APPRAISAL OF COLLECTIVE BARGAINING PROCESS AS A MEANS OF SETTLEMENT OF LABOUR DISPUTES IN NIGERIA: CHALLENGES AND PROSPECTS

BY

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BEING A DISSERTATION PRESENTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS (LL.M) DEGREE

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MAY, 2016.

DECLARATION

I, Ngele Emmanuel Osogu NGELE, hereby declare that this dissertation entitled "APPRAISAL OF COLLECTIVE BARGAINING PROCESS AS A MODE OF SETTLEMENT OF LABOUR DISPUTES IN NIGERIA: CHALLENGES AND PROSPECTS" has been written by me and that it is a record of my own research work. No part of this DISSERTATION has been presented or published anywhere at any time, by anybody, Institution or Organisation or for the award of any academic degree.

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Ngele Emmanuel Osogu NGELE Date
LLM/LAW/9716/2010-2011

CERTIFICATION

This dissertation, entitled: APPRAISAL OF COLLECTIVE BARGAINING PROCESS AS A MODE OF SETTLEMENT OF LABOUR DISPUTES IN NIGERIA: CHALLENGES AND PROSPECTS, by Ngele Emmanuel Osogu NGELE meets the regulations governing the award of Master of Laws (LL.M.) of the AHMADU BELLO UNIVERSITY, ZARIA, NIGERIA and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This work is dedicated to God almighty, omnipotent, omniscience, omnipresence, the Ebenezer, He who was He who is, and He who is to come.

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ABBREVIATIONS

ADR……..……..Alternative Disputes Resolution

All ER…….…..……..All England Report

All FWLR…….…….……..…..All Federation Weekly Law Report

ASUU…….....Academic Staff Union of Universities

CAP……...……..…….……Chapter

CEACR……..…..Committee of Expert on the Application of Convention & Recommendation

CEDAW…….. United Nation Convention on the Elimination of all forms of Discrimination Against Women

DJNIC……...Digest of Judgment of National Industrial Court

DPR……..Department of Petroleum Resources

EVD…….. Ebola Virus Disease

IAP…….Industrial Arbitration Panel

JOHESU……...…….…Joint Health Workers Sector Union

JUSUN…….…….Judicial Staff Union of Nigeria

ILO…….……International Labour Organisation

LFN……..Laws of the Federation of Nigeria

NECA…….Nigeria Employers Consultative Association

NICN……National Industrial Court of Nigeria

NLC……...Nigeria Labour Congress

NLLR…….Nigeria Labour Law Report

NMA……Nigeria Medical Association

NWLR……...…...Nigeria Weekly Law Report

NUEE……..National Union of Electricity Employees

NULGE..……National Union of Local Government Employees

NURTW…….National Union of Road Transport Worker

PENGASSAN…..……Petroleum and Natural Gas Senior Staff Association of Nigeria

PIB……...…….Petroleum Industry Bill

SC……..Supreme Court

TAM……..……..Turn Around Maintenance

TUC……...……Trade Union Congress

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ABSTRACT

This dissertation is entitled Appraisal of Collective Bargaining Process as a Mode of Settlement of Labour Disputes in Nigeria: Challenges and Prospects. The study examines Collective Bargaining process as a preferred means of settlement of Labour disputes in Nigeria. It is an established fact that the coming in of Industrialization and creation of wealth in the nation gave rise to economic growth, hence the need of labour and management by the sovereign (Nigeria), to provide goods and services to the public at a stable and affordable price. a)The failure of management to recognize labour union during collective bargaining for an effective Collective bargaining, b) The challenge associated with the enforcement of collective agreement and c) The problem of refusal of appeal from National Industrial Court except for appeals on Fundamental Human Right, calls for research hence this dissertation. This research is library oriented research wherein recourse were made to statutes, conventions, case laws, text books, journals, literature etc. Statistics were also gathered from the Ministry of Labour and productivity and National Industrial Court of Nigeria, to ascertain the level of the applicability of Collective Bargaining in settlement of labour disputes in Nigeria. However, the research reveals that the major challenges associated with effective collective bargaining are; non recognition of labour unions by the management. Secondly, before now collective agreement are binding in honour only and are regarded as mere gentleman's agreements that are not judicially enforceable unless incorporated into the employee's contract of employment. Thirdly, Expansion of the jurisdiction of the National Industrial Court beyond simple labour and employment disputes. The legislature should come up with an instrument where management (Government) shall be compelled to recognize employees and their Union(s) in collective bargaining and to see the act of non recognition of employees union(s) as a criminal offence for peace and growth of the nation's economy, b) to review the relevant laws relating to labour, so as to ensure the implementation and enforceability of every collective agreements, without necessarily embarking on strike or litigation for it to be enforced. c) The NIC should be structure not to be seen as a court of last instance, should there be need to appeal its judgment.

CHAPTER ONE

1.0 GENERAL INTRODUCTION

1.1 Background to the Study

Under the Labour Law, Trade Dispute, which is also called Labour Disputes originated from the interaction within an organized labour market.[1] From the historical perspective the origin of trade dispute in Nigeria can be traced to the coming in of the European Missionaries which actually marked the beginning of the real wage employment as foreign currencies and investments began to be introduced into Nigeria. As a result of the establishment and growth in these investments the need for employment into the modern industrial structure arose. This necessitated the influx of men into the paid employment which became a remarkable source of income to the working class. The problem of the rising cost of living and the inadequacy of wages to keep pace with the rise in price of goods and services made collective bargaining inevitable.

However, the inequality in bargaining power of an individual employee who cannot influence the amount of wages payable, or resist, if his employer demands of him an excessive number of working hours, or to force his employer to install safety devices and other protection against industrial hazards or accidents, made collective action by workers inevitable and subsequently prepared the ground and basis for the rise of modern trade unionism.[2] In a bid to resolving the emerging disputes to ensure stable development in the economy, parties resorted into employing local means of resolving disputes now known as Collective bargaining. It is an established fact that emergence of Industrialization and institutionalization of labour resulted into large number

[1]. Andrew, O.O. (2014) *The National Industrial Court: Regulating Dispute Resolutions in Nigeria.* Retrieved from www.gamji.com/article800/NEWS-July_29,2014-4:19pm
[2]. Ibid

corporations in Nigeria, hence the need to ensure peace and harmonious disputes resolution for an effective service delivery. In the course of balancing legitimate expectations of employees and employers, to ensure steady and uninterrupted supply of goods and services, conflict is bound to occur.

Therefore, reconciliation of Labour Disputes leads to stability, and ensures peaceful co-existence between employees and employers. A forum to achieve a cordial relationship between employers and employees is necessary in order to achieve the said peaceful coexistence. The International Labour Organization (ILO) has adopted conventions by providing framework for member states to enact laws that would foster such mechanism. In this respect, Nigeria has enacted the Trade Disputes Act[3] and Wages Boards and Industrial Council Act,[4]which provide, among others, mechanism for amicable resolution of trade disputes via collective bargaining for the growth of the nation's economy and to discourage chaos within the labour industry.

The provision of International Labour Organisation (ILO), Article 2 of its Convention No. 154, adopted in 1981 by Nigeria defines collective bargaining as follows:

> *The term Collective Bargaining extends to an employer, a group of employers or one or more employer's organizations, on the one hand, and one or more workers' organizations on the other, for (a) determining working conditions and terms of employment; and or (b) regulating relations between employer or their organizations and a workers' organization or workers' organizations.*

Collective bargaining is a better mechanism employer(s) and employee(s) can adopt to agree on terms and conditions of employment.[5] Despite the legal mechanism available to promote collective bargaining between parties, Nigerian workers and their trade unions suffer serious

[3]. Trade Disputes Act, Cap.T8, Laws of the Federation of Nigeria, 2004.
[4]. Wages Boards and Industrial Council Act, Cap.W1, Laws of the Federation of Nigeria 2004.
[5]. Okene, O.V.C., (2008) *The Internationalization of Nigerian Labour Law: Recent Developments in Freedom of Association,* 7 University of Botswana Law Journal, p.81.

difficulties in bargaining with their employers. This has necessitated proposals to ensure greater protection of the Nigerian worker and bring Nigerian law and practice in line with minimum standards prescribed by the International Labour Organisation. In tracing the sources of the right to collective bargaining in Nigeria, it is pertinent therefore to state that collective bargaining is a mechanism in the Nigerian System of Industrial relations. Although, there is no express constitutional provision in Nigeria on the right to collective bargaining, the Constitution[6] provides that one of the economic objectives of the government is to ensure that;

> *The state shall direct its policy towards ensuring that (...) (b) conditions of work are just and humane and that there are adequate facilities for leisure and for social, religious and cultural life; (c) the health, safety and welfare of all persons in employment are safeguard and not endangered or abused (...)"*[7]

The above provision also calls for collective bargaining legislation, to facilitate the achievement of these objectives via encouraging parties to always exhaust the opportunity offered by collective bargaining. The Nigerian System of collective bargaining is characterized by a reliance on the principle of "voluntarism". The concept of Voluntary collective bargaining has been accepted by all sides to the employment relationship.[8]

Freedom of association and the right to form or to belong to a trade union of one's choice is a fundamental right guaranteed by the constitution which shall also be our focus in this research. The Trade Union Act also provides that any person who is otherwise eligible for membership of a particular trade shall not be refused admission to membership of the union because of his ethnic origin, religion or political opinion. The Labour Act equally makes it unlawful for any employer to make it a condition of employment that a worker shall or shall not join a trade union

6. Constitution of the Federal Republic of Nigeria 1999 (as amended)
7. Section 17 (3) (b) and (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)
8. Uvieghara, E.E. (2001) *Nigerian Labour Law,* Malthouse Press Ltd., Lagos, p.388.

or shall not relinquish membership of a trade union; or cause a worker to be dismissed or in any way be prejudiced because of trade union membership, or trade union activities.[9].

1.2 Statement of the Problem

Conflict of interest among Labour, Management, and the public which boils down to non implementation of collective agreement and agitation for formation of new Union, and consequences of deadlock during collective bargaining affects production and development which raises concern against achieving maximum production. Also, the act of refusal to bargain leads to discord which in turn negates the spirit of understanding parties.

Research Questions

a. Whether collective bargaining is the most preferred/used method of settlement of labour disputes in Nigeria considering the arbitrariness of management and non recognition of labour union(s)?
b. Whether Collective agreement as a bye product of Collective bargaining is indeed enforceable in view of its status as a gentle man's agreement?
c. Whether there exist effective legal framework in the conduct and process of collective bargaining, and whether Collective bargaining is the most perfect means of resolving trade disputes vis-à-vis other means of trade disputes resolution?

[9]. Section 9 (6) (a) (b) of the Labour Act, Cap. CL 1, Laws of the Federation of Nigeria, 2004.

1.3 Aim and Objectives of the Study

The aim of this research is to decisively examine the process of Collective bargaining and agreement in settling labour disputes and its challenges, and the objectives of this research are as follows;

i. To examine the legal frame work, problems associated with collective bargaining process and their effect in settling labour disputes in Nigeria.

ii. To appraise the enforceability or otherwise of collective agreement reached after collective bargaining and the way out.

iii. To establish the effectiveness of Collective Bargaining and National Industrial Court of Nigeria in resolving trade disputes and enforcement of collective agreement for the promotion of maximum production and National development.

1.4 Justification of the Study

The significant of this research entails identifying challenges militating against effective collective bargaining process, reasons for the non enforceability of collective agreement and the way out. This study is also important as it addresses the increase of the jurisdiction of the National Industrial Court by the Constitution in resolving labour dispute and enforcement of collective agreement. It further serves as a source of materials for students, lawyers, lecturers, public, and the Government, particularly now, the National Industrial Court is empowered to encourage collective bargaining and enforce collective agreement.

The knowledge of collective bargaining is quite important as it is an instrument of social justice that allows workers to negotiate on a more equal footing with their employer. It can also be seen

as an instrument for good democracy, settlement of disputes, redistribution of power and the promotion of efficiency in the workplace..

1.5 Scope of the Study

The scope of this study covers specifically appraisal of the collective bargaining process in settling labour disputes in Nigeria. This research also center's on the following issues; enforceability or otherwise of collective agreement, the role of the National Industrial Court of Nigerian in enforcement of collective agreement. Reference is also made to International Labour Organization laws.

1.6 Research Methodology

The methodology adopted in this study is the doctrinal method (i.e.) Books, statutes and cases based research.[10] Internet, textbooks, seminars, journals and articles in Nigerian. Also, relevant conventions or Foreign Legislation on the subject matter under consideration were consulted. Empirical study of collective bargaining process is also adopted by applying to Ministry of Labour and Productivity and National Industrial Court wherein relevant statistics were gathered to appraise the applicability of Collective bargaining. Visitation to the Ministry of Labour and Productivity was to ascertain effort made by the ministry in resolving collective bargaining, also Nigeria Labour Congress was visited for relevant materials, National Industrial Court, Abuja Division was visited and finally, Faculty of Law, Ahmadu Bello University, Zaria Library was also useful in this work.

[10]. Aboki, Y. (2009) *Introduction to Legal Research Methodology*, Tamaza Publishing Company Limited, 4 Zaria, Kaduna State, Second Edition, p.3.

1.7 Literature Review

This research work heavily depends on written materials of scholars consulted in the above stated institutions with special interest placed on the views of the writers as it applies to collective bargaining process in settling labour disputes in Nigeria.

Agomo,[11] in her book defined collective bargaining and collective agreement, negotiable issues, legal status of collective agreements, voluntary modes of settlement of industrial disputes and finally the National Industrial Court of Nigeria, these issues no doubt has improved the knowledge of labour disputes. The author did not address the issue of challenges and prospects of collective bargaining process as a mode of settlement of labour disputes in Nigeria. The author in an attempt to address the composition and jurisdiction of the National Industrial Court failed to resolve the issue of effectiveness or otherwise of the National Industrial Court which this work seeks to address.

Uvieghara, analyzed the Legal framework of collective bargaining, Government effort or role via the Minister in pursuing its policy of industrial self governance that encourages employers and workers to try to settle questions of wages and conditions of employment by collective bargaining and would only intervene in the last resort or in the public interest as an impartial conciliator or arbitrator. The author dwelt mainly on the provisions of the 1999 Constitution in addressing exclusivity of the National Industrial Court on trade disputes and ended in the confusion or dilemma posed by the said provisions. The author's argument in the exclusivity of the jurisdiction of the National Industrial Court clearly shows his lack of knowledge on the fact that the conflict is now resolved by the express and comprehensive provisions on the exclusive

[11]. Agomo, C.K. (2011) *Nigerian Employment and Labour Relations Law and practice*, Concept Publications (press Division) Lagos, ps.292,293,294.

jurisdiction of the National Industrial Court in the Constitution of the Federal Republic of Nigeria (as amended) hence the constitution as review few years after publication of his book and this calls for the author's review of his book to accommodate the recent position in the amended Constitution as covered in this research.

Offornze, D.A. et al,[12] in their book examined the History, Establishment and Development of National Industrial Court of Nigeria, jurisdiction and procedure of the National Industrial Court, their effort in this regards are appreciated, but their failure to appraise the challenges and prospects of collective bargaining process in settlement of labour disputes in Nigeria calls for research.

Richard, Idubor[13] extensively appraise history and development of Trade union, Trade disputes settlement machinery, effect of collective bargaining and legal status of collective agreement. The jurisdiction of the National Industrial Court as captioned by the Constitution (as amended) was not considered which is now addressed in this research.

Oladosu Ogunniyi[14]while discussing collective agreement and enforceability in his book made no reference to the expansion on the jurisdiction of the National Industrial Court as provided by 1999 Constitution (as amended).

Akintunde Emiola[15]considered bargaining process of collective agreement and further argued that the National Industrial Court in its enforcement and interpretation of collective agreement should be listed among the "superior courts of record" in Section 6(3) of the Constitution. This

[12]. Offornze, D.A. et al, (2013) *The National Industrial Court of Nigeria: law practice and procedure* Wildfire publishing House, United Kingdom.
[13]. *Employment and Trade Dispute Law in Nigeria,* Silva publishers Ltd., (1999).
[14]. Oladosu Ogunniyi (1999) *Nigerian Labour and Employment Law in perspective*, Folio Associate Ltd., Lagos, p.260.
[15]. Akintunde Emiola, (2001) *Public Servant and the Law,* Emiola (publisher) Ltd. Ikoyi Road, Ogbomosho, Nig. p. 241.

argument holds no ground as the Constitution of the Federal Republic of Nigeria 1999(as amended) has now laid the issue to rest.

Okene, in his Article *Collective Bargaining in Nigeria: Trade Unionism at the Cross Roads*[16]argued in his work despite its acclaimed functions, the institution of collective bargaining has been criticized for various reasons. Critical labour law theorists regard collective bargaining as a tool by which capital continued to dominate labour.

The author further argued that the Unions provide an institutional context within which workers can formulate and express their aspirations, aggregate their voices and experience the dignity that comes with having some power to effect the decisions governing one's life and no machinery is available for employees to participate in the determination of employment conditions in the public sector. Having seen the above views of the author, nothing was said on how agreement concluded through collective bargaining could be enforced in Nigeria and be made effective.

The resolution on writing on this topic is in the right direction, hence the need to improve in the work of the authors, and ensure effective appraisal of the legal framework of collective bargaining, its process as a means of settling labour disputes in Nigeria for a sustainable economy.

1.8 Organizational Layout

This research on Appraisal of Collective Bargaining Process as a means of Settlement of Labour Disputes in Nigeria: Challenges and prospects would be as follows;

[16]. Okeene, O.V.C., Op.*cit.,* p. 77.

Chapter one consists of the Background of the study, Statement of the Problem, aim and Objectives, Scope of the Study, Methodology, Justification, Literature Review and Organizational Layout.

Chapter two deals with the Conceptual clarification of key terms, such as Collective Bargaining, Collective Agreement. It also considered the Importance of Collective bargaining, collective bargaining and other similar methods of labour dispute, Concept of Labour disputes in Nigeria and trade unioinism.

