p28 – 38.

<sup>73</sup> *Ibid*, p. 30.

<sup>74</sup> Assefa Admassie. 'Exploring the High Incidence of Child Labour in Sub-Saharan Africa' (2002), *African Development Review*, p251 – 275.

the problem of accessibility to the NIC since the NIC currently has limited number of divisions across the federation. Also, the NIC may become over-flooded with many cases as child abuse happens almost on daily basis. This problem may however be circumvented if the NIC invokes its powers under Section 24 of the 2006 NIC Act and Rule 28 of the NIC Rules 2007. Under the cited provisions, the NIC has powers to transfer cases where the circumstances warrant.

### **NECESSITY OF FAIR HEARING IN THE NATIONAL INDUSTRIAL COURT**

Another point to consider is the indispensability of fair hearing in the administrative and procedural array of industrial organizations. Globalization as well as the economic recession in recent times has made many employers, multinational corporations infringe on the rights of their workers. Many workers now lose their jobs for various reasons including downsizing, restructuring and arbitrary termination of contracts are meted out without respect for due process of law. Section 36 of the Constitution makes provisions for fair hearing which is predicated on the principles of natural justice.<sup>75</sup> In *University of Calabar v. Essien*,<sup>76</sup> Uguh JSC stated:

Where an employer dismisses or terminates the appointment of an employee on ground of misconduct all that the employer needs establish to justify his action is to show that the allegation was disclosed to the employee, that he was given a fair hearing, that is to say, that the rule of natural justice were not breached and that the disciplinary panel followed the laid down procedure, if any, and accepted that he committed the act after its investigation.

Before an employer can dispense with the service of his employee under the common law, he needs to afford the employee an opportunity of being heard before exercising his power of summary dismissal.<sup>77</sup> The principle of fair hearing is very germane also in the discipline

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<sup>75</sup> Emeka Chianu. 'Towards Fair Hearing for all Nigerian Employees' (2007) 1(1) *Review of Nigerian Law and Practice* p29 – 60.

<sup>76</sup> (1996) 10 NWLR (Pt. 477) p225, 262.

<sup>77</sup> *Yusuf v Union Bank of Nigeria* (1996) 39 LRCN 1139, 115, Per Wali JSC.

of workers by the employers. As part of its jurisdiction, employees can seek recourse to the NIC to get remedy for unlawful dismissal from employment. In *Danmole v AG Leventis & Co (Nigeria) Ltd.*<sup>78</sup> Ilori J. Reiterated that absence from duty without leave amounts to misconduct that justifies dismissal, but the *audi alteram partem* principle imposes a duty upon an employer to act fairly by giving the employee an opportunity to explain himself before taking any decision which affects the employee's proprietary right. The NIC has the jurisdiction to address this matter by adjudicating on issues that arise from such occurrences.<sup>79</sup>

### **CRITIQUING THE HUMAN RIGHTS MANDATE OF THE NATIONAL INDUSTRIAL COURT**

The vesting of human rights jurisdiction in the NIC even though commendable may create series of setbacks for the enforcement of human rights in Nigeria. One attendant problem may be the renewed interest in the limits of human rights jurisdiction of the NIC and the fact that the exclusive nature of the jurisdiction may restrict rather than expand access to justice. As Ishola, Adeleye and Momodu have noted 'the court will, from time to time, have to grapple with the demarcation of its jurisdiction, and will be constantly concerned to ensure that any human rights violation it deals with was truly committed in relation to a labor dispute/issue'.<sup>80</sup> The lingering debate on whether human rights relate to labour issue or dispute may result in delay in the administration of labour justice. Significantly, it is unclear whether the provisions of the Fundamental Rights Enforcement Procedure (FREP) Rules are applicable to proceedings before the NIC. Some of the matters arising from the vesting of human rights jurisdiction in the NIC<sup>81</sup> are discussed hereunder.

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<sup>78</sup> (1981) 1 – 3 CCHCJ 227.

<sup>79</sup> Ayeni n.10 p240 – 244.

<sup>80</sup> Abdullahi Saliu Ishola *et al* n.63 p167.