Chapter three deals on Legal and Institutional framework of the process of Collective Bargaining, International Labour Organization(ILO) standard on collective bargaining, status of collective bargaining, factors affecting collective bargaining in resolving Labour disputes, challenges of implementing Collective agreements and the role of Labour Organisations in promoting and developing labour relations for national development via Collective Bargaining. Chapter Four deals on Collective Bargaining as a means of settlement of Labour disputes in Nigeria, the principles of for the enforcement or otherwise of Collective Agreement and Unionism and Collective Agreement under the Law. Chapter Five concludes the research with a summary, finding and recommendation.

Conclusion

It is the apparent imbalance of power between employees and the employers that has necessitated the desire of workers to come together. Workers discovery of the fact that collective bargaining will place them nearly at equal pedestal with their employer resorted to collective action, because by coming together their strength is consolidated and far more effectively than they could as individuals. This work seeks to analyses the applicability of collective bargaining in resolving

labour disputes in Nigeria. In this chapter, the following were considered; the background structure of the research, the statement of the research problem, the objectives, the scope, the research methodology, literature review and the organizational structure.

The statement of the problem raised in this chapter include; inability to effectively resolve trade disputes, arbitrariness cum failure by management to recognize trade unions during collective bargaining and finally the challenge of unenforceability of collective agreement.

It is a known fact that disputes in the labour industry is inevitable. Government effort and responsibilities derives from the economic and social objectives of the government, as enshrine in the Section 17 of the Constitution (as amended) is paramount, if we must ensure a harmonious and conducive atmosphere in labour industry/relation.

CHAPTER TWO

2.0 CONCEPTUAL CLARIFICATION OF KEY TERMS

2.1 Introduction

The concept of settlement of labour disputes under the law is essential, as ensuring effective settlement of disputes remains the objective of the law. This chapter is focused on the conceptual clarification of key terms as it relates to collective bargaining, concept of labour dispute in Nigeria, parties to trade disputes, subject matter of trade dispute, Types of trade dispute, Importance of collective bargaining, Collective Bargaining and other similar methods of settling

2.2 Concept of Collective Bargaining

Collective Bargaining involves a process of consultation and negotiation of terms and conditions of employment between employers and workers, usually through their representatives. It involves the situation where the workers union or representatives meets, with the employer or representatives of employer in an atmosphere of mutual cooperation and respect to deliberate and reach agreement on the demands of worker concerning certain improvements in the terms and conditions of employment. Section 91 of the Labour Act[1]defines collective agreement as the process of arriving or attempting to arrive at a collective agreement.

However, the term 'collective bargaining' was coined in the 18th century to two British historian of British Labour Movement to describe the bilateral negotiation process which was later to develop at the close of the 19th century between Labour and Management.[2]

[1]. Labour Act, Cap.L1, The Laws of the Federation of Nigeria, 2004.
[2]. Idubor, Richard, (1999) *Employment and Trade Disputes Law in Nigeria*, Sylva publishers Ltd., Akure, Benin City and Lagos p.168.

Some union members most times regard union or group demands as final not subject to the spirit of give and take which is characterized by negotiation in the collective bargaining. Employees who might not necessarily belong to any union may approach the employer with "take it or we strike" package of demands.[3] The employer may also in his response take such matter personal or as affairs between him and each individual worker.

The employer may in this same light ignore the demand and damned the consequences therein especially because he could easily replace them with fresh workers. But as industries expanded with corresponding increase in workforce and use of special skills, it became difficult at a given time to replace such mass dismissed workers in the skilled trade.[4] In Britain, for instance, the government came to the protection of the employers with the enactment of the combinations Act of 1799, which made it an offence, punishable with three months imprisonment, for any person who joined another to obtain increase in wages or reduction in hours of work.[5]In Nigeria, Section 18 of the Trade Disputes Act[6] provides that a worker shall not take part in a strike where any of the circumstances in the section exist. Section 30 of the Trade Union(Amendment) Act 2005, also disallowed a person, trade union or employee from taking part in a strike or lock-out except in the conditions provided in section30(a-e)[7] exist.

Even after the Combination Act was repealed in 1824, many workers were as a result unwilling to join trade unions which lacked cohesion, stability and authority to negotiate binding agreements. The emergence, however of skilled craftsman in such trade as Engineering, Woodworking and painting, made it difficult for such employers to ignore the worker's

[3]. Ibid.
[4]. Idubor, Richard, Op.cit.
[5]. Ibid.
[6]. Trade Disputes Act, Op.cit.
[7]. Trade Union (Amendment)Act 2005

demands. It was in this skilled trade that effective unions first emerged on a permanent basis. The stage was then for the development of collective bargaining.

The first recorded collective bargaining was in Philadelphia in the United States of America in 1789 when the Journeymen Cordwainers were locked out by their employers for refusing cuts in wages. The Journeymen had to sue for peace and present an offer of compromise. This led to the idea of a committee of employers and that of workers. A collective agreement was reached by striking a balance below the worker's offer and above the proposed cuts of the employers.

2.2.1 Collective Bargaining

Collective Bargaining is a process of negotiation on terms and conditions of employment between employers and workers.[8] Collective bargaining is also defined as the process of arriving or attempting to arrive at a collective agreement.[9]

According to Davey[10] collective bargaining: Is Constitutional relationship between an employer entity (government or private) and labour organization (union or association) representing exclusively, a defined group or employee of said employer(appropriate bargaining unit) concerned with the negotiation, administration, interpretation and enforcement or written agreement covering Joint Understanding as to wages or salaries, rate of pay; hours of work and other conditions of employment.

[8]. Okene, O.V., Op.cit.p. 62; Section 91 of the Labour Act, Cap.L1, the Laws of the Federation of Nigeria, 2004.
[9]. Okene, O.V. *Ibid.,* p. 73.
[10]. Davey, H.W. (1972) *Contemporary Collective Bargaining* 3rd Ed., Englewood Cliff, New Jesey. p.64.

The term "collective bargaining" extends to all negotiations which take place between an employer, a group of employers or one or more employer's organization, on the one hand, and one or more workers organization on the other, for:[11]

a. Determining working conditions and terms of employment, and/or
b. Regulating relations between employers and workers and/or
c. Regulating relations between employers or their organization and a workers' organization or workers organizations.

It has been expressed[12] that no Nigerian legislation clearly defined the term "collective bargaining" Section 48 of the Trade Disputes Act and National Industrial Court Act (NICA) only defined Collective Agreement.[13] Judging from the above definitions, it would seem that if Nigerian legislature had defined "collective bargaining" it would have been similar to the above definition, or could be identical with Article 2 of the ILO Convention 154 which provides thus:

> *The term Collective Bargaining extends to an employer, a group of employers or one or more employer's organizations, on the one hand, and one or more workers' organizations on the other, for (a) determining working conditions and terms of employment; and or (b) regulating relations between employer or their organizations and a workers' organization or workers' organizations.*

It must be added as the correct position however, that although not elaborate, the Labour Act,[14] in section 91 defines "collective bargaining" as: "The process of arriving or attempting to arrive at a collective agreement."

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[11]. Idubor, Richard, *Op.cit.p.170*.
[12]. Ibid.
[13]. Agomo, C., (2010) *Legal Protection of Human Rights of workers in Nigeria: Regulatory Changes, and Challenges, in Human Rights at Work. Hart* publishing Ltd., 16c Worcester Place, Oxford, United Kingdom, p.292.
[14]. Labour Act, Op.cit.

Deduced from the definitions above, the object of collective bargaining is to reach agreement on the following:

i. Wages and wages rates including overtime, piece rates, shift work, increment and promotions.
ii. Grading and classification of jobs.
iii. Hours of work, annual leave, sick leave, maternity leave etc.
iv. Allowances-leave, rent, transport.
v. Uniforms, tools, overalls.
vi. Safety and help equipment and protective gadgets.

According to Odigie,[15] collective bargaining has four stages. In the first place, the organization for bargaining must be established. Where there is no union, the organization can be a group of workers. The second stage is the formulation of demands (and the working out of the limit to concessions to be made) intended to change or introduce new terms or conditions of employment, usually from union side. Third stage is the most dramatic and the most widely publicized phase, which is known as the actual negotiation, while the fourth stage is the administration of the agreement reached.

2.2.2 Collective Agreement

According to the Black's Law Dictionary[16] Collective Agreement is defined as "a contract between an employer and Labour Union regulating employment conditions, Wages, benefits, and grievances"

[15]. Odigie, S.A., (1993) *State Intervention in Industrial Relations in Nigeria*, Exco-sivo press, Warri, p.91.
[16] .Garner, B.A. (2004) *Black's Law Dictionary,* Thomson Business 610 Opperman Drive, St. Paul, United State of America, 8th Edition p.280.

However, by Section 48 of the Trade Disputes Act[17] collective Agreement is defined as:

> any agreement in writing for the settlement of disputes and relating to the terms of employment and physical conditions of work concluded between an employer, a group of employers or organizations representing workers, or the duly appointed representative of any body of workers, on the one hand; and one or more of trade unions or organizations representing workers, or the duly appointed representatives of any body of workers, on the other hand;

Similarly, Section 54 of the National Industrial Court Act[18] defines Collective Agreement as:

> Any agreement in writing regarding working conditions and terms of employment concluded between –
>
> a) an organization of employers or an organization representing employers (or an association of such organisation), of the one part, and
> b) an organization of employees or an organization representing employees (or an association of such organisation), of the other part;

Section 90 of the Labour Act,[19] defines "collective bargaining" as the process of arriving or attempting to arrive at a collective agreement.

In examining the effect of collective agreement, it is deduced therein that non-payment of wages or the non-enforcement of collective agreements inter-alia pay wages mostly are the real causes of strikes in Nigeria.[20] Even where an agreement has been dully entered between the workers and the employer after bargaining, the workers may be constrained to embark in industrial action by the very fact of the failure on the part of the employer to honour and keep to the terms of the agreement. Hence the strike to compel an employer or employee to accept terms of employment

[17]. Trade Disputes Act, Op.cit.
[18] . National Industrial Court Act, 2006
[19]. Labour Act, Op.cit.
[20]. Okene, O.V.C., Op.cit p.61.

and physical condition of work ...[21] The court in the case of *Union Bank of Nigeria Limited vs. Edet*[22] noted that "Whenever an employer ignores or breaches a term of collective agreement, resort could only be had… to a strike action should the need arise and it will be appropriate"

However, the failure of the employer to honour collective agreement has led to several industrial actions. The workers were not happy that even after an agreement was entered into for the employer to pay their wages after negotiations the employer failed to keep to it.[23] The workers were forced to embark on strike action as they had no other alternative by which to achieve their "legitimate" claims whenever management refuses to honour their agreement.

Base on the above, it is crystal and obvious that collective bargaining is bedeviled with enormous challenges but its importance is yet to be fully tapped.

2.2.3 Importance of Collective Bargaining

Collective Bargaining includes not only negotiations between the employers and unions but also includes the process of resolving labour-management conflicts. Thus, Collective Bargaining is essentially a recognized way of creating a system of industrial jurisprudence, it act as a method of introducing civil rights in the industry, directing management to be conducted by rules rather than arbitrary decision making. It establishes rule which define and restrict the traditional authority exercised by the management.[24]

Importance of collective bargaining is classified into three (3), to the employees, employers and the society point of view as follows:

.[21]. Ibid.
[22] . (1993) 4NWLR (Pt.287) 288 at 291.
[23]. Ibid., p.62 .
[24]. Industrial relations.na ukrihub.com-- July 29, 2014-4:19pm.

a) Importance to Employees

1. Collective bargaining develops a sense of self respect and responsibility among the employees.
2. Collective bargaining increases the moral and productivity of employees.
3. It restricts management's freedom for arbitrary action against the employees, moreover, unilateral actions by the employer is also discouraged.
4. Effective collective bargaining machinery strengthens the trade unions matters and bargain for higher benefits.
5. It helps in securing a prompt and fair settlement of grievances.
6. It also provide a flexible means for the adjustment of wages and employment conditions to economic and technological changes in the industry, as a result of which the chances for conflicts are reduced.[25]

b) Importance to Employers

1. It becomes easier for the management to resolve issues at the bargaining level rather than taking complaints of individual workers.
2. Collective bargaining tends to promote a sense of job security among employees and thereby tends to reduce the cost of labour turnover to management.
3. Collective bargaining opens up the channel of communication between the workers and the management and increases workers participation in decision making.
4. Collective bargaining plays a vital role in settling and preventing industrial disputes.[26]

[25]. Ibid.
[26]. Ibid.

c) Importance to Society

1. Collective bargaining leads to industrial peace in the country, which result in establishment of a harmonious industrial climate that supports and helps the pace of a nation's effort for wealth creation and social development since the obstacles to such a development can be reduced considerably.
2. The discrimination and exploitation of workers is constantly being checked.
3. It provides the method or the regulation of the conditions of employment of those who are directly concerned about them.[27]
4. Collective bargaining serves as a process of negotiation on a whole range of issue bordering on the regulation of the terms and conditions of employment between workers and employer or government, aimed collective agreement.
5. Collective bargaining is seen as the most rational process of determining and reviewing the terms and conditions of employment. The process manifests the power relationship, between the employers and government.
6. Effective Collective bargaining results to a strong stable well focused and democratically run unions, expand the scope of collective bargaining and strengthen industrial democracy.[28]

However, in appreciating the above importance of effective Collective bargaining, the Nigeria Labour Congress (NLC) is expected to discharge the following role in ensuring effective Collective bargaining;

1. To provide supporting data for negotiation through research.

[27]. Ibid.
[28]. www.nlc ng.org -- July 29, 2014-4:19pm.

2. To continually review the national minimum wage and ensuring that its negotiation involves broader consultations with all stake holders.

3. Influencing labour legislation is also, expected of the NLC.

4. Ensuring acceptance of collective agreement in all sectors of the economy.

5. Intervening in industrial disputes with the aim of strengthening its affiliates.

6. Ensuring an enhanced bargaining capacity of affiliates and adequate protection for negotiators against possible victimization.

7. And finally, to ensure that collective bargaining take into account the need to protect industry and work organization.[29]

2.3 Collective Bargaining and other similar methods of settling Labour Disputes

The current legal framework for the settlement of trade disputes is contained in the Trade Disputes Act 1976 (as amended),[30] the Trade Disputes (Essential Services) Act 1976[31] and the National Industrial Court Act 2006. The legal framework established by the provision of Sections 1, 3, and 4 of the Trade Disputes Act ostensibly recognizes the principle of free collective bargaining and voluntary settlement in trade disputes, also extended to other means of settlement of labour disputes as follows;

2.3.1 Mediation

Mediation under the Act is still part of the voluntary mode of settlement of trade disputes. According to Section 4(2) of the Trade Disputes Act, if an attempt to settle the dispute by the

[29]. Ibid.
[30]. Cap.T8 L.F.N., 2004.
[31]. Cap.T9 L.F.N., 2004.

parties themselves as provided in Section 1 fails, or where there is no dispute settlement agreement in existence, the parties are to meet within seven days of the failure to settle the dispute under the presidency of a mediator. The Mediator must be a person mutually agreed upon and appointed by the parties.

These stages can only takeoff where the parties have unsuccessfully used their own process as predetermined by them, or where there is no such agreement in existence. There is a seven-day window period within which to settle the dispute. The calculation of the seven days begins from the date of the failure to reach a settlement, or from the date when the dispute arises, or is first apprehended, where there is no prior dispute settlement agreement.[32]

The parties to the dispute have seven (7) days to settle the dispute through Mediation,[33] and must be reported to the Minister in writing highlighting points of disagreement, and describing steps taken in the attempt to settle the dispute. This report had to be made within three days of the seven days of parties' failure to reach an agreement. Mediation marks the end of voluntary mechanism under the Trade Disputes Act**.** Mediation can be very effective and useful mechanism for the settlement of trade disputes. It combines the characteristics of friendliness, speed, with no victor and vanquished.[34]

2.3.2 Conciliation

The Trade Disputes Act, in Section 7, gives the Minister of Labour and Productivity the power to intervene in an industrial dispute, existing, or apprehend disputes, with the object of promoting settlement by reconciliation. If the Minister is not satisfied with the step taken under Section 4

[32]. Kanu, C. A., Op.cit., p.313.
[33]. Ibid.
[34]. Ibid.

and 6 of the Trade Disputes Act. One of the options is to ask the parties to repeat the process of voluntary settlement and mediation, but after the time slated for settlement has expired and there is no settlement, the Minister may then proceed to exercise any of the powers conferred on him in Section 8, 9, 17 and 33 of the Trade Disputes Act. Section 8 provides for the appointment of a Conciliator by the Minister. This is in one's opinion, the beginning of the compulsory mechanisms for the settlement of trade disputes.[35]

Prior to the enactment of the Act of 1976 the practice was for the Chairman of the conciliation panel to be "mutually agreed." Such a conciliator was to be appointed at the request of either the employers or the workers. But under the new statute, the disputants are given no role to play in the matter.[36]The great defect in this process is that the parties or any of them may refuse to cooperate with a conciliator because there is no legal compulsion to cooperate or even give the conciliator encouragement of a possible settlement.

Thus, a conciliator's effort may turn to be a waste of time and expense.[37]The qualification for an appointment is that the conciliator must be "a fit person". The person so appointed shall inquire into the causes and the circumstances of the dispute and by negotiation with the parties endeavour to bring about a settlement. See Section 8(2) of the Trade Disputes Act 2004. A memorandum of the term of the settlement signed by the representatives of the parties is to be sent to the minister if the parties are able to reach a settlement within seven days of the

[35]. Ibid.
[36]. Akitunde, Emiola, Op.cit. p.219.
[37]. Ibid

appointment of the conciliator.[38]It is a criminal offence for any of the parties to act in a manner inconsistent with the terms of settlement.[39]

2.3.3 Arbitration and Industrial Arbitration Panel (IAP)

According to Section 9 of the Trade Dispute Act, it provides for the reference of a dispute to Industrial Arbitration Panel (IAP) by the Minister, within 14(fourteen) days of the receipt of a report under Section 6. Under the Act, where a trade dispute occurs between employer and workers, effort must be made through the existing negotiating machinery to settle such a dispute at a meeting between both parties; If there is failure to reach to an agreement, the matter is reported to the Minister of Labour and Productivity, who, in certain specified cases, may appoint a conciliator. If conciliation fails, the minister of labour and productivity is required to refer the dispute within 14 (fourteen) days, to the Industrial Arbitration Panel for settlement.[40]

When a matter is referred to the IAP by the minister, the chairman sets up an arbitration tribunal in accordance with the provision of Section 9(4) (a)-(c) the Trade Disputes Act[41]

Parties to a dispute do not have direct access to the IAP. It is the prerogative of the Minister to decide when to refer a matter to the IAP. An award of an arbitration tribunal is not made in the open tribunal, rather, it is sent to the Minister under Section 13 of the Act. The minister then informs the parties of the award and gives them the opportunity to accept or object to the award. An objection to any part of the award constitutes a fresh dispute.[42]

[38]. Kanu, C. A., Op.cit. p.314.
[39]. Ibid., Section 8 (4) of the Trade Disputes Act 2004).
[40]. Oladosu, Ogunniyi Op.cit., p.292.
[41]. Kanu, C. A., Op.cit., p.315.
[42]. Ibid.

The minister also may decide in accordance with Section 13(3) of the Act, to send an award back to the tribunal for reconsideration. This is part of the inbuilt bottleneck that is capable of slowing down the process. The final stage is the publication of the award by the minister in the Federal Gazette. The publication of the award gives it a legal backing and makes it binding on the parties to whom the award relates.[43]The jurisdiction of the IAP is restricted to trade dispute.[44]

2.3.4 National Industrial Court

National Industrial Court as another body for the settlement of industrial disputes was established in 1976 by Decree No.7 of the Federal Republic of Nigeria1976 and by the Trade Disputes Act. In Sections 20 and 21 of Trade Dispute Act[45], this mechanism is considered and is exhaustively discussed below.

2.4 Concept of Labour Dispute in Nigeria

The term **Labour Disputes** according to the Black's Law Dictionary is "a controversy between an employer and its employees concerning the terms or conditions of employment of those who negotiate or seek to negotiate the terms or conditions of employment."[46] For the purpose of this work, the term Labour Disputes is to be used interchangeably with "Trade Dispute" as both terms has been ascribed same meaning and interpretation herein;

According to Section 48 of the Trade Dispute Act[47] trade dispute "relates to any disputes between employers and workers or between workers and workers which is connected with the

[43]. Ibid.
[44] . Kanu, C. A., Op.cit., p.316.
[45]. Cap.T8, LFN., 2004.
[46]. Garner, B.A., (2004) *Black's Law Dictionary,* Thomson Business 610 Opperman Drive, St. Paul, United State of America, 8th Edition p.553.
[47] . Trade Disputes Act, Op.cit.

employment, non-employment or terms of employment and physical conditions of work of any person;"

Trade dispute also is defined by Farnham and Pimlott[48]as:

> All disputes arising out of terms and conditions of employment; engagements and non-engagements, suspension or termination of employment; allocation of work duties between workers or groups of employees; matters of discipline; membership or non-membership of trade unions; facilities for trade union official; trade union recognition; and disputes arising out of the machinery for negotiation or consultation and other agreed procedure.

In considering the above definitions, three (3) basic elements are discernable; the parties to a trade dispute, the subject matter of trade dispute, and its purpose.

In exploring the concept of "Trade Dispute" recourse is made in the case of *Chemical and Non-Metalic Product Senior Staff Association vs Benue Cement Company Plc.*[49]decided before the enactment of NIC Act 2006, the NIC held that a complaint by workers that legal deductions from their salaries, which are not remitted to the appropriate organs of government qualifies as a trade dispute under Section 48 of the Trade Disputes Act,[50] The National Industrial Court proceeded to make the distinction between the individual and group in collective employment disputes[51] The reasoning by court was hinged on the fact that jurisdiction conferred on this court was principally in respect of settling 'Trade Disputes', which term was defined as employment dispute between employees and employer(s) or between workers and workers. The court reasoned that because the definition of 'trade disputes' referred to workers in the plural, it must be read as excluding individual worker.

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[48] . Richard, Idubor, Op.cit. p.99.
[49]. (2005)2 NWLR (pt.6) 470-475.
[50]. Trade Disputes Act, Op.cit.
[51]. The phrase 'regular courts' is used to denote the High Court as distinct from the special character of the NIC regarding the resolutions of Labour Disputes.

Uvieghara however shared this view, to him "because the Interpretation Act[52] in Section 14(b) provides that words in the singular includes the plural, and words in the plural includes the singular, individual employment disputes necessarily comes within the purview of the jurisdiction of the NIC."[53] As pointed out by Hon. Justice Benedict Bakwaph Kanyip.[54] That given the jurisdiction of the NIC under Section 7 of the NIC Act 2006, is now subject based. The debate may be purely within any of the items listed under the said section, whether the dispute is individual or collective.

NURTW vs. Ogbodo,[55]*Attorney General of Oyo State vs. Nigeria Labour Congress Oyo State Chapter*,[56]*BPE vs. National Union of Electricity Employees (NUEE)* in seeking to clarify the term 'trade dispute' simply broke it into ingredients (where 'trade' was defined separate from 'dispute'); and in the process, not stressing the fact that the term 'trade dispute' is a term of art in labour/industrial relations laws[57]

Disputes relating to the conclusion and variation of collective agreement and an alleged dispute did not feature under Section 48(1) of the Trade Disputes Act in definition of the term 'trade dispute', neither did disputes in relation to federations of 'employers' or 'employees' organizations. Section 53 of the Trade Union (Amendment) Act[58]defines a trade dispute also as; "…any dispute between employers and workers or between workers and workers, which is connected with the employment and non-employment or terms of employment or condition of work of any person."

[52]. Cap.123, L.F.N., 2004.
[53]. Nicn.gov.ng/k2.php-16/07/2014-6:24pm.
[54]. Ibid.
[55]. (1998) 2NWLR (Pt.537) 189,
[56]. (2003) 8NWLR 1.
[57]. Simpson, R.C. (1977) "Trade Dispute in British Labour Law" p.40.
[58]. Trade Union (Amendment)Act, 2005

From the above definitions, for dispute to be regarded as trade dispute, it must;

a. Be a dispute between employers and workers or between workers and workers (i.e. the parties to the dispute), and
b. Connected with employment, or non-employment matter or terms of employment or condition of employment (the subject matter; nature and purpose).[59]

2.4.1 Types of Trade Disputes

According to the International Labour Organization (ILO)[60] to which Nigeria is a member has graded trade disputes into three basic categories, namely; 'Grievance Dispute', 'Recognition Dispute' and 'Dispute of Interest.'

1. Grievance Dispute: These disputes are disputes which arise from day to day workers' complaints or grievance and are also referred to as "Conflict of Rights Disputes" or "Legal Disputes." or "interpretation disputes" The nomenclature describes the nature of the issues involved. These disputes usually arise as a protest by the worker or workers concerned against action or inaction of management.

   The workers grievances are usually based on alleged violation of an existing right or an alleged unfair treatment by the management as adjudged by certain rules. Under the category of grievance dispute management may undertake to discriminate against workers because of their union membership or activities.[61]

[59]. Oladosu, Okunniyi, (1991) Nigeria *Labour and Employment Law*, Folio Associates Limited, 7 Henry Carr. Street, Ikeja, lagos. p.281
[60].ILO, "Conciliation in Industrial Disputes; A Practical Guide" Geneva (1973)p.14-17
[61]. Ibid.

2. Recognition Disputes or Disputes of Recognition: This dispute may arise when the management refuses to recognize a trade union for purpose of collective bargaining. The reason usually is that management dislike trade unionism and will not have anything to do with a trade union, or that the union requesting recognition is not sufficient representative or there are several unions in the undertaking making conflicting claims to recognition. This category of dispute used to be associated with serious problem when voluntarism in the formation, registration and recognition to trade unionism was fully in place in Nigeria.[62]
3. Dispute of Interest: 'Dispute of interest' and sometimes called 'collective labour' involved different dispute relating to the determination of new terms and conditions of employment, in most cases originating from trade union demands or proposals concerning the improvement of wages, fringe benefits, job securities or other terms and conditions of employment, and most often arises in connection with the negotiation of collective agreements, such a dispute arises if a request to negotiate is refused or if in the course of their negotiation the parties fails to reach agreement on the outstanding issues.[63]

However, since there are generally no mutually binding mode that can be relied upon to arrive at a settlement of interest dispute, recourse must be had to bargaining power, compromise and sometimes a test of economic strength for the parties to reach an agreed solution, this type of dispute lead itself best to conciliation as a method to assist in settlement.

In some cases however, The parties to such a dispute agreed to submit it to binding arbitration, while in a number of countries legislations has empowered the competent authorities to refer

[62]. Ibid., 107.
[63]. Ibid.

certain interest to binding arbitration particularly in the case of disputes in essential services or disputes that if continued are likely to have an adverse effect on National health or security.[64]

In Nigeria, the parties to an unending interest disputes and the like are coerced by the provisions of the Law[65] to submit to conciliation, and the arbitration machinery involving the industrial Arbitration Tribunal and the National Industrial Court are left with the action.

2.4.2 Parties to Trade Disputes

For a trade dispute to be within the statutory provision, there must be worker on one or both sides of the dispute. It must be a dispute between workers and their employer or their representatives. Section 48 of the Trade Dispute Act,[66] defines a worker as;

> Any employee, that is to say any public officer or any individual (other than a public officer) who has entered into or works under a contract with an employer, whether the contract is for manual labour, clerical work or otherwise, expressed or implied or written, or whether it is a contract of apprenticeship.[67]

By Section 43(1) (c) and (d) of the Trade Unions (Amendment) Act,[68] it is apparent that a worker in respect of whom a dispute arises need not be in the employer's business. Section 43(1) (c) says; An act by a person in contemplation or furtherance of a Trade Dispute shall not be actionable in Tort on the grounds only…that it consist in his threatening that a contract of employment (whether one to which is a party or not) will be broken; or (d) That it consist in his threatening that he will induce some other person to break a contract of employment to which that other party is a party.[69]

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64. Ibid.
65. Combined effect of Sections 4, 6, 9, 16 and 17 of the Trade Disputes Act, Cap.T8, LFN., 2004.
66. Trade Dispute Act, Op.cit.
67. Idubor, Richard, Op.cit., p.101.
68. 2005
69. Section 43 (1) (c) and (d) of the Trade Unions (Amendment) Act, 2005; Oladosu, Op.cit., p.291.

2.4.3 Subject Matter of Trade Disputes

Section 48 of the Trade Dispute Act,[70] raises three issues as follows:

a) Employment or non-employment,

b) Terms of employment, or

c) Conditions of work.[71]

a. The employment or non-employment of a person: A dispute connected with the question, whether a worker may be employed, or continue in employment surely is a dispute connected with employment or non-employment of a person.

b. Terms of Employment: This would normally cover express or implied terms in a contract concerning wages, hours of work, holidays with pay, sickness benefits, grading and promotion, and mode of dismissal. Terms of employment would include not only existing terms or rights but also revised or negotiated future rights. This may also include dispute over an agreement of workers not to join a trade union, or the interpretation of the terms of a collective agreement.

Condition of work as a subject matter of Trade Dispute: The phrase has not been judicially interpreted even though a trade dispute may also arise from the conditions of work of workmen.

Conclusion

Collective bargaining which is viewed as a concept of settlement of labour disputes, in Section 91 of the Labour Act[72] is a process of arriving or attempting to arrive at a collective agreement. This chapter in the bid to define collective bargaining, distilled the following features as what

[70]. Cap.T8, LFN., 2004.
[71]. Idubor, Richard, Op.cit., p.103.
[72]. Cap.L1, The Laws of the Federation of Nigeria, 2004

every collective bargaining must picture; a) determination of working conditions and terms of employment, b) regulating relations between employers and workers, c) regulating relations between employers or their organization and a workers organization(s)

Collective bargaining also envisaged the following as parties; a) an organization of workers or an organization representing workers of the one part, and b) an organization of employers or an organization representing employers of the other part. The importance of collective bargaining was not left in this chapter as it viewed its importance to the employees point of view, employers point of view and the society point view. Knowing these areas of importance positions one on a better pedestal.

CHAPTER THREE

3.0 LEGAL AND INSTITUTIONAL FRAMEWORK OF THE PROCESS OF COLLECTIVE BARGAINING

3.1 Introduction

The current legal framework for the settlement of trade disputes is contained in the Trade Disputes Act 1976 as amended,[1] the Trade Disputes (Essential Services) Act 1976[2] and the National Industrial Court Act 2006.The legal framework established by the provision of Sections 1, 3, and 4 of the Trade Disputes Act ostensibly recognizes the principle of free collective bargaining and voluntary settlement of trade disputes.

3.2 Processes of Collective Bargaining –Trends

International Labour Organization (ILO) Standard on Collective Bargaining

The International Labour Organization is the pre-eminent authority on international labour standards.[3] The International Labour Organization (ILO) Convention No.98 enjoins members of the organization to take measures appropriate to national conditions where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employees' organizations, with a view to regulate the terms and conditions of employment by means of collective agreements.[4]

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1. Cap.T8 L.F.N., 2004.
2. Cap.T9 L.F.N., 2004.
3. Okene, O.V.C., Ibid., p.42.
4. Uveghara, E.E., Op.cit. p.388

The solemn obligation of the international labour organization is to further among the nations of the world programs which will achieve …the effective recognition of the right of collective bargaining.[5]

As to the sources of labour, the basic law is the Constitution[6]which was promulgated by the Constitution of the Federal Republic of Nigeria (promulgation)[7]. It came into force on 29 May, 1999. Section 1(3) states that it provisions shall be supreme.[8]Section 12(I) of the Constitution[9] provides that "*No treaty between Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly".*

Nigeria has ratified 38 ILO Conventions.[10] It is also interesting to note that the provisions of many ILO countries have become part of domestic legislation by the inclusion of the contents of these conventions into the text of the local legislation. The Labour Act is a very good example of national legislation that incorporates various ILO provisions without explicitly saying so.[11]

The role of the ILO in the promotion of collective bargaining was acknowledged as follows: "The solemn obligation of the International Labour Organization is to further among the nations of the World programmes which will achieve (…) the effective recognition of the right of

[5]. ILO Constitution of the International Labour Organization and standing Orders of the International Labour Conference (Geneva,1998) pp.23-24.
[6]. Constitution of the Federal Republic of Nigeria 1999 (as amended)
[7].Constitution of the Federal Republic of Nigeria (promulgation)Decree 1999.
[8]. S. 1 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
[9]. Ibid.
[10]. It includes No. 87 on Freedom of Association, No. 98 on the Right to Organise and Collective Bargaining, No. 100 on Equal Remuneration, No. 111 on Employment Discrimination, No. 138 on Minimum Age, No. 155 on Occupational Safety and Health, and No. 182 on Elimination of the worst forms of child labour.
[11]. Agomo, C., *Legal Protection of Human Rights of workers in Nigeria: Regulatory Changes, and Challenges, in Human Rights at Work.* Hart publishing Ltd., 16c Worcester Place, Oxford, United Kingdom (2010) p.240.

collective bargaining."[12] This convention established the right of all workers to form and join organizations of their own choosing, and set out modalities for workers' organizations to function independently of government control.

Furthermore, ILO convention[13] on the Right to Organize a Collective Bargaining protects workers against acts of anti-union discrimination in respect of their employment.[14] The workers' organizations are also protected against interference by other organizations and by employers in their establishment, functioning and administration. In addition, the convention provides for the obligation to establish machinery appropriate to national conditions, where necessary to ensure respect for the right to organize and encourage the full development and utilization of the machinery for collective bargaining.[15] Nigeria on 17th October, 1960 ratified[16] the ILO Convention 98 on the right to organize a collective bargaining which was adopted in 1949 being the main source of workers right to collective bargaining.[17]

The ILO has consistently considered freedom of association and the right to collective bargaining to be among the core rights that are at the heart of ILO's mission.[18] In June, 1998 the ILO adopted the declaration on fundamental principles and Rights at work. The declaration embodies the principles of eight fundamental conventions and all member states are required to observe these principles regardless of ratification, as a condition of membership. As stated in the declaration

[12]. ILO: Constitution of the International Labour Organization and standing orders of the International Labour Conference. Geneva (1998) p.23-24.
[13]. ILO convention No.98 (1949)
[14]. Okene, O.V.C., Op.*cit.,*p.66.
[15]. Ibid.
[16]. Uveghara, E.E. Op.cit.
[17]. Okene, O.V.C., Op.cit.
[18]. Ibid

> all members even if they have not ratified the (Fundamental) conventions, have an obligation arising from the very fact of membership in the organization, to respect, promote and realize, in good faith and in accordance with the constitution, the principle concerning the fundamental rights which are the subject of those(Fundamental) Convention.[19]

The principles referred to in the declaration includes freedom of association, recognition of the right to collective bargaining, the elimination of forced and compulsory labour, the effective abolition of child labour and equal remuneration an elimination of discrimination in occupation and employment.

However, the concept of working condition used by the ILO supervisory bodies is not limited to traditional working conditions, such as promotions, transfers, dismissal without notice. The ILO convention No.98 imposes an obligation on member states to take appropriate legislative measures to ensure that the right to collective bargaining as contained in the collective bargaining convention No. 154 which defines collective bargaining as extending to the following observed:

> All negotiations which take place between an employer, a group of employers or one or more employers' organizations on the one hand, and one or more workers' organization on the other, for-
>
> A. Determining working conditions and terms of employment and or
>
> B. Regulating relations between employers and workers and or
>
> C. Regulating relations between employers or their organizations and workers or workers organizations.

[19]. Ibid.

It is submitted that Nigeria is in breach of ILO standards for failing to allow workers in the public sector to bargain at an appropriate level.[20]In line with the position above, the ILO has established International Human Rights Standards which enshrine workers' right to free and voluntary collective bargaining.