<sup>81</sup> Ayeni n.10 p244 – 245.

### **Exclusiveness of the Jurisdiction**

Foremost among the issues that has received attention of scholars in relation to the human rights jurisdiction of the NIC is its exclusive nature. The Constitution (Third Alteration) Act 2010 grants exclusive jurisdiction to the NIC in civil matters in all cases of infringement of fundamental rights which occurred as a result or as a consequence of labour, trade disputes, and industrial relations matters. In fact, all matters bordering on these issues that were pending before a state High Court, High Court of the FCT or the Federal High Court are required to be transferred to the relevant division of the NIC.<sup>82</sup> This position has been affirmed in the cases of *Josiah Madu v Solus Schall Nigeria Ltd*<sup>83</sup> and *Echelukwu John O & 90 Others v Igbo-Ekiti Local Government Area*.<sup>84</sup> In the latter case, the Court of Appeal even rebuked the trial judge for striking out a labour related human right matter rather than transferring it to NIC.<sup>85</sup> The practice so far has been to file human rights matters bordering on employee/employer relationship at the NIC.<sup>86</sup> As the law stands currently, provisions of Section 46 of the Constitution and by extension the FREP Rules can no longer be interpreted as applicable only to state High Court, High Court of FCT and the Federal High Court. By virtue of the Third Alteration Act, the NIC may now be considered as having limited special jurisdiction referred to in section 46 of the Constitution.<sup>87</sup>

It is argued that rather than confer exclusive jurisdiction on the NIC in human rights related labour matters, it is preferable to make the jurisdiction concurrent rather than exclusive.

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<sup>82</sup> Abdullahi Saliu Ishola, *et al* p.25.

<sup>83</sup> Unreported. See the facts of the case in Gbenga Biobaku & Co. 'The Exclusive Jurisdiction of the National Industrial Court in Labour and Employment Matters' <[www.gbclaw.com/The%20Exclusive%20Jurisdiction%20of%20the%20National%20Industrial%20Court.pdf](http://www.gbclaw.com/The%20Exclusive%20Jurisdiction%20of%20the%20National%20Industrial%20Court.pdf)> accessed 15 October 2021.

<sup>84</sup> *Echelukwu John O & 90 Others v Igbo-Ekiti Local Government Area*, Appeal No CA/E/261/2011 (unreported). Judgment was delivered at the Enugu Division of the Court of Appeal, on 10 December 2012.

<sup>85</sup> See for instance *Mrs. Folarin Oreka Maiya v The Incorporated Trustees of Clinton Health Access Initiative, Nigeria & 2 Ors*, Suit No NIC/ABJ/13/2011.

<sup>86</sup> *Ibid*.

<sup>87</sup> Abdullahi Saliu Ishola *et al*, n.63 p. 25 – 27.

Prior to the Third Alteration Act when labour related human rights violations may be filed before any state High Court, Federal High Court or the High Court of the Federal Capital Territory, victims of human rights violations clearly had more access to justice and it was quick and easy to access any of these courts due to their presence in all states and many local governments at the state level. Thus the vesting of exclusive jurisdiction in the NIC in labour related human rights matters may lead to avoidable delay in the administration of labour justice and impose further constraints on litigants who may have to travel to the state capital where the available NIC divisions are located. The question again is whether the NIC has the capacity to cope with the resulting workload.<sup>88</sup> The NIC is yet to establish divisions in all states, and the existing divisions are not spread evenly across the Federation. This creates cumbersome challenges and unnecessary hurdles for litigants. While the creation of more divisions will ameliorate this problem it still does not explain why High Courts that have several divisions in every state are divested of human rights jurisdiction in labour matters.<sup>89</sup>

### **Applicability of the 2009 FREP Rules to the National Industrial Court**

In the exercise of the powers conferred on the Chief Justice of Nigeria by virtue of section 46(3) of the Constitution, the FREP Rules were enacted in 2009.<sup>90</sup> In its Preamble, the FREP Rules 2009 requires that provisions of chapter IV of the Constitution shall be interpreted expansively and purposely with a view to advancing human rights protection.<sup>91</sup>

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<sup>88</sup> Ifeoluwa Olubiyi. 'Jurisdiction and Appellate Powers of the Nigerian National Industrial Court: Need for further Reform' (2016) 7(3), *The Gravitas Review of Business & Property Law*, p. 44.