For example the level of collective bargaining is not free from administrative interference, no clear cut mechanism for trade union recognition for the purpose of conducting collective bargaining, restriction on the subject matter of bargaining as the scope of negotiable issues are restricted, public sector workers are never allowed to bargain, collective agreement are not enforceable, there are restrictions on the right to strike.

Labour standard has become the subject of international rules through bodies such as ILO. Such standards are an increasing element of the global economy of which Nigeria is a part. One must hope that Nigeria will translate the ILO inspired standard on collective bargaining into Nigeria leadership of African union and its important role and status as a member of the governing body of the International Labour Organization.

It must be expected to show a very positive example in all spheres of respect for global labour standards, especially the right to collective bargaining.

Status of Collective Agreement

The legal statuses of collective agreement are doubtful and at best a gentleman's agreement. It is extra-legal, devoid of sanctions, a product of trade unionists pressure.[21]

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[20]. Ibid., p.88.
[21]. *Bertram B. Nwajagu vs. British American Insurance company (Nigeria) Limited (2000) 14NWLR (pt.687)* p.356; *ACB.Plc. vs. Nbisike (1995)8NWLR (pt.416)725; Nigeria –Arab Bank Ltd. vs. Shuaibu (1991)4NWLR (pt.186)p.363*

The court has in different occasion held that there is no legal compulsion on either the employee or the employer to enter into collective agreement except in the case of certain public boards or corporations. They are not intended to create legal relations. This means that collective agreements are binding in honour only.[22]

3.3 Impact of Collective Bargaining on settlement of Labour Disputes

3.3.1 Factors that affect Collective Bargaining in resolving Labour Disputes in Nigeria

1. The first issue affecting effective collective bargaining is the act of the unilateral determination of the salary and other employment conditions of public sector employees in many developing and industrialized countries.[23]The practice of using the ad hoc commissions system on public sector workers is also contrary to the often repeated government policy of encouraging collective bargaining. Indeed, this practice has been criticized for the negative impact it has on the development of collective bargaining and the Nigerian economy in general.[24]

   According to Fashoyin,[25]Undoubtedly, the most damaging blow to the principle of collective bargaining is the use of a semi-political method of wage determination through special commissions or tribunals. This method which at best can be described as paternalistic in nature arose outside the known policy on labour relations. This is because the declared official stance of government on wage determination through collective

[22]. *Bertram B. Nwajagu vs. British American Insurance company (Nigeria) Limited. Ibid*
[23]. Ozaki, M. (1987) Labour *Relations in the Public Sector: Method of Determining Employment conditions,* 126 International Labour Review, p.286.
[24]. Okene, O.V., Op.cit., p.92.
[25]. Fashoyin, T. (1987) *Collective Bargaining in the Public Sector: Retrospective and Prospects,* Lagos, Macmillan Nigeria, p.5.

bargaining bears no semblance to the wage determination system. The above provision has contributed immensely to the unfavourable state of Labour relation in Nigeria today.

2. Non observance of collective agreement which is the by-product of collective bargaining. This is as a result of the common law rule that collective agreements are generally unenforceable and is now in operation in Nigeria.[26] Now Section 3(1) of the Trade Disputes Act[27] provides that where there is a collective agreement for the settlement of a trade dispute, the parties are to deposit three (3) copies of the agreement with the Minister of Labour, once this is done, the minister has discretion to make an order specifying that the agreement or portions thereof shall be binding on the employers and workers to whom they relate. This discretion is subject to abuse given that the Minister could refuse to make an order in the exercise of his discretionary powers.

   Indeed, the minister will never make such an order especially where the interest of the government whom he represents will be affected by the order which he makes and without the enforceability of collective agreements, collective bargaining cannot be effective.

   The ILO has queried the Nigerian practice of subjecting collective agreements to ministerial approval before it can become binding on the parties.[28]

3. Another root cause or factor affecting collective bargaining is the arrogance and intransigence on the part of workers representatives, ignorance of the law, worsened by

[26]. *Union Bank of Nigeria vs. Edet* (1993)4NWLR (Pt.287)288.
[27]. Trade Disputes Act, Cap.T8, LFN. 2004.
[28]. Okene, O.V.C., Op.cit., p.98.

tactlessness in approach to labour relations matters, precipitate and ignite industrial conflicts.

3.4 Challenges of Implementing Collective Bargaining Agreements

3.4.1 The role of labour organizations in promoting and developing labour relations for national development via collective bargaining.

a. On 1st January, 2012 the Federal Government of Nigeria increased the pump price of petrol from N65.00 to N138.00. On 9th January,2012 the Nigeria Labour Congress(NLC), Trade Union Congress(TUC), Civil Society Organization and other professional bodies claim to have constitutional right, embarked on a nationwide strike, protest and demonstration across the states of the federation of Nigeria neglecting an order of interim injunction at NIC sitting in Abuja On Friday 6th January, 2012 obtained by the Federal Government through its Attorney General and Minister of justice restraining the NLC.,TUC., and their agents from embarking on the planned strike in the interest of peace, National security and stability of the country. This disputes which was finally resolved by reduction of the fuel price to N97.00 (Ninety Seven Naira) resulted to closure of economic activities, violation of freedom of movement of other citizen and occupation of the streets.[29]

b. On 1st July, 2013 the Academic Staff Union of Universities(ASUU) embarked on almost six(6) months strike which ended on 17th December, 2013. ASUU and the Federal Government were engaged in a battle over the ratification of an agreement reached in 2009 on conditions of service for universities lecturers, and funding of infrastructural

[29]. http://www.vanguardng.com/2012/02/fuel-subsidy-strike-20th August,2014-10:16am.

development in Nigeria Universities. Following the appointment of then Benue State Governor, Gabriel Suswan by the Federal Government to review the areas of conflict in the agreement and head the Government delegation while ASUU delegation was led by the Chairman Nasir Fagge, a meeting was held at the office of then Secretary General of the Federation, Senator Pius Anyim which ended in deadlock. Negotiation was ceded to then Vice President, Namadi Sambo after the former president Goodluck Ebele Jonathan reshuffled the Executive council of the Federation, the then minister of Education Prof. Rukayyatu Rufai was removed and Nyesome Wike was appointed supervising minister of Education. The inability of then Vice President, Namadi Sambo to resolve the strike led to the direct intervention of former President Goodluck Ebele Jonathan which after a thirteen hour meeting on 4th November, 2013 Federal Government agreed on some of the controversial issue, this also gave rise to the death of former ASUU president Festus Iyayi who was killed in a car crash on his way to Kano to participate in the union's National Executive Council meeting. Consequent upon the Federal Government announcement of payment of N200,000,000,000.00(Two Hundred Billion Naira) into a Central Bank account called Revitalization of Universities Infrastructure Account, Government and ASUU on 1 1th December,2013 finally reached a compromise during a negotiation brokered by the president of the Nigeria Labour Congress(NLC) Abdulwaheed Omar, which led to the signing of a MOU which contained the outcome of the ASUU meeting with President.[30]

c. After several tussle from 2013, agreement between the Nigerian Medical Association (NMA) and the Government broke down in June,2014 leading to an indefinite strike by

[30]. https//m.premiumtimesng.com/news…19th August,2014-4:40pm

the doctors, even when outbreak of the Ebola Virus Disease(EVD) provided an opportunity for the doctors to be rational and patriotic and call off the strike. The Government then suspended the residency training programme with the sack of about 16,000 medical doctors in the country. The NMA resentment with the government was for improved service, and that the Federal Government was giving in too much to the aspirations of the Joint Health Sector Union (JOHESU) to the detriment of the NMA. First attempt by the doctors and government to reach an agreement mediated by then Secretary to the Federal Government, Senator Anyim Pius Anyim, then Minister of Labour and Productivity, Chief Emeka Wogu collapsed midway. Subsequently, after 55 days and the intervention of the former Senate president David Mark, including the poor public rating of the NMA, the association called off the strike on 25th day of August, 2014.The resolution disclosed that the Federal Government shall pay two(2) months salary arrears to members of NMA on or before 31st August,2014 and balance of salary arrears reflected in the 2015 budget paid to members of NMA. That the new salary structure of medical doctors will be effective from January, 2015.

Ndudu Elumelu, then Chairman, House Committee on Health, stressed the need for the Federal Government and organized labour unions to honour various agreements reached in the bid to forestall future strike action and ensure industrial harmony in various sectors of the nation's economy.[31]

d. On 2nd August, 2014 Judiciary workers under the aegis of the Judicial Union of Nigeria (JUSUN) suspended their about three(3) weeks old strike. JUSUN demanded compliance with the judgment delivered by Justice Adeniyi Ademola of the Federal High

[31]. http://www.google.com...30th August,2014-3:10pm.

Court in Abuja wherein he ordered the Accountant General of the Federation to deduct the funds meant for the state judiciary directly from the consolidated revenue fund and pay it to the NJC for onward disbursement to various heads of Courts as provided by the constitution.

JUSUN suspended the strike after long hours of meeting between the union's leadership and then Minister of labour and productivity, Mr. Emeka Wogu, as well as other stakeholder in the Justice sector. The agreement indicates that JUSUN demand will be met in 45 days.

e. On 19th September, 2014 it was reported that the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and Nigeria Union of Petroleum and Natural Gas Workers (NUPENG) strike was challenging, as motorists and commuters in Abuja observed long queue of vehicles at various fuel station subjecting drivers in patronizing black marketers who made brisk business by selling 10 Liters of fuel for N2, 000.00 and N3, 000.00.

The strike which was as a result of Federal Government call for the abolition of casualisation of work in the oil and gas industry equally demanded an immediate passage of the Petroleum Industry Bill (PIB) by the National Assembly, and call Security Agents to investigate the brutal murder of one of their leaders Mr. Bakole Orasanya, a staff of Halliburton by unknown persons in Port Harcourt, Rivers State. In a bid to resolve the said dispute an ad hoc committee comprising members of NNPC, PENGASSAN, NUPENG, Department of Petroleum Resources

(DPR) to work out modalities and framework for sustaining NNPC Pension Scheme and Turn around Maintenance (TAM) of refineries.[32]

However the year 2013 was quite eventful with the academic staff union of Universities (ASUU) strike that lasted for six months. That was perhaps the longest strike in the history of the labour movement in Nigeria. However, the said strike inflicted serious setback on student academic calendar and as a result stalled the progress in the academic industry thereby affecting the economy of the country. In other to appreciate and ascertain the effectiveness or otherwise of the Federal ministry of labour and productivity in resolving dispute via collective bargaining, the following findings and data is generated from the Federal Ministry of Labour and productivity as follows.

[32]. Saharareporters.com/…/fuel-Scarcity 19th September,2014…5:14pm.

TABLE A:

The table below is the summary of cases handled via Collective Bargaining by the Ministry of Labour and productivity from 2004 to 2013:[33]

Year	No. of Disputes	Disputes Resolved	Disputes not Resolved	Pending Disputes
2004	23	17	6	-
2005	21	15	6	-
2006	29	18	11	-
2007	181	73	49	59
2008	122	41	22	59
2009	109	44	17	48
2010	72	15	42	15
2011	18	4	-	14
2012	23	5	1	17
2013	6	4	-	2
Total	604	236	154	214

[33] Ministry of Labour and productivity Record of disputes resolution via collective bargaining,2004 to 2013.

TABLE B:

The table below is the breakdown of names of parties, the subject matters and how each case from April, 2010 to 2013 was resolved:[34]

Date	Names of Parties	Subject of dispute	Resolution
January,2013	National Union of Teachers vs Bauchi State Government	a) Implementation of all outstanding Promotion. b) Implementation of all outstanding allowance to all primary school teachers. c) Payment of 1 month arrears of 27.5% to teachers.	Resolved via conciliation after embarking on strike.
March,2013	H. Otahaya vs Knightwood Properties	Nonpayment of entitlement.	Resolved via conciliation and the entitlement paid.
March,2013	Oladayo Oke vs Great Nigeria Insurance Company Plc.	Nonpayment of entitlements.	Entitlements paid after conciliation.
March,2013	Matthew Aguele vs Victoria Water Services.	Termination of appointment.	Management promised to pay Insurance entitlement as a

[34] Ministry of Labour and productivity Record of disputes resolution via collective bargaining,2012-2013.

			result of conciliation.
March,2013	Olufunke Adedayo vs Mutual Benefit Assurance.	Termination of appointment of Olufunke Adedayo.	Resolved via mediation.
March,2013	FLRPSSAN vs Michelin Tyre Services Company Limited.	Wrongful termination of appointment of Mr. Theodore shaleta	Resolution pending via conciliation.
January,2012	SEWUN/MEPROSA vs Aluminum Smelter Company Ltd Ikot Abasi.	Government unwillingness to renew expired collective agreement	Mediation
February,2012	JUSUN vs Kwara State Government.	Protest for the reinstatement of former chief justice of the State	Government intervened after embarking on strike.
February,2012	JORAISU vs Kwara State Government	None payment of members Arrears.	Government intervened after embarking on strike
February,2012	NISPRI vs Kwara State Government	None payment of members Arrears	Government intervened after embarking on strike
February,2012	MINICS vs Kwara State Government	None payment of members Arrears	Government intervened after

			embarking on strike
February,2012	NLC vs Federal Government of Nigeria	Removal of petrol subsidy	Government intervened after embarking on strike
February,2012	JUSUN vs Akwa Ibom State Government	Non implementation of the salary structure of the judiciary staff	Government intervened after embarking on strike
March,2012	JWAN vs Edo State Government.	Non payment of minimum wage	Government intervened after embarking on strike
March,2012	JHSU & A vs Imo State Government	1)Non implementation of CONHESS despite Agreement reached in court 2)To stop the policy of commercialization and privatization of the health sector.	Government intervened after embarking on strike
March,2012	Nigerian Union of Mine Workers vs Micatex	1) Non Unionisation of workers 2)Implementation of check off dues	Dispute resolved via mediation
March,2012	HAPSSA vs The Management of Le	Termination of the contract of	Dispute intervened

	Meidian Hotel & Golf Resort	Mr. Shola Atake of the Hotel	
March,2012	NUPENG vs Prime Leasing West African Limited	1)Non payment of the outstanding arrears. 2)Non implementation of pension fund 3)Deduction of union due	Dispute intervened
April,2012	Psychiatric Hospital USELU vs JAC	1)Appointment of substantive medical Director Dr. S.O. Olota 2)That the Acting M.D should be restored 3)The report of the panel of inquiry should be made public and implemented.	Dispute intervened after embarking on strike
April,2012	JPSNC vs Imo State Government	1)Transfer of workers on level 01-06 to 10 2)Commercialization of Imo state public service 3)Non funding of pension and gratuity 4)Promotion not practised	Dispute intervened after embarking on strike
April,2012	NUPENG vs Olgette Project Limited	1)Non Recognition of the union by the Management of Olgette Project Limited	Dispute intervened. The union was

		2)Sacking of staff due to union activities	recognized and the sacked staff restored.
April,2012	NUATE vs IADC	Refusal to unionise members of IADC by NUATE	Dispute intervened.
April,2012	NULGE vs Plateau State Government	Non implementation of the N18,000 minimum wage	Union resort to strike while observing mediation
August,2012	CCESSA & NUCECFWW vs ABB Powerline Limited	1)Outstanding Union dues 2)Owed salaries 3)Benefits of disengaged workers 4)Deducted pension of staff not remitted to the PFA	Dispute resolved via Conciliation
October,2012	AUPCTR vs Edo State Government	Non payment of salaries to the staff of Edo Transport Company since Nov.,2009	Closure of company while conciliation is pending
October,2012	MHWU vs Akwa Ibom State Government	Non implementation of CONHESS	Dispute resolved
October,2012	PENGASSAN vs Universal Energy	Breakdown of the negotiation of the Collective Bargaining	Disputes resolved via conciliation

	Resources Ltd	Agreement from the workers.	
November,2012	Prime Leasing West African Limited vs NUPENG	1).Provision of Medical care 2)Pension Scheme for the workers 3)Remittance of Tax deducted to Government 4)Group insurance policy for workers 5)Provision of pay slip to workers 6)Collective Bargaining Agreement for workers.	Resorted to conciliation
December,2012	NASU vs Federal Government of Nigeria	Federal Government failure to honour agreement on Allowance.	Embarked on warning strike while resolution is pending.
December,2012	COHESU vs Kwara State Government	Illegal deduction from health workers union salaries	Resolved via conciliation after meeting with parties and the issue was resolved
January,2011	Joint Health Sector Unions IN Anambra State vs ANSG	Call on the negotiation and implementation of CONHESS	Embarked on strike
January,2011	SEWUN vs Priority	1)Non recognition trade	Resorted to

	Aluminum	union 2)Unfair Labour practice	conciliation
Februay,2011	NUPTM vs OAUTH	1)Non implementation of circular ps/FMH/O of 15/12/10 on CONHESS	Dispute resolved after embarking on strike
February,2011	SEWUN vs Comet Star Manufacturing Company Ltd	1)Non recognition of Trade union Unfair labour practice Operating without registered condition of service.	Dispute intervened
March,2011	Rector/Management of Kessington Poly vs NASU	Illegal branch of union activities in the campus and directive to hand over union properties the Registrar	Dispute intervened
May,2011	International Brewery Plc vs NUFBTE	Declaration of Redundancy due to non Compliance with the latest technology Development.	Dispute intervened
Augst,2011	NLC vs ANSG	Payment of National Minimum wage	Settlement via Conciliation
September,2011	NLC/TUC vs Osun State Government	Non implementation of the minimum wage	Intervened via conciliation after embarking on strike
Decemer,2011	Adamawa State Government vs	Non implementation of	Intervened after

	Adamawa State Civil Service NLC/TUC	minimum wage	resorting to strike
November,2011	NUHPSWU vs Bisi Hotels Benin City	Non recognition of union	Dispute intervened
November,2011	SSAUTHRIAI vs Management Uni Ben	Non recognition of the union caretaker committee payment of check off due to branch Exco.	Dispute intervened
November,2011	NUHPSWU vs Kada fried chicken	Non recognition of union	Dispute intervened
	NUT vs Kwara State Government	Non implementation of Teachers Special Account(TSA)	Dispute intervened
December,2011	ASUU vs Federal Government	Inadequate fund for the universities	Intervened after resorting to strike
December,2011	NUPENG vs Olgetta Nig. Ltd	Non-unionisation of Olgetta staff	Dispute intervened and resolved
February,2010	Benue Cement Gboko vs Benue State Board of Internal Revenue	Under deduction of revenue from employees	Dispute intervened after embarking on lockout
February,2010	NLC vs Anambra State Government		
February,2010	Judicial Staff Union of Nigeria CRS Chapter vs C.R.S.	1)Non-implementation of Judiciary Staff Salary scale	Dispute intervened after embarking on

	Government	2)Common funding for all judicial staff 3)Establishment of Judiciary pension Board for Federal and State	strike
February,2010	N.U.T. CRS Branch vs C.R.S. Government	Retirement of about 924 teachers in the State. The union claimed that they were not carried along in this exercise.	Dispute intervened
February,2010	J.A.C vs CRS Government	J.A.C of M.HWU& NANNM gave 921 day ultimatum or face a strike action over 1)Non payment of health salary structure of 1995 Refund of C.P.A deduction of health workers salaries since September- December,2008	Dispute intervened while settlement is on going
February,2010	JUSUN vs Ogun State Government		Dispute intervened
February,2010	PRESTREST LTD Abeokuta NUCFRLANMPE	Communication gap between the parties	Dispute intervened
February,2010	SUN & SAND OTA vs FACANA & FACANA Chambers	WORKMEN COMPENSATION: to be paid to Miss Temitope	Dispute intervened

		Adebusoye is yet to be paid	
March,2010	S.E.W.U.N vs Sparkwest Steel Industries Ltd Sagamu	Mass termination of employees	Dispute intervened
March,2010	NUCFRLANMPE vs Benkiser Nig. Ltd		Resolved
March,2010	A.A.E.U.N. vs Okomu Oil Palm Company	1)Casting aspersion and the use of abusive words on Nigerians. 2)Beating of workers and act of intimidation of Branch Executives. 3)Illegal fine of N5000 on traffic offenders 4)Forced labour on the plantation 5)Contracting to private individual without due consultation.	Dispute intervened after embarking on strike
March,2010	BCC Gboko vs Benue State Board of Internal Revenue	Under deduction from the employees	Resort made to mediation after embarking on strike
March,2010	NULGE vs Borno	Threat to embark on industrial action if their demands are	Dispute intervened while settlement is

	State Government	not met	on going
March,2010	RTWEA vs Federal Government	Complaint on extortion of money from their members by Government Agencies.	Dispute intervened while settlement is on going
April,2010	SEWUN vs Coleman Wire & Cables	Unionisation of staff	Dispute intervened
April,2010	Shakti Ind.Ltd Sango vs NUCFRLANMPE	Dismissal of union leaders	Dispute intervened
April,2010	FBTSSA vs The Management of Grain Milling	Termination of Appointment of their members Retrenchment/Redundancy of another member without approval	Dispute intervened
April,2010	FBTE vs Ministry of Commerce & Breweries Ltd.	Non payment of 33 months salaries involving union/senior staff	Dispute intervened
April,2010	NIPP Maraberu Eng. West Ltd vs National Fittas Association	Demand for increase in monthly salary and improved welfare package	Dispute intervened
April,2010	AUPCCTRE vs Edo Transport Service Ltd.	Alleged mal administration which has increased debt profile of the organization.	Dispute intervened
April,2010	JUTI vs Borno State Government	Non implementation of CONTISS by the state Government.	Dispute intervened

A considered View or perusal of the above table on resolution of disputes via collective bargaining and other related means by the instrumentality of the Federal ministry of labour and productivity, will suggest that reference of disputes to Federal ministry of labour and productivity is poorly patronized.

From the above observation it will be deduced that more awareness need to be carried out to correct the situation where only 604 cases are registered or referred to the Federal Ministry of Labour and productivity from 2004 to March,2013.

The Federal Ministry of Labour and Productivity should intensify its effort in ensuring quick dispensation of matters before it to improve on the finding where 214 matters were still pending out of 604 cases.

3.5 The effects of the National Industrial Court as a Court

3.5.1 The National Industrial Court of Nigeria

The National Industrial Court was established for the first time in 1976,[35] Section 254(a) of the Constitution [36] and Section 20 of Trade Disputes Act.[37]Provides for the establishment of the National Industrial Court of Nigeria which shall consist of the president and such number of Judges as may be prescribed by an Act of the National Assembly.

However, the court did not start functioning until 1978[38].The court which started with a division in Lagos and later with another Division in Abuja, now has total of 12 (twelve) Divisions in the

[35]. Trade Disputes Act, Cap.T8, Laws of the Federation of Nigeria.2004.
[36]. Constitution of the Federal Republic of Nigeria 1999 (as amended)
[37]. Trade Disputes Act, Op.cit.
[38]. Hon.Justice Paul Atilade (Rtd.) was the pioneer president of the court and served between 1978 and 1996 the second president of the court was the late Hon.Justice M.A. Borishade, who served between 1998 and 2002.The incumbent president of the court, Hon. Justice Babatunde Adeniran Adejumo, was appointed the third president of the court on 14th April,2003 and was sworn-in-on 5th May,2003.

country.[39] Furthermore, Section 254(c) of the Constitution[40]also provides for the jurisdiction of the National Industrial Court, while bySection7of the National Industrial Court Act[41] the court now has jurisdiction throughout the Federal Republic of Nigeria. The court has exclusive jurisdiction in civil causes and matters relating to labour, including trade unions and industrial relations, and environment and conditions of work, health, safety and welfare of labour and matters incidental thereto.[42]

3.5.2 Composition

The Composition of the National Industrial Court under the1976 Act, provides that the president of the court presides over every sitting, whether a full court, or a three member court. As a result of the above provision, the court could not sit anytime the president was away for any reason[43] the example of this is the failure of the court to sit more than one year between 2002 and 2003, when a sitting president died.

Another problem associated with the 1976 Act is the mode of appointment of the members of the Court, which was equally an issue. Other than the president, members of the court were appointed by the minister of employment, Labour and productivity. This together permits the appointment of non-lawyers as members of the court, which created a problem of acceptance by the judiciary. The limited membership was also an issue considering the volume of cases that the court had to handle across the federation.[44]

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[39]. The Divisions of the National Industrial Court includes; Abuja, Akure, Awka, Calaber, Enugu, Ibadan, Jos, Kano, Lagos, Makurdi, Owerri and Port-Harcourt.
[40]. Constitution of the Federal Republic of Nigeria 1999 (as amended)
[41]. National Industrial Court Act 2006
[42]. Oluwole Kehinde, (1978-2006) *Digest of Judgments of National Industrial Court,* wabattt ventures suit 27, ASUCON plaza,513/515,Ikorodu Road, Lagos state.
[43]. Agomo,C. K., Op.cit. p.2
[44]. Ibid, p.327.

These issues are now addressed by the National Industrial Court Act 2006.

However, Section 53(1) of the National Industrial Court Act 2006 provides that "part II of the Trade Disputes Act is hereby repealed" other provisions of the Trade Disputes Act are to be construed with necessary modifications as may be required to bring into conformity with provisions of the National Industrial Court Act.

Section 1 of the National Industrial Court Act provides;

> (1)There is established a court to be known as the National Industrial Court.
>
> (2) The court shall consist of –
>
> (a) The president of the court who shall have overall control and supervisions 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 subsection (4) (b)of Section 2of the Act.

Section 2 of the National Industrial court provides for the appointment of the president and the judges of the court.

> 1) The president of the court shall be appointed by the president, on the recommendation of the National Judicial Council, subject to confirmation by the senate.
>
> 2).The appointment of a person to the office of a judge of the court shall be made by the president on the recommendation of the National Judicial Council.
>
> 3).A person shall not be eligible to hold office of the president of the court unless the person is qualified to practice as a legal practitioner in Nigeria and has considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria.
>
> 4).A person shall not be eligible to hold office of a judge of the court unless-

> a). The person is a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years and has considerable knowledge and experience in the law and practice of industrial relations and employment Conditions in Nigeria; or
>
> b).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.

Furthermore, Section 20(3)-(5) of the trade Disputes Act[45] provides as follows;

> The members of the court shall be-
>
> a) the president of the court; and
>
> b) four other members all of whom shall be persons of good standing, to the knowledge of the minister, well acquainted with employment conditions in Nigeria, and at least one of whom shall, to his satisfaction, have component knowledge of economics, industry or trade.
>
> 4) For the purpose of dealing with any matter which may be referred it, the court shall, at the discretion of the president of the court, be constituted of either;
>
> a) all five members; or
>
> b) the president and two ordinary members.
>
> 5) For the purpose of dealing with any matter as aforesaid, the court may at the discretion of the president of the court be assisted by assessors appointed in accordance with S.27 of this Act.[46]

Apart from part II of the Trade Disputes Act which was repealed by Section 53(1) of the National Industrial Court Act 2006.

Other provisions of the Trade Disputes Act are to be construed with necessary modification as may be required to bring it into conformity with provisions of the National Industrial Court Act[47]

[45]. Cap.T8 LFN., 2004.
[46]. Ibid.
[47]. Section 53 (2) of the National Industrial Court Act 2006.

Any inconsistency between the two Acts is to be resolved in favour of the National Industrial Court Act.[48]

The National Industrial Court Act 2006 as a matter of fact is a landmark legislation passed by a democratically elected National Assembly after the normal legislative process, including a public hearing where stakeholders, including Supreme Court, were represented. It enjoyed the widest consultation and contribution from the academia, the Bar, the Bench, Trade Unions and Institutions.

3.5.3 Jurisdiction of the National Industrial Court

Jurisdiction being the threshold of judicial power and judicialism and by extension extrinsic to adjudication, parties cannot by connivance, acquiescence or collusion confer jurisdiction on a court where jurisdiction is lacking.[49]

For clarity of purpose the word jurisdiction is also seen as "… the authority of a court to exercise judicial power…"[50] while the word power is defined as "The legal right or authorization to act or not to act; the ability conferred on a person by the law to alter an act, will, the rights, duties, liabilities or other legal relations either of that person or of another."[51]

Jurisdiction has also been defined by the Halsbury's Laws of England as "…the authority which a court has to decide matters that are before it, or take cognizance of matters presented in a formal way for it decision"[52] while exercising its jurisdiction a court asserts its powers. The powers of the court are necessary to enable it effectively exercise its jurisdiction. Powers are

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[48]. Section 53 (3) Ibid.
[49]. *Okolo vs. Union Bank Nig. Lt*d. (2004)3 NWLR (pt.859)87; *F.G.N. vs. Oshiomhole* (2004) 3NWLR (pt.860) 305 Ratio 4 @ P.324
[50]. *Nyame vs. F.R.N. (2010) 7NWLR* (pt.1193)344 at 393 par.G.
[51] Bryan, A. G. *Black's Law Dictionary*, p.1189
[52] Vol.10,4th Edition

therefore ancillary to the jurisdiction of a court. Without jurisdiction, a court cannot exercise any power.

Note therefore, that exercise of jurisdiction is condition precedent to the exercise of power by a court.[53] The issue of the jurisdiction of the court is most fundamental because where a court lacks jurisdiction it lacks the vires to decide any issue in the case.[54]

It is pertinent to note that the competent or the jurisdiction of the court is determined by the existing law at the time of trial court, or court of appeal heard the matter respectively.

Section 7(1) of the National Industry Court 2006 provides thus;

> (1)The court shall have and exercise exclusive jurisdiction in civil causes and matters –
>
> a) relating to-
>
> (i) labour, including trade union and industrial relations; and
>
> (ii) environment and conditions of work, health, safety and welfare of labour and matters incidental thereto; and
>
> b) relating to the grant of any other to restrain any person or body from taking part in any strike, lockout or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out, or any other industrial action;
>
> c) relating to determination of any question as to the interpretation of-
>
> (i) any collective agreement,
>
> (ii) any award made by an arbitral tribunal in respect of a labour dispute, or organizational dispute,
>
> (iii) the terms of settlement of any labour dispute, organizational as may be recorded in any memorandum of settlement,

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[53]. Hon. Justice Babatunde Adeniran Adejumo, OFR, A paper delivered at the annual law week of unity Branch, Abuja of the Nigerian Bar Association on 4th December,2013 "Understanding the Jurisdiction and powers of the National Industrial Court of Nigeria: A step by step Guide"p.4.

[54]. *Crown Merchant Bank Ltd vs. Lead Way Assurance Co. Ltd* (1997) 11NWLR (pt.529) p.405.

(iv) any trade union constitution, and

(v) any award or judgment of the court.

Section 254(C) of the Constitution of the Federal Republic of Nigeria 1999(as amended) also provides for the jurisdiction of the National Industrial Court as follows;

> (1) Notwithstanding the provision of Sections 251,257,272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred on it by an act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-
>
> (a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from work place, the conditions of service, including health, safety, welfare of labour, employee, worker or matter incidental thereto or connected therewith;
>
> (b) relating to or connected with or arising from Factories Act, Trade Dispute Act, Trade Union Act, Employee's Compensation Act or any other Act or law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Act or laws;
>
> (c) relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lockout or any industrial action, or any conduct in contemplation or in furtherance of a strike, lockout or any industrial action and matter connected therewith or related thereto;
>
> (d) relating to or connected with any dispute over the interpretation and application of the provision of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, Employers Association or any other matter which the court has jurisdiction to hear and determine;
>
> (e) relating to or connected with any dispute arising from the National minimum wage for the Federation or any part thereof and matters connected therewith or arising there from;
>
> (f) relating to or connected with unfair labour practice or international best practice in labour, employment and industrial related matters;

(g) relating to or connected with any disputes arriving from discrimination and sexual harassment at the work place;

(h) relating to or connected with or pertaining application or interpretation of international labour standard;

(i) relating to or connected with 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 the judgment of the court;

(iv) Terms of settlement of any trade disputes

(v) Trade union disputes 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 or workplace;

(vii) Disputes relating to or connected with any personnel matter arising from any free trade zone in the federation or any part thereto.

(k) relating to or connected with trade dispute arising from payment or nonpayment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political, 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 recommendation from 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 preferred upon it by an Act of the National Assembly.

(m) relating to or connected with the registration of collective agreement.

(2)Notwithstanding anything to the contrary in the constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.

(3)The National Industrial Court may established an alternative disputes resolutions Centre within the court premises on matters in which jurisdictions are conferred by this constitution or by any other Act or law;

Provided that nothing in this subsection shall preclude the National Industrial Court from entertaining and exercising appellate and supervisory jurisdiction over an arbitral tribunal or commission, administrative body, or board of inquiry in respect of any matter the National Industrial Court has jurisdiction to entertain or any other matter as may be prescribed by an Act of the National Assembly or any law in force in any part of the Federation.

(4)The National Industrial Court Shall have and exercise jurisdiction and powers to entertain any application for the enforcement of the award, decision, ruling or order made by any arbitral tribunal or commission, administrative body, or board of inquiry relating to, connected with, arising from or pertaining to any matter of which the National Industrial Court has the jurisdiction to entertain.

(5)The National Industrial Court shall have and exercise jurisdiction and powers in criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this section on any Act of the National Assembly or by any other law.

(6)Notwithstanding anything to the contrary in this constitution, appeal shall lie from the decision of the National Industrial Court from matters in Sub-Section 5 of this Section to the court of Appeals of right.

Note: The promulgation of the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Act 2010 confers on the NIC one of the broadest jurisdiction of any court under the 1999 constitution (as amended)[55]

In the words of the president of the NIC, Hon. Justice Babatunde Adeniran Adejumo:

> The new jurisdiction of the NIC is perhaps the widest and the most elaborate jurisdiction conferred on any court in the 1999 Constitution (as amended).This is so as a result of the experience under the NIC Act 2006, when a lot of subject matter of the jurisdiction granted the court were enmeshed in controversies as to their extent and consequently hampered from effective fruition. It is abundantly clear that the present approach has retained all the good innovations associated with it. The couching of the present jurisdiction of the court has created innovations to tackle the problems associated with the NIC Act, 2006.[56]

In addition to the expansion of the Jurisdiction of the National Industrial Court the court has over the years discharged or exercises its jurisdiction in the following cases in settling trade disputes:

In *Sunny Okwudiashi vs. Costain West Africa Plc.*[57] the NIC court held that the employment right of workers whether in terms of dismissal/termination or in terms of claims for salaries; wages and other entitlements of work, all come within the purview of labour or at worse are matters incidental to labour.

In *Association of Senior Staff of Banks, Insurance and Financial Institutions vs. Nigerian Employers Association of Banks, Insurance and Allied Institutions*[58] The management of American International Insurance Company introduced a different set of computers for its

[55]. Amucheazi, O.D. and Abba P.U. (2013) *The National Industrial Court of Nigeria: Law, Practice and Procedure*, The Wildfire publishing House, United Kingdom, p.65.
[56]. Ibid.
[57]. (2011)23NLLR (Pt.65) 299.
[58]. Unreported Suit No.NIC/15/1998/1990

operations, as a result of which some of its staff were redundant. the appellants declared a trade dispute after a meeting between the management and the employees union failed. The appellants were dissatisfied with the award of the Industrial Arbitration Panel and appealed to the National Industrial Court. In dismissing the appeal the court held that before a collective agreement can be enforced at the NIC terms of the agreement must be clear, precise, unambiguous and signed by the parties.

And in the case of *Lasisi Gbadegesin vs. WEMA Bank Plc.*[59]the court held that none of the version of the collective agreement was valid and enforceable because the first is unsigned and is incomplete with several pages missing.

Section 7(2) of the National Industrial Court gives the National Assembly discretion to confer such additional jurisdiction on the court in respect of such other causes or matters incidental, supplementary or related to those set out in Sub-Section (1).