<sup>89</sup> Ayeni n.10 p. 245 – 246.

<sup>90</sup> The FREP Rules came into force on 1 December 2009. See Federal Republic of Nigeria Official Gazette No. 74, Vol. 96, Lagos, 17 November 2009. For a general critical appraisal of the strengths and weaknesses of the FREP Rules, see Dakas CJ Dakas, 'Judicial Reform of the Legal Framework of Human Rights Litigation in Nigeria: Novelties and Perplexities' in Epiphany Azinge & Dakas CJ Dakas (eds), *Judicial Reform and Transformation in Nigeria: A Tribute to Hon Justice Dahiru Musdapher, GCON, FNIALS, Chief Justice of Nigeria* (Lagos: Nigerian Institute of Advanced Legal Studies, 2012) 334. See also Abiola Sanni. 'FREP Rules, 2009 as a Tool for the Enforcement of the African Charter on Human and Peoples' Rights in Nigeria: The Need for Far-Reaching Reform' (2011) 11 *African Human Rights Law Journal*, p. 511.

<sup>91</sup> FREP Rules 2009, Preamble.

Domestic courts are also required to respect international human rights instruments including the African Charter on Human and Peoples' Rights (African Charter), the Universal Declaration of Human Rights (UDHR) and other regional and international human rights instruments.<sup>92</sup> The Rules also require courts to enhance access to justice for all classes of litigants and welcome public interest litigations and relax the rules of *locus standi*. In order to ensure accelerated hearing of human rights cases, the FREP Rules require that human rights cases shall be given priority in deserving cases.<sup>93</sup>

As lofty as the provisions of the FREP Rules are, there are a number of reasons to argue that the FREP Rules are inapplicable to the NIC. First, there is a little difference between the human rights jurisdiction vested in the NIC in terms of Section 254 of the Constitution (as amended) and the special jurisdiction vested in High Courts in terms of Section 46(3) of the Constitution, and this difference, it is argued, is consequential for the applicability of the FREP Rules to NIC.<sup>94</sup> The Third Alteration Act confers on the NIC jurisdiction 'relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution'.<sup>95</sup> By contrast, High Courts are vested with jurisdiction in terms of Section 46 of the Constitution. Thus, while the special jurisdiction of High Courts relates to the enforcement of fundamental rights in Chapter IV, the limited jurisdiction of the NIC relates to jurisdiction over the interpretation and application of the provisions of chapter IV as it concerns employee/employer relationship. Thus, the NIC in a strict sense may not have jurisdiction for enforcement of chapter IV other than to resolve disputes relating to application and interpretation of the provisions of chapter IV as it pertains to labour matters. Further, section 46(3) empowers the Chief Justice of Nigeria to make rules specifically 'with respect to the practice and procedure of a High Court for the purposes of section 46 and since the NIC is not a High Court, it is doubtful if the FREP Rules would apply to it. The

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<sup>92</sup> *Ibid.*

<sup>93</sup> FREP Rules 2009, Preamble.

<sup>94</sup> Generally Abdullahi Saliu Ishola, *et al* n.63 p.29 – 32.

<sup>95</sup> CFRN 1999, section 254C.