The National Assembly may also, by an act prescribed that any matter under Subsection 1(a) of Section[60] may go through the process of conciliation or arbitration before such is heard by the court, regardless of anything to the contrary in this or any other enactment or law.[61] Section 7(6) of the National Industrial Court Act made provision on the need to conform with international standards, which provides thus: "The court shall, in exercising of its jurisdiction or any of the power conferred upon it by this Act or any other enactment or law, have due regard to good or international best practice in labour or industrial relations..."

[59]. Unreported Suit No.NIC/57/2008/2009
[60]. National Industrial Court Act 2006.
[61]. Section 7 (3). Ibid.

On exclusivity of the jurisdiction of the court, a careful perusal of the jurisdiction of the Federal High Court as contained in Section 251(1)-(3) of the 1999 Constitution (as amended) shows clearly that the court is a well defined and enumerated exclusive jurisdiction as regards the subject-matters over which it can exercise jurisdiction, and the jurisdiction speaks for itself.

As regards the High Court of the Federal Capital Territory, Abuja and the High court of the state, the two courts are granted general jurisdiction with regards to the subject matters they can entertain, except as limited by section 251 and 254(c) of the 1999 constitution.[62] It would be recalled that under the 1979 constitution, the High court was granted unlimited jurisdiction but with the emergence of the 1999 constitution, the position has changed. Although territorially speaking, the jurisdiction of a High court of a state is limited to the territory of the respective states while that of the High court of the Federal Capital Territory is confined to the Federal Capital territory, but in terms of subject matters, the jurisdiction of both courts is general to the extent of section 251and 254(C) of the 1999 Constitution (as amended).

As it is now, the National Industrial Court is a court of enumerated exclusive jurisdiction, just like the Federal High Court.[63]

The controversy surrounding the status and jurisdiction of the National Industrial Court of Nigeria is laid to rest by the provision of Section 6(5) (CC) of the 1999 constitution (as amended), which makes the court a superior court of record as oppose the supreme court decision in this issue, wherein the court in the case of *National Union of Electricity Employees of Nigeria & 1 Or. vs. Bureau of Public Enterprises*[64]stated that the National Industrial Court of Nigeria was not expressly and directly listed in Section 6 of the 1999Constitution which contains

[62]. Ibid.
[63]. Ibid., p.11.
[64]. (2010)LPELR-1966 SC.

the list of the superior courts of record in Nigeria, the National Industrial Court of Nigeria was an inferior court and had no exclusive jurisdiction against the High Courts.

Now, with the listing in Section 6(5) (CC) of the 1999 Constitution (as amended), the issue of jurisdiction and status of the court are now well settled. In a nutshell, from the 4th of March, 2011 the 1999 constitution (as amended) has clearly listed the superior courts in Nigeria and defined the scope of their respective jurisdictions.[65]

On what happens to all matters or actions commenced at the then appropriate courts and which have been opened or on which trial has commenced before the 4th of March, 2011 would have to continue in those courts till they are finally disposed of, but all those in which trial have not started or opened would have to be transferred to the NICN irrespective of their having been filed before the enactment of the Third Alteration Act.

The supreme court in the case of *Obiuweubi vs. C.B.N.*[66] Held thus:

The law in force or existing at the time the cause of action arose is the applicable law for determining the case. This law does not necessarily determine the jurisdiction of the court at the time that jurisdiction is invoked. That is to say the law in force at the time the cause of action arose governs the determination of the suit, while the law in force at the time of trial based on cause of action determines the court vested with jurisdiction to try the case. For Example, Decree 107 of the 1993 came into force on 17/11/93. A litigant who had a cause of action in 1990 would have his case governed by the law at the time (i.e. 1990) If trial commences before 1993 the court to try the case would be the state High Court but if after 17/11/93 the case would be tried in the Federal High Court.

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[65]. Hon. Justice Babatunde Adeniran Adejumo Op.cit p.11.
[66]. (2011)7NWLR (Pt.1247)465

3.5.4 Examination of the expanded exclusive jurisdiction of the NICN in the 1999 Constitution (as amended)

(a) Jurisdiction as to the composition of the court (Numbers and Qualification of Members of the Bench):

Section 254(E)-(1) gives the court the authority to assume jurisdiction over the subject matter on which the court is granted jurisdiction if it is constituted of at least one judge or at most three as may be determined by the president of the court. But as of its criminal jurisdiction, it would appear that it is only a single judge that can competently exercise its jurisdiction.[67]

The Supreme Court position is that:

> A court is only competent to entertain a case;
>
> a) It is properly constituted as regards the number and qualifications of the members of the bench and no member is disqualified for one reason or the other;
>
> b) The subject matter of the case is within its jurisdiction; and there is no feature in the case which prevents the court from exercising its jurisdiction; and
>
> c) The case comes before the court initiated by due process of the law and upon fulfillment of the condition precedent to exercise of jurisdiction.[68]

However for a court to competently assume jurisdiction over an issue, it must be constituted by the specified number of members that form a quorum and the members must possess the requisite qualifications.

[67]. Section 254 (e) (2) of the 1999 Constitution (as amended).
[68]. Per Adekeye JSC in *Nyame vs. F. R. N.* (2010)7NWLR (Pt.1193)344@393 par.F-H.

A person is qualified to be a judge of the court only if he has been qualified for at least ten years as a legal practitioner in Nigeria and has considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria.

The court is also obliged to employ the use of assessors, where necessary, but never to appoint a layman as a judge.[69]

(b) Jurisdiction over Payment of Salaries, Gratuities, Allowances, Benefits and other Entitlement of any Employee or Public Office Holder:

Base on Section 254(C) (1) (k) of the 1999 Constitution (as amended) provides that the NICN now has exclusive civil jurisdiction to entertain suits dealing with issues connected with the payment or non-payment of salaries, pensions, gratuities, allowances, benefits, and other entitlements of like nature of any employee (private or public) and any public office holder be he/she a political or judicial officer.

In *Mandah vs. Olukoya & Ors*[70]the court held that Section 254C(1)(K) of the 1999 Constitution as amended gives the National Industrial Court the jurisdiction to hear and determine "any civil causes or matters relating to or connected with disputes arising from payment or nonpayment of salaries, wages…of any employee…"

Furthermore, Section 254Cof the 1999 Constitution (as amended) directly list out the Employees Compensation Act as one of the Act over which the NICN shall have exclusive civil jurisdiction.

[69]. Section 254B (4) of the 1999 Constitution (as amended)
[70]. (2014)40 N.L.L.R. (Pt.124)537 NIC

I think this settles the issue of which court has jurisdiction over suits emanating from the confines of the employees' compensation Act.[71]

In the case of *National Pension Commission vs. Zenon Lab. and Chem. Ind. Ltd*[72] wherein the court held it has exclusive jurisdiction on issue of remittance of pension by virtue of Section 254C(1)(k) of the Constitution of the Federal Republic of Nigeria (as amended)

(c) Jurisdiction over Strike, Lock-Out, and Other Industrial Actions:

National Industrial Court is now conferred with the jurisdiction 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.[73]

The above position appears not to take away totally the rights of workers to go on strike or that of employers to engage in lock-out, which are necessary adjunct and ancillaries of the freedom of association, guaranteed by Section 40 of the 1999 Constitution Nigeria (as amended), and are recognize by all modern democracies.

In the case of *VAM ONNE Nig. LTD. & Anor. vs. PENGASSAN*[74] the court held that: "By virtue of Section 254C(a), (b) and (c) respectively of the1999 Constitution(as amended), the National Industrial Court of Nigeria has been sufficiently endowed with jurisdiction to hear and determine suit rooted in industrial action and claim for a declaration and injunctive reliefs against same."

[71]. Hon. Justice Babatunde Adeniran Adejumo Op.cit. p.20.
[72]. (2004)42 N.L.L.R. (Pt.132) 559 NIC.
[73]. Section 254 (c) (1) (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
[74]. (2013) 38 N.L.L.R. (Pt.118) 458 NIC.

This view is perhaps strengthened in the duty currently imposed on the court to enforce International best practices and standards in industrial relations in Nigeria.[75]

The added duty to implement labour treaties and conventions ratified by Nigeria[76] are rights contain in international labour conventions and treaties which Nigeria has ratified.

The essence of these provisions would appear to be that the court may restrain parties from taking part in strike or lock-out while it orders collective bargaining between parties in the interim. In the event of the negotiation failing, in as much as the requirements of law are met, the parties may be at liberty to exercise their fundamental rights to go on strike or engage in lock-out as the case may be. This jurisdiction is very significant to the economy of the nation as it may bring some sanity into the exercise of the rights of strikes, lock-outs and other industrial actions.[77]

This provision if observed, no doubt has the potential capacity to reduce the frequency of the incidences of strikes and other industrial actions and its disruptive effect on the economy.

Section 18(e) and (f) of the Trade Disputes Act provides thus:

> 1. An employer shall not declare or take part in a lock-out and a worker shall not take part in a strike in connection with trade dispute where-
>
> ... (e)The dispute has subsequently been referred to the National Industrial Court under Section 14(1) or 17 of this Act; or

[75]. Section 254 (c) (I) (f) and (h) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
[76]. Section 254 (c) (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
[77]. Hon. Justice Babatunde Adeniran Adejumo, Op.cit., p.18.

(f)The National Industrial Court has issued an award on the reference.

The additional conditions on the situations in which strike actions are forbidden in the provisions are considered as follows;

1) The first has to do with when there are objections to arbitral awards and the minister has sent the objection to the National Industrial Court to determine, parties are forbidden to go on strike during the pendency of the appeal. This accord with the civilized democratic norm of Lis Pendens all over the world that when actions are pending in the court, parties must maintain the status quo.

2) The second aspect has to do with a situation where the court has actually issued an award on the disputes.[78]

The rationale for this is that parties must abide with the decision, however hard it might be. This is the hall mark by which civilization is measured. A refusal to abide by the decision of a court; you will agree with me, is definitely an invitation to anarchy. By this, any responsible court, will restrain invocation of its coercive power to punish for contempt.

In the case of Attorney General of the Federation vs. Nigerian Union Congress & anor.[79] The claimant applied to the National Industrial Court for an order restraining the defendants from embarking and/or inciting the general public to embark on general strike, street protests, mass rallies, or any other action that would be inimical to the economic affairs of the Federal Republic of Nigeria, arguing that the economic activities within the country would be adversely

[78]. Ibid., p.19.
[79]. Unreported Suit No.NIC/ABJ/03/03/2012

affected as the same would be the case with health and safety of the citizenry if the threatened strike is allowed to hold. After going through the application the court ordered that embarking on strike will compound the problem, meaningful dialogue rather than strikes will achieve more positive result to the satisfaction of the parties and the general citizenry.

On when person, trade union or employer can engage in strike or lockout the court in the case of *Aero Contractors Co. of Nigeria Ltd. vs. NAAPE and Ors.*[80] NIC held thus:

> Section 31(6)(a) of the Trade Union Act,2004 as amended by the 2005 Amendment provides that no person, trade union or employer shall take part in a strike or lockout or engage in any conduct in contemplation or furtherance of a strike or lockout unless the person, trade union or employer is not engage in the provision of essential services.

Conventionally, strike actions are usually resolved via collective bargaining by the both parties or by intervention of Government agents.

(d)Jurisdiction to Entertain Issues Bordering on Sexual Harassment and Discrimination at Work Place:

Sexual harassment in this context is not only applicable to the female sex as males could also be sexually harassed by superior female bosses. However, this is the first time in Nigeria, the issue of sexual harassment at the work place has been given attention by providing a possibly effective means of checkmating it,[81] and against discrimination in the workplace on account of sex or otherwise.

It is trite to note that this jurisdiction is both complimentary to the provision of Section 42 of the Constitution and equally goes beyond its purview, in so far as the issue involved has to do with

[80]. (2014)42 N.L.L.R. (Pt.133) 664
[81]. Section 254 (C) (1) (g) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

discrimination at workplace. Section 254(c) (I) (g) gives the National Industrial Court of Nigeria jurisdiction to entertain any questions that pertains to discrimination. By interference, it means any type of discrimination at workplaces against any person is now cognizable at the National Industrial Court of Nigeria.

Thus, the inhibitions or limitations contained in Section 42(1)-(2) of the 1999 Constitution(as amended) as regards what would amount to discrimination, would seem not to be applicable when it comes to application of Section 254(c)-(I)(g) of the 1999 Constitution (as amended) on issue dealing with discrimination at workplace in view of Section 254(c)-(I) of the 1999 Constitution (as amended) which grants the National Industrial Court of Nigeria exclusive civil jurisdiction in its areas of competence notwithstanding anything [82] contained to the contrary in the constitution.

In the case of *Maduka vs. Microsoft Nig. Ltd. &Ors.*[83]The NIC in its judgment held that

> "the labour law in Nigeria as at now has no specific provision for sexual harassment in the work place but he National Industrial Court by virtue of Section 254C (i)- (g) of the 1999 Constitution Third alteration Act,2010 has the jurisdiction to entertain civil causes and matters relating to or connected with any disputes arising from discrimination or sexual harassment in the work place."

The court further held on the definition of sexual harassment to include:

> *Such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem: It is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in*

[82]. Hon. Justice Babatunde Adeniran Adejumo Op.cit., p.21.
[83]. (2014)41 N.L.L.R. (125)67 NIC; *Fagbore vs. Oando Plc. & Anor*. (2014) 48 N.L.L.R. (Pt.15) 339 NIC.

connection with her employment, including recruiting or promotion, or when it creates a hostile environment.

In the instant case the 2nd respondent policy, which is applicable to the 1st respondent on Anti-harassment and Anti-discrimination policy and complaint procedure which is in evidence as exhibit FA1, is in line with the United Nation Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) General Recommendation No. 19 of 1992 which is against any form of discrimination.

(e)Jurisdiction over National Minimum Wage:

Majority of industrial relations disputes in Nigeria are closely connected with issues of wages and salaries[84] and as such, very crucial to industrial harmony. Overtime in Nigeria, a lot of crises have often trailed the introduction of minimum wage by the federal government. Jurisdiction on the issue, being labour dispute, was formerly scattered in several courts is now a settled issue with the grant of jurisdiction to the National Industrial Court of Nigeria to adjudicate on these issues throughout the Federation or any part thereof.[85]The court would be able to adjudicate the disputes that may arise in future in relation to introduction of new national minimum wage. An additional advantage of this jurisdiction is that the court has territorial jurisdiction nation-wide, such that it can make a nationwide binding pronouncement.

(f) Jurisdiction on Child Abuse and Human Trafficking:

The National Industrial court is now conferred with the exclusive civil jurisdiction to entertain cases on issues bordering on child labour, child abuse and human trafficking.[86] Ever before now, the jurisdiction to entertain suits on child labour and human trafficking had been scattered in

[84]. Hon. Justice Babatunde Adeniran Adejumo, Op.cit p.23.
[85]. Section 254 (c) (I) (g) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
[86]. See Section 354 (C) (I) (i) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

series of courts throughout the nation, but with the ascendance of the Third Alteration Act, a single court has been conferred with exclusive jurisdiction to entertain these issues.

The implication may be that the Sections of the various statutes conferring civil jurisdiction on these issues on other courts are now void. With this, Nigeria will now be able to effectively implement the ILO's Declaration on fundamental principles and Rights at work which frowns on all forms of forced labour, including child labour.[87]

(g) Jurisdiction over Free Trade Zone:

Before the enactment of the Third Alteration Act, personnel matters in all the free trade zones were not justiceable. Thus, the operators of the zones could not be sued in a court of law for anything done or omitted to be done in relation to personnel matters in the free trade zones. Consequently the rights and privileges of workers and employee were frequently trampled upon with impunity. With the jurisdiction now granted the National Industrial Court of Nigeria on any personnel matter arising from any free trade zones in the country, the ouster clause in their enabling Act may now be considered void to the extent of its inconsistency with Section 254(C)-(I)(j)(vii)of the 1999 Constitution (as amended).[88]

(h) General Jurisdiction on Labour Employment and Industrial Relation Matters:

It is safe to state that any conceivable, labour, employment and industrial relations disputes are now covered in Sections 254(c)-(I)(a),(j)(iv)-(vii) and (i)(iii)of the 1999 Constitution (as amended). This ensures that any industrial relations and related matters and matters incidental thereto are brought together under the same canopy for the specialized attention of the court.

[87]. Hon. Justice Babatunde Adeniran, Op.cit.
[88]. Ibid.

The legal effect of this is that from the 4th of March, 2011, the civil aspect of industrial relations, labour and employment matters that were formally handled by the various High Courts across the nation are to be handled with exclusively by the[89] National Industrial Court OF Nigeria.

(i) Jurisdiction over Criminal Matters:

The court is granted jurisdiction in respect of criminal causes and matters arising from any civil causes or matter of which jurisdiction is conferred on the court by the Constitution or by any other statute.[90] This fusion of jurisdiction will ensure that all matters to jurisdiction related to labour and industrial relations can be expeditious in a specialized court with the needed expertise. Similar criminal jurisdiction is conferred on the Federal High Court in respect of causes and matters on which it exercises civil jurisdiction.[91]

Note: It does not imply that the court has the general criminal jurisdiction to try all manners of matters simply because they arose from matters over which it possess civil jurisdiction. The intendment of the Section is to afford the court jurisdiction to try the offences created in our labour related statutes like the Factories Act, Labour Act, Trade Disputes Act, Trade Union Act, and etcetera. Therefore it might be unnecessary to entertain any fear that the court will infringe on the jurisdiction of other courts in criminal matters as has been expressed in certain quarters.[92]

While interpreting similar provisions of Section 251(3) of the 1999 Constitution which conferred criminal jurisdiction on the Federal High Court to try offences arising from the subject matters over which it has civil jurisdiction, the Court of Appeal held that the Federal High Court did not

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89. Ibid.
90. Section 254 (C) (5) and Sub-Section (1) of Section254 (C) (10) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
91. Section 251 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
92. Hon. Justice Gummi, "National Industrial Court: powers and jurisdiction," being text of a paper delivered 2011 at the Otutu Oabaseki Auditorium of the National Judicial Institute, Abuja on the 29th of June,2011.

possess exclusive jurisdiction on those criminal matters over which it has jurisdiction.[93] The wording of the section appears to be impari material with the Section granting the National Industrial Court of Nigeria criminal jurisdiction.[94]

The NIC has in the case of *National Pension Commission vs. Zenon Lab. and Chem. Ind. Ltd*.[95]held that Section 254C(5) of the 1999 Constitution (as amended) grant the court the jurisdiction to try the three defendant companies, for the criminal offences as stipulated under Section 85 and 90 of the Pension Reform Act,2004.

(j) Jurisdiction over Issues Relating to the Interpretation and Application of Chapter IV of the 1999 Constitution as Amended:

Chapter IV of the 1999 Constitution is titled; "Fundamental Right" the provision of Chapter IV (Ss.33-44) provides and confers equal rights that are enjoyed by all human beings. These rights are considered basic to human kind. Therefore any law that attempt to derogate from these rights would be declared invalid. Infringements of these rights are justifiable in courts. Equally any trial that falls short of these provisions is considered nugatory.[96]

It is therefore certain that jurisdiction is granted to the court to entertain any question relating to or connected to any disputes over the interpretation and application of these provisions in relation to matters over which the court exercises jurisdiction. Among all these rights, the provision of fair hearing contain in Section 36 are of particular relevance to trial in courts. They contain rules that serve as the litmus test for all courts trials. Section 40 which guarantee the right to form and belong to any trade union for the protection of the members' interest, is also of

[93]. Momodu vs. The State (2008) All FWLR (Pt.447)67 at 103-105.
[94]. Hon. Justice Babatunde Adeniran Op.cit p.24.
[95]. (2014)42 N.L.L.R. (Pt.132)559 NIC.
[96]. Hon. Justice Babatunde Adeniran Op.cit p.25.

particular relevance. The legal implication is that the court must observe these provisions and entertain any application in their respect in relation to its jurisdiction.[97]

In the case of *Morakinyo vs. University College Hospital Board of Management*[98]wherein the court held that by virtue of Section 254C (1)(d) of the 1999 Constitution (as amend), the NIC can interpret and apply the provisions of Chapter IV of the 1999Constitution as it relates to labour, employment, trade unionism and industrial relation matters.

In the instant case, since the right to fair hearing being considered relates to the employment of the claimant, the court held that it has jurisdiction to interpret and to apply it.

(k)Jurisdiction over International Conventions, Treaties and Protocols Relating to Industrial Relations and Workplace:

The position of the law in Nigeria before the Third Alteration Act came into force, was that for an International Conventions, Treaty and Protocol to become enforceable in Nigeria it must first be ratified by Nigeria and subsequently domesticated by the National Assembly.[99] With the coming into force of the Third Alteration Act on the 4th day of March, 2011 our labour jurisprudence has been altered. For an International Convention, Treaty and Protocol on labour and industrial matters to become enforceable in Nigeria today, it only needs to be ratified by Nigeria, provided number of member states that are required to ratify such is met and the commencement date is ripe. The need for domestication appears to be done away with as provided in Section 254(c)-(2) of the 1999 Constitution (as amended). Before coming into force

97. Ibid.
98. (2014) 41 N.L.L.R. (Pt.128) 607 NIC.
99. See Section 12 (1) of of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and *Fawehimi vs. Abacha* (2000)6NWLR (Pt.160)228.

of the Third Alteration Act, Nigeria has always been queried by the International Labour Organization (ILO) by failure to implement conventions, treaties and protocols duly ratified.

This may now be a thing of the past. Nigeria can now be part of the global industrial relations village. This may increase the international confidence that the Nigeria economy greatly needs and thereby induce direct foreign investments. In fact, the court has begun to set precedents on this aspect of its jurisdiction by delivering judgment base on it.[100] Some of these judgments have been loudly applauded by the International Labour Organization (ILO)[101]

Notwithstanding the lofty objectives of the said provision, there is an apparent conflict between the provision of Section 254(C) (2) and Section 12(1) of the Constitution in respect of the applicability of international treaties/conventions, in the sense that while Section 254C (2) predicates the enforceability/application of labour treaty/convention on its ratification, Section 12 provides that no international treaty, convention or protocol which Nigeria has ratified shall be enforceable in Nigeria unless such treaty or convention has been enacted into law by the National Assembly. This process, which is known as domestication of treaty, is subsequent to and distinct from ratification of a treaty and no court of law in Nigeria can enforce or apply any treaty or convention which has not been domesticated.[102]

In the case of *Maduka vs Microsoft Nig .Ltd & Ors.*[103] The court held thus:

> By virtue of Section 254C (2) of the Constitution of the Federal Republic of Nigeria 1999(as amended), the National Industrial

[100]. The *Hon. Attorney General of the Federation vs. National Association of Government Medical Practitioners and Dr. J.N. Chukwuani*, Unreported Suit No.NIC/EN/16/2010 delivered on 20th June, 2011; *Mrs .Folarin Oreka Maiya vs. The Incorporated Trustees of Clinton Health Access Initiative Nigeria and Ors*, Unreported Suit No. Nic/Abj/13/2011 delivered 11/11/2011 wherein several conventions were cited and upheld.
[101]. Newsletter on International Labour Law for Judges, Lawyers and Legal Educators Reference from http://www.itcilo.org/en/uploads/201112021445-37144.pdf/atdownload/file.-July 29, 2014-4:19pm.
[102]. *Fawehimi vs. Abacha* (2000)6NWLR (Pt.160)228.
[103]. (2014) 41 N.L.L.R. (Pt.125)65 NIC.

> Court shall have the jurisdiction and power to deal with any matter pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relation to labour, employment, workplace, industrial relations or matters connected therewith.

The court in the instant case, having been so empowered, makes recommendations particularly, the United Nation Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and ILO Discrimination (Employment and Occupation) Convention (1958) No.111 which have been ratified by Nigeria and are in force for construing the fundamental rights of the applicant expressly guaranteed in the 1999 Constitution (as amended) which embodies the concept of freedom from discrimination and the right to dignity.

(l)Jurisdiction to Apply International Best Practices and Standards:

The constitution now directly empowers the court to take cognizance of International best labour and Industrial Relations practices in arriving at decisions.[104]

The Determinant of International Best Practice

In ascertaining what amount to international best practice reliance is placed on ILO numerous standard in conventions and recommendations, together with the opinion of the committee of experts on freedom of association and the committee of experts on the application of conventions and recommendation (CEACR) [105]

Example of the said ILO numerous standards[106] are as follow;(a)Convention No.87, (b)Freedom of Association and protection of the right to orgnise,1984 (c) Convention No:98,(d) Right to organize and collective bargaining,1947, (e) Convention No.105; (f)Abolition of forced

[104]. Section 254 (c) (1) (f) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)
[105]. Agomo, C. K., Op.cit., p.331.
[106]. *Oyo State Government vs. Alh. Bashir Apapa and Ors (*2008)11NLLR (pt.29)p.228

labour,1957[107] (g)Equal remuneration,1951, (h) Discrimination (Employment and occupation) Convention No.111 of 1958, (i)Convention No156; (j) Workers with family responsibilities,1981.

The court has also made clear its position on the need "for employers to apply" best practices in termination of employment.[108]

Equally, the court can look into question pertaining to the application or interpretation of International Labour Standards.[109]This I believe has the potential to greatly increase international confidence in the Nigerian economy and encourage foreign direct investments.[110]

The NIC in the case of *Obazuaye vs. Trust Bank of Nigeria*[111] held that by virtue of Section 254C(1) (i) and (h) of the Constitution, the NIC has jurisdiction over unfair labour practices in other to ascertain the fairness or otherwise of the practices of employer.

(m)Jurisdiction to interpret its own Award or Judgment:

The court is conferred with the jurisdiction to determine any question connected with the interpretation and application of its award and judgment.[112] This seems to me a salutory provision in that it will enable the court to clarify its award and judgment when there is ambiguity or confusion as to what exactly is awarded or its ambit or the exact meaning of its judgment or its ambit. This is not strange as superior courts have always had the jurisdiction to

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[107]. The report of the committee of experts on the application of conventions and recommendations in application of labour standards 2004 (I),pp.144-145 for comments on Nigeria's reply to queries raised in respect of this convention); See also comment on convention on convention No.123; Minimum Age (underground work),1965; convention No.100.

[108]. *Petroleum and Natural Gas Senior Staff Association of Nigeria vs. Schlumberber Anadrill Nigeria Ltd.* Unreported Suit No.NIC/9/2004 of September 18, 2007.

[109]. Section 254 (c) (1) (h) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

[110]. Hon. Justice Babatunde Adeniran Adejumo Op.cit., p.19

[111]. (2013) 38N.L.L.R. (Pt.116) 28 NIC.

[112]. Section 254 (c)- (1) (j) (iii) of the Constitution . Op.cit.

interpret their own awards or judgments whenever there are ambiguities under the doctrine of "slip rule"[113] This seems to be much more needed in the National Industrial Court of Nigeria because of the finality of its judgments in some instances for now. Its absence would have been fatal in a situation where there is ambiguity and the court cannot be approached to clarify or interpret, and there is no right of appeal[114]

(n)Alternative Disputes Resolution (ADR) and Appellate Jurisdiction:

The 1999 Constitution as (amended) confers jurisdiction on the National Industrial Court of Nigeria over industrial, employment, labour and industrial disputes recognize and encourages the use of other disputes resolution methods by validating and making them enforceable at the National Industrial Court of Nigeria. In the case of *Uko vs Footwear and Accessories Manufacturing and Distribution Plc*.[115] the court held that by the provision of Sections 254C(1)(f) and 254C(3) of the 1999 Constitution(as amended) the National Industrial Court is empowered to established an alternative dispute resolution centre.

Subsection 1(j) (i-ii), (iv), and (v) of Section 254Calso gives jurisdiction and powers to the court to look into questions relating to interpretation and application of Collective Agreements, award or order made by arbitral tribunal in respect of trade disputes or trade union disputes, termsof settlement of any trade dispute and trade union dispute or employment dispute as may be recorded in a memorandum of settlement. Subsection (1)(i)(ii) gives the court jurisdiction to look into appeals from the decisions or recommendations of any administrative body or commission of enquiry arising from or connected with employment or industrial relations matters. Subsection (1) (m) equally affords the court the jurisdiction to look into issues relating to or connected with

[113]. *Obioha vs. Ibero* (1994) 1NWLR (Pt.322) 503@510 r.8.
[114] . Hon. Justice Babatunde Adeniran Adejumo Op.cit., p.23.
[115]. (2014) 47 N.L.R.R. (pt.153) 407 NIC

the registration of collective agreements. All these heads of jurisdiction comes squarely within the confines of ADR mechanism.[116]

The proviso to Subsection 254(C) (3) also empowers the National Industrial Court of Nigeria to exercise appellate and supervisory jurisdiction over an arbitral tribunal or commission or administrative body, or board of enquiry in relation to any matter on which the court has jurisdiction or any other matter as may be prescribed by an Act of the National Assembly or any law in force in any part of the Federation. Finally, Subsection (4) of Section 254(C) confers the National Industrial Court of Nigeria with the jurisdiction to entertain any application for the enforcement of the award, decision or order made by any arbitral tribunal or commission, administrative body, or board of inquiry on any matter on which the court has jurisdiction.

This enables the court to ensure that the arbitral awards in the labour arena are easily enforceable unlike the former situation where parties would have to relegate issues already settled at arbitral tribunal if the opposing party reneges! The effect of this provision is that all other lawful method of dispute resolution are allowed in the industrial relations and labour arena in Nigeria. These provisions are further cemented by the provision of Section 20of the National Industrial Court Act 2006 and saved by Section 316(5) of the 1999 constitution (as amended).

It is therefore valid to state that the dispute resolution mechanisms provided for in the Trade Disputes Act still remain relevant. By virtue of Section 315 of the 1999 Constitution which provides that all existing laws that are not contrary to the provisions of the constitution are preserved. The provisions of the Trade Disputes Act, appears not to be in conflict with the constitution, and must therefore continue to hold sway. This view appears to be strengthened by

[116]. Hon. Justice Babatunde Adeniran Adejumo Op.cit., p.15.

the decision of the supreme court that the jurisdiction of any court is not in any way affected simply because a statute provides that a pre-action administrative avenues be exploited before a dispute is brought to the court, and that until such avenue are fully exhausted, the matter will be premature for formal court trial.[117] Undoubtedly, the jurisdiction granted to the National Industrial Court of Nigeria to entertain questions relating to the interpretation and application of collective agreement, the previous controversy surrounding the enforceability of collective agreements and consequential confusion created by the conflicting decisions of our courts may be a thing of the past.[118]

It will be recollected that at various High Courts before now, collective agreement were only binding in honour except when incorporated into the conditions of service of the employee.[119] The National Industrial Court of Nigeria is now conferred with the jurisdiction to apply and enforce arbitral awards.[120]

The direct encouragement of Alternative Disputes Resolution mechanisms which is a major instrument of modern dispute resolution and which is particularly useful in labour and industrial relations ensure that the major advantages of Alternative Disputes Resolution (ADR) includes: Flexibility, cost effectiveness, speed and accuracy and retention of business relationship, are afforded the parties. It is safe to say this will positively impact the economy.[121]

In the case of *Nnosiri & Ors. vs. Eastern Bulkcem Co. Ltd. (*2014)44 N.L.L.R. (Pt.138)113 NIC, the court held that by virtue of the provision of Section 254C(1)

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[117].*Owoseni vs. Faloye* (2005)14NWLR (pt.946)719 at 740; *Aribisala vs. Ogunyemi* (2005)6 NWLR (pt.921) 212
[118]. Hon. Justice Babatunde Adeniran Adejumo, Op.cit., p.16..
[119]. *Nwajiagu vs. Baico* (2000)14NWLR (pt.68)356; *Afribank (Nig.)Plc vs. Kunle Osisanya (*2000)1NWLR (pt.642)228.
[120]. Section 354C (1) (j) and (4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
[121]. Hon. Justice Babatunde Adeniran Adejumo, Op.cit. p.17.

(j)(i) of the1999 Constitution(as amended) by Third Alteration Act,2010, the National Industrial Court of Nigeria has exclusive jurisdiction, both to interpret and apply collective agreement.

3.6 Appeal

An appeal shall lie from the decision of an arbitral tribunal to the court as of right in matters of dispute specified in Subsection (1) (a) of the Section.[122] Unlike the position under the Trade Dispute Act, a party to an arbitral award is entitled to obtain a copy of the records of the arbitral proceedings and award from the arbitral tribunal.[123] The National Industrial Court has discretion to draw any inference of fact, and confirm, vary or set aside the judgment, award or order of the Court, tribunal or body, the subject of the Appeal.[124] It may also order a rehearing and determination, on such term as the court may think fit; or order judgment to be entered for any party; or make a final or other order on such term as the court may think fit to ensure the determination on merit of the matter in dispute between the parties.[125]

In conclusion**, t**his chapter considered Legal and institutional Framework of the process of Collective Bargaining wherein Process of Collective Bargaining-Trend, Status of Collective Bargaining, Impact of Collective Bargaining in settlement of Labour Disputes, Factors that affect Collective Bargaining in resolving Labour in Nigeria, challenges of implementing Collective Bargaining Agreements, the role of Labour Organisation in promoting and developing labour relations for national development, the effect of National Industrial Court and Appeal were considered. It is apparent that the law made little or no attempt in providing processes to be observed in Collective Bargaining when resolving Labour disputes.

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[122]. Section 7 (4) of the National Industrial Court Act, 2006.
[123]. Section7 (5), Ibid.
[124]. Section 8,Ibid.
[125]. Section 8 (a)- (d) of the National Industrial Court Act, 2006.

3.6.1 The National Industrial Court and Right of Appeal

The National Industrial Court is a court of both first and last instances with respect to matters under its jurisdiction. This has been a contentious issue, on the ground that it contradicts or contravenes the provisions of the constitution which preserves the inherent jurisdiction of the High Courts. The Trade Disputes (Amendment) Act, 1992, gave a party in trade dispute before the National Industrial Court the right of appeal to the court of appeal on matters of fundamental rights. This was not defined and so led to some opening of a flood gate of litigation from the National Industrial Court to the Court of Appeal. The National Industrial Court Act 2006 now links the right of appeal to matters covered in Chapter IV of the Constitution[126]this is however, made subject to an omnibus provision in Section 9(1) which preserves the overriding power of the Constitution to extend or limit its jurisdiction.

Section 9 of the National Industrial Court Act provides thus;

> 1) Subject to the provisions of the Constitution of the Federal Republic of Nigeria 1999 and Subsection (2) of this section, no appeal shall lie from the decisions of the court to the court of Appeal or any other court except as may be prescribed by this Act or any other Act of the National Assembly.
>
> 2) An appeal from the decision of the court shall lie only as of right to the court of Appeal only on questions of fundamental rights as contained in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999.

Finally, Section 10 gives the court power to enforce its judgment. This includes power to commit for contempt of the court.

[126]. Section 9 (2) of the National Industrial Court Act.2006

This research also extended its search light to the effectiveness or otherwise of the National Industrial Court in resolving labour disputes by the various divisions in Nigeria as follows:[127]

[127] National Industrial Court of Nigeria Summary of pending cases in the Divisions Documentation,2014.