FREP Rules itself define 'court' to mean state High Court, High Court of the Federal Capital territory or the Federal High Court.<sup>96</sup> In practice, the NIC requires human rights application filed before it to comply with its Rules of Procedure and not necessarily with the 2009 FREP Rules.<sup>97</sup> Since human rights in Nigeria may be enforced only through the FREP Rules, the human rights jurisdiction of the NIC may thus be limited to disputes over interpretation and application of provisions of Chapter IV of the Constitution as they relate to labour matters and not blanket jurisdiction for enforcement of human rights.<sup>98</sup>

### ***Right of Appeal***

The position of the law prior to the 1<sup>st</sup> day of July, 2017 was that, the appealable decision of the NIC were only limited to judgments emanating from fundamental rights as enshrined under chapter IV of the Constitution and appeals emanating or relating to criminal matters determined by the NIC and nothing more. The above position was held for long time and the NIC was said to have the final say on industrial matters, except when it concerns or touches on Chapter IV of the constitution and in circumstances where the court was invoked in its criminal jurisdiction.<sup>99</sup>

Following the Third Alteration of the 1999 Constitution by virtue of which the National Industrial Court of Nigeria was exculpated from the controversy as to whether or not it is a superior court of record. That is to say, that the NIC was repositioned and elevated to the status of a superior court of record and accordingly ranking in judicial hierarchy with the High Court of the States and that of the Federal Capital Territory Abuja, Federal High Court Customary Court of Appeal and Sharia Court of Appeal, the NIC indubitably became a superior court of superior and was accordingly listed with its counterparts under Section 6

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<sup>96</sup> Order I (2), FREP Rules, 2009.

<sup>97</sup> Abdullahi Saliu Ishola, n.63 p. 33.

<sup>98</sup> Ayeni n.10 p. 246 – 247.

<sup>99</sup> Abdulwahab Abdulahi. 'National Industrial Court Judgment not final Supreme' <<http://www.vanguardngr.com/2017/08/industrial-court-judgment-no-final-supreme-court/>>accessed 12 December 2021.



(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and same was also reflected among the courts to which the Court of Appeal is constitutionally vested with exclusive jurisdiction to entertain appeals emanating from it.<sup>100</sup>

However, one question calls for answer, that is, whether appeals from NIC relating to issues of Fundamental Human Rights and Criminal Matters for which the NIC has power to try and make pronouncements therein, cannot be appealed up to the Supreme Court? It is submitted that issues of enforcement of human rights and proof of guilt or otherwise of any citizen of the Federal Republic of Nigeria is unfettered, and constitutionally, no Court is ousted of its jurisdiction to hear and determine criminal appeals emanating from the provisions of Chapter four (4) of the Constitution Federal Republic of Nigeria 1999 (as amended). Hence, it is expected that such appeals can be made up to the Supreme Court as of right, as this better accords with the notion of justice.

## **CONCLUSION**

This paper undertook a historical overview of how the NIC came to be established, the bottlenecks that attended its establishment, which chiefly comprised of the non-recognition of its status as a superior court of record. The Third Alteration Act to the 1999 Constitution of Nigeria marked a watershed in the development of the NIC as well as for labour jurisprudence in Nigeria. Much as this Act sealed the controversies surrounding the jurisdiction and status of the court, it also carried with it, a bag of new challenges and constraints.

As a foundation however, the paper considered the meaning of and preeminent importance of jurisdiction as well as the sources and various aspects of jurisdiction, including the composition of the court and its legal status. It examined the relevant provisions of the Act which settled the controversy surrounding the legal status of the court as it established

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<sup>100</sup> CFRN 1999, section 240 (as amended).

without prevarication, the fact that the NIC is to operate as a superior court of record and it was accordingly listed as one of the superior courts of record under the constitution. Also settled is the exclusivity of jurisdiction the court now enjoys with regards to labour matters. This exclusivity of jurisdiction however extends to cover human rights issues under chapter four of the constitution as long as it has a bearing on a labour matter. This exclusivity of jurisdiction of the court was also extended to cover other matters such as discrimination at workplace, child abuse, child labour and human trafficking. The paper finds that this extension of jurisdiction has the potential of causing delay in the dispensation of justice as well as the restricting access to justice. It is therefore strongly recommends that exclusivity of jurisdiction should be retained only in core labour cases while for other matters over which the NIC's jurisdiction has been extended to cover, it should be allowed to enjoy concurrent jurisdiction with other relevant superior courts of record. The discretion should therefore be reserved with prospective litigants as to which court to approach as against the position where it is the court that determines whether or not it is expedient to transfer the matter to other courts.

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