TABLE C:

Table of NIC summary of pending cases in the Divisions as at the end of 1st quarter (i.e. January to March, 2014)

S/NO	DIVISION	NO.OF PENDING CASES BROUGHT FORWARD FROM LAST QUARTER	NO. OF CASES FILED THIS QUARTER	NO. OF RULING DELIVERED THIS QUARTER	NO. OF JUDGEMENTS DELIVERED THIS QUARTER	NO. OF CASES STRUCKED OUT THIS QUARTER
1	ABUJA	609	75	46	35	26
2	AKURE	214	11	19	8	27
3	CALABAR	164	23	28	19	18
4	ENUGU	343	27	28	32	19
5	IBADAN	176	33	32	26	4
6	JOS	199	19	10	7	6
7	KANO	39	10	6	_	2
8	LAGOS	822	124	39	42	81
9	MAKURDI	124	17	8	8	3
10	OWERRI	137	24	19	10	7
11	PORT-HARCOURT	211	68	20	14	22
TOTAL		2,958	363	235	187	193

TABLE D:

Table of NIC summary of pending cases in the Divisions as at the end of 1st quarter(i.e. April to June, 2014)

S/NO.	DIVISION	NO. OF CASES FILED THIS QUARTER	NO. OF RULING DELIVERED THIS QUARTER	NO. OF JUDGEMENTS DELIVERED THIS QUARTER	NO. OF CASES STRUCKED OUT THIS QUARTER
1	ABUJA	86	31	41	34
2	AKURE	10	22	4	22
3	CALABAR	12	21	14	7
4	ENUGU	21	21	26	12
5	IBADAN	39	19	27	8
6	JOS	10	9	6	11
7	KANO	13	12	6	1
8	LAGOS	143	21	67	83
9	MAKURDI	12	11	11	6
10	OWERRI	19	8	12	2
11	PORT-HARCOURT	47	24	14	39
TOTAL		412	199	228	222

TABLE E:

Table of NIC summary of pending cases in the Divisions as at the end of 1st quarter (i.e. July to September, 2014)

S/NO.	DIVISION	NO. OF CASES FILED THIS QUARTER	NO. OF RULING DELIVERED THIS QUARTER	NO. OF JUDGEMENTS DELIVERED THIS QUARTER	NO. OF CASES STRUCKED OUT THIS QUARTER
1	ABUJA	80	13	14	12
2	AKURE	12	9	11	4
3	CALABAR	15	2	13	1
4	ENUGU	17	6	15	8
5	IBADAN	18	3	35	5
6	JOS	8	-	5	-
7	KANO	5	4	6	-
8	LAGOS	146	15	15	22
9	MAKURDI	7	2	3	1
10	OWERRI	14	4	11	-
11	PORT-HARCOURT	-	9	6	3
TOTAL		322	67	170	56

TABLE F:

Table of NIC summary of pending cases in the Divisions as at the end of 1st quarter (i.e. October to December, 2014)

S/NO.	DIVISION	NO. OF CASES FILED THIS QUARTER	NO. OF RULING DELIVERED THIS QUARTER	NO. OF JUDGEMENTS DELIVERED THIS QUARTER	NO. OF CASES STRUCKED OUT THIS QUARTER
1	ABUJA	37	34	41	36
2	AKURE	13	13	10	19
3	AWKA	109	-	-	-
4	CALABAR	22	4	-	2
5	ENUGU	19	13	8	12
6	IBADAN	11	18	10	12
7	JOS	17	3	32	6
8	KANO	8	13	9	3
9	LAGOS	185	11	25	28
10	MAKURDI	17	5	13	8
11	OWERRI	55	5	14	1
12	PORT-HARCOURT	21	23	7	8
TOTAL		514	142	169	136

From 3rd January, 2012 to 20th December, 2012 total case of 352 were filed at the National Industrial Court of Nigeria, Abuja out of which 69 cases has been concluded while 283 are pending.

Also, from January, 2013 to November, 2013 a total case of 312 were filed or brought before the National Industrial Court of Nigeria, Abuja.

From the above analysis it is clear that cases taking to National Industrial Court from January, 2012 to November, 2013 are 664 and in a clear contrast with cases taken to Federal Ministry of Labour and productivity shows that the National Industrial Court recorded higher number of cases as opposed 604 cases only recorded by the Federal Ministry of Labour and productivity from 2004 to March, 2013. The institutional challenges in collective Bargaining process, if addressed, and effective legal framework put in place to clearly spelt out the processes to be observed in Collective Bargaining process it will improve the patronage of adopting Collective Bargaiing as a means of resolving labour disputes.

CHAPTER FOUR

4.0 COLLECTIVE BARGAINING AS A MEANS OF SETTLEMENT OF LABOUR DISPUTE IN NIGERIA

4.1 Introduction

Labour Disputes and conflicts are inherent in labour relations systems, this tends to occur when the collective bargaining process is reaching a breaking point, if not resolved, often gives rise to industrial actions, such as strikes. The introduction of prevention and settlement of labour disputes measures is therefore, a corner stone of sound labour relations policy.

The effective resolution of labour disputes is closely linked to promotion of the right to collective bargaining. The structure of dispute settlement system is normally designed to promote collective bargaining, For example by requiring all the parties to exhaust the dispute settlement procedure provided for, by their collective agreement, before having access to State provided procedures. However, the danger to be avoided is the imposition of solutions, particularly through compulsory arbitration which if not accompanied with the necessary safeguards, may amount to denial of right to free and collective bargaining.[1]

This chapter begins with Collective Bargaining as A means of settlement of Labour Disputes in Nigeria, principle for the enforcement or otherwise of Collective Agreement, National Industrial Court and enforcement of Collective Agreement and right of appeal.

The need for an effective collective bargaining cannot be overemphasize having in mind the role of collective bargaining is to ensure a peaceful, harmonious and conducive environment in the

[1]. Chapter IV. Substantive provisions of Labour Legislation: settlement of collective labour dispute. www.ilo.org/../ch4.htm.

labour industry, and this is key to the healthy economy of a nation. Achieving effective bargaining without enforcement of collective agreement is an effort in futility. This chapter is set to address the following sub-topics for an effective consideration of the above topic: Status of Collective Agreement, Principle for the enforcement or otherwise of Collective Agreement, and National Industrial Court and enforcement of Collective Agreement and right of appeal.

4.2 Principle for the enforcement or otherwise of Collective Agreement

The principle associated in the enforceability or otherwise of Collective Agreement is imperative for better understanding of the enforcement of collective agreements.

Presently, Collective Agreements are common, and governs employment relations of many employees.[2]

Enforcement of Collective Agreement is not expected to be an issue since, the agreement would have been jointly and collectively arrived at, through the accommodation predicated on the spirit of give and take. Unfortunately, in Nigeria this has not always been the case. Absence of privity of contract between workers and the trade unions that often negotiate with employer on behalf of the workers, and lack of intention to create legal relations are the reasons often cited for the non-enforceability of such agreements in Nigeria.[3]

In Considering the contractual enforceability of collective agreements generally, the common law principle of 'privity of contract' cannot be discountenanced; simply put, the doctrine of privity of contract means that only the parties to an agreement are bound by its terms.[4] For example, when a contract of employment is entered into, the two parties to such a contract are

[2]. Madaki, A. M. and Paul, Abraham, (2014) *Appraisal of the trajectory and transformation of the enforceability of collective agreements in Labour relation in Nigeria*, UMYULJ Vol.1, p.74
[3]. Ibid; *Bertram B. Nwajagu vs. British American Insurance company (Nigeria) Limited.* Op.cit.
[4]. Oladosu, O., Op.cit. p.265

usually the employer and the employee; the union is not involved and can only be described as a stranger to the agreement.

Is Collective Agreement ordinarily enforceable?

In answering the above question resort is made to the Wages Boards and Industrial Councils Act[5] and the Trade Disputes Act[6] which made Collective Agreements indirectly enforceable once they are deposited with and confirmed by the order of the Minister of Labour.

Section 3(1) of the Trade Disputes Act[7] provides that where there is any written collective agreement for the settlement of any trade dispute within a trade or industry, at least three(3) copies of such agreement must be deposited by the parties with the Federal Ministry of Labour within thirty days of the commencement of the Act in the case of agreements entered into before the date of commencement of the Act, and in case of agreements entered into on or after the date of commencement of the Act, within thirty days of the execution thereof. Thereafter, the Minister may order that all or part of the agreed terms shall be binding on the parties. The effect of this is that either party may take legal action to enforce the agreement once it is confirmed by the Minister.

Furthermore, Section 3(4) of the Trade Disputes Act[8] provides for sanctions in case of failure to comply with the terms of the agreements as confirmed by the Minister which reads thus; "If any person fails to comply with the terms of the said order he shall be guilty of an offence and be liable on conviction to a fine of N100 or to imprisonment for six months"

[5]. Wages Boards and Industrial Councils Act, Cap.W1, Laws of the Federation of Nigeria 2004
[6]. Trade Disputes Act, Cap.T8, Laws of the Federation of Nigeria 2004.
[7]. Ibid
[8]. Ibid

Thus, it is clear that collective agreements are made legally enforceable once the terms are confirmed by the minister.[9] Collective Bargaining is also enforced by the National Industrial Court of Nigeria as extensively discussed above. However, this paper further examine other methods of giving effect to the provisions of collective agreement as it relate to individual contracts as follows;

a. Incorporation by Reference

Under this principle, once an appropriate clause from a collective agreement has been incorporated into the individual contract of employment it will remain in force and be binding unless and until amended or expunged. It must also be borne in mind that reference to the incorporated terms must be made in the individual contract to the effect that the contract is subject to the terms and conditions agreed with the union in the appropriate collective agreement.[10]

The problem associated with this principle is the inability to identify which of the terms or stipulations in a collective agreement can be regarded as incorporated into the contract of employment of the workers affected and how this can be done.[11] In the bid to address the above difficulties the Supreme Court has in the case of *Osoh and Ors. vs. Unity Bank Plc.*[12] Held thus:

> The provision of Section 47(1) of the Trade Disputes Act 1990 require collective agreements to be in writing so as to formalized the agreement
>
> What has further emerged from the definition with respect to many cases of "collective agreements" is that where they have created legal relations giving rise to contractual obligation between the

[9]. Oladosu, O. (1991) *Nigerian Labour and Employment Law in Perspective*, Folio Associates Limited, Ikeja, Lagos State p.263
[10]. Ibid. p.266
[11]. Ibid
[12]. *Osoh and Ors. vs. Unity Bank Plc*.

> parties they are enforceable by the immediate collective parties (i.e. Between an employer or an employers' organization and a trade union or unions) but as between the employers and the workers it is only so where they have been incorporated into the contracts of employment of the employees so as to be actionable for any breach arising there from at the suit of either party to the contractual relationship. Otherwise they are not more than mere vague inspirational terms which are bound to present practical problems of enforcement and the best method being to use political or trade union pressure to bring about their enforcement…

In the case of *Musa vs G4S Nigeria Limited & Anor.*[13] The court in determining when a collective agreement forms part of terms of employment held that Collective Agreement except where they have been adopted as forming part of terms of employment, are not intended to give, or capable of giving individual employee a right to litigate over an alleged breach of their terms as may be concerned by them to have affected their interest nor are they made to supplant or even supplement their contract of service.

b. Agency

Agency is one other way for making terms of Collective Agreement applicable to the individual contract.[14] The use of this principle though not generally accepted is associated with difficulties in its applicability as it calls for the address of the following questions; If employees who are not union members are bound by the collective agreement the same way as if they were members, can they be said to have appointed the union as their agent, when in fact they are not members of the union? And will that not amount to the creation of agency without the consent of the principal?

The above position has given room for conflicting decision on the applicability of principle of agency in enforcement of collective agreement in the court.

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[13]. *(2014)49 NLLR (pt.163)546 NIC.*
[14]. Oladosu, O., Op.cit.272

In the case of *Union of post and Telegraphs Workers of Nigeria vs. A.G of Nigeria*[15] wherein the plaintiff union had asked for declaration that the deduction of two days pay from the wages of its members by the employers was illegal because it was unauthorized, the defense counsel, on behalf of the Attorney General contended the plaintiff union was an outsider, which not being an employee of the department, was not competent to bring the action and the court in its judgment rejected the defense counsel's argument. While in the case of *Burton Group Ltd. vs Smith*[16] it was held that there was no reason why an agency would not be implied simply from the fact of union membership.

4.3 Unionism and Collective Agreement with Management under the Law

Historically the first trade union legislation for the colony is the Trade union Act of 1938 which allowed a minimum of five workers to form a trade union. This led to a proliferation of structural deficient and financial weak unions. The 1938 Act was repealed by Trade Union Act 1973. The Act provided for more stringent requirement for the registration of trade union. In 1976 an administrator was appointed with a mandate which included the restriction on existing nearly 1,000 trade unions.[17]The exercise led to the promulgation of the Trade Unions (Amendment) Act,[18] The number of trade unions was reduced to 70, comprising 42 industrial unions of junior staff,19 senior staff associations and 9 employers' associations.[19]

The Act introduced a new third schedule containing the list of the 70 registered unions. This schedule was divided into two parts namely: part A and B by the Trade Unions (Amendment) Act 1986. Part A contained the list of the 42 trade unions of workers, while Part B contained the

[15]. 1958 LD/142/58
[16]. *(1977)IRLR.351*
[17]. Agomo, C. K., Op.cit., p.268.
[18]. Formally Decree No.21, Laws of the Federal Republic of Nigeria 1978.
[19]. Agomo, C. K., Op.cit., p.268

senior staff and Employer's Association list, Trade Unions in part B were prohibited from affiliating with the Nigeria Labour Congress (NLC)[20] Finally, the Trade unions (Amendment) Act, 2005 which was passed in March, 2005 has on paper reintroduced the principle of real freedom of association at both individual and Federal levels.[21]

4.3.1 Sources of the Right to Freedom of Association and Relevance to collective bargaining

The right and sources of trade unionism is predicated on the following instruments;

a. Constitutional Guarantee

Section 40 of the Constitution of the Federal Republic of Nigeria[22]guarantees the right to freedom of association. The Section provides that; "Every person shall be entitle to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interest."

However, this constitutional guarantee covers workers in both private and Public sectors of the economy. It is clear that an employer who prevents or bars his employees from joining a trade union is infringing the constitutional right of his or her employee.[23] Section 46 of the Constitution provides that 'any person who alleges that any of the provisions of the chapter has been/ is being or likely to be contravened in any state in relation to him may apply to a High court in that state in for redress.'There have been many instances where employers made their employees sign contracts not to be members of a trade union while in employment.[24]

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[20]. Ibid. p.269.
[21]. Section 8 (3) Trade Union Act, 2005.
[22]. Constitution of the Federal Republic of Nigeria,1999 (as amended)
[23]. Danesi, R. A., (2010) Nonstandard work Arrangements and Right to Freedom of Association in Nigeria, NJLIR., Vol.4 No.4 p.25.
[24]. Ibid., p.26.

For instance, in the case of *Management of Harmony House Furniture Company Limited vs National union of furniture, fixtures and wood workers,* Digest of Judgments of National Industrial Courts[25] The court held that the dismissal of the chairman of the Worker's Union for his union activities contravened the provisions of this Section. It also declared the two undertakings issued by the employer to be signed by workers to scare them away from joining their trade union illegal. This undertaking according to Danesi amounted to a yellow dog contract.[26] Any law that is inconsistent with the constitution is null and void to the extent of its inconsistency.[27] Therefore, any employer who denies his workers the right to organize, amount to a breach of the Constitution and the worker can claim damages in that light.

b. The Trade Union Act

Another source in which right to unionism emanates is the Trade Union (Amendment)Act,[28] indeed in Section 1(1) defines a Trade Union as "any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers, whether the combination in question would or would not, apart from this Act, be an unlawful combination by reason of its purpose being in restraint to trade, and whether its purpose do or do not include the provision of benefits of its members."

The above definition indicates that workers no matter their employment status "whether temporary or permanent" have right to join or form trade union without prior authorization from their employer in other to improve their employment conditions.[29]

[25]. (NIC) 1978-2006, p.187.
[26]. Ibid.
[27]. See Section 1 of the Constitution1999 (as amended)
[28]. Trade Union (Amendment)Act 2005.
[29]. Danesi, A. Rosemary, Op.cit., p.28.

In the case of *Patovilki Industrial Planners Limited vs National Union of Hotels and Personal Services Workers,*[30] the NIC upheld that both permanent and casual workers have the right to form a trade Union. The court further held that Section 1(1) of Trade Unions (Amendment) Act, allows workers, whether permanent or temporary, to form a trade union and a relevant trade union can unionize workers who are casual daily paid workers. In this case, the Appellant Company was into the business of industrial cleaning. The Respondent union is a registered trade union. The Union sought permission to unionize the Appellant's workers, but the company refused on the basis that they were casual workers. The Respondent therefore declared a trade dispute. The Industrial Arbitration Panel (IAP) heard the dispute and gave an award in favour of the Respondent union. The Appellant being dissatisfied appealed to the NIC, which consequently upheld the ruling of the IAP. In July, 1990.

NOTE: There are two yardsticks to determine whether or not a combination of workers or employees can be described as a Trade Union.[31] The first is that the combination must be of workers and employers. The second is that the regulation of the terms and conditions of employment of workers must be a fundamental objective.

However, one of the grounds on which the certificate of registration of a trade union may be cancelled is that the principal purpose for which the union was registered, namely, the regulation of the terms and conditions of employment of workers, has ceased to exist.[32]

[30]. Suit No.NIC/12/89, Digest of Judgments of National Industrial Court (1978-2006) p.288-289.
[31]. Agomo, C. K., Op.cit., p.273.
[32]. See Section 7 (1) of the Trade Unions Act, 2005.

c. The Labour Act

Another law that protects the right of workers to associate for trade union purposes is the Labour Act.[33] This Act address some issues relating to trade unionism in Nigeria such as its provision for workers membership, involvement in trade unions and trade union activities[34]

d. The African Charter on Human Rights

The African Charter on Human Right is relevant in considering the source of unionism in Nigeria since it has been enacted as an Act of National Assembly.[35] The African Charter is another source that guarantees freedom of association for workers in Nigeria. Article 10 of the Charter provides that "Every individual shall have the right to free association provided that he abides by the law" Nigeria has ratified this Charter and has indeed made it part of its National Law by way of enactment of Section 12(1) of the Constitution[36] which states that "No treaty between the Federation and any other country, shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly." Therefore, it can be deduced from this Act that the African Charter on Human and People's Rights has become part of Nigerian law.[37]

The case of *Gani Fawehimi vs. Abacha*[38] affirms the binding effect of the African Charter since it has been incorporated into Nigerian law by virtue of Section 12(1) of the Constitution and therefore has become part of Nigerian corpus jurist**.** In delivering the lead judgment, Ogundare, J.S.C. held inter alia, that where, however, the treaty is enacted into law by the National

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[33]. Cap.L1, LFN., 2004.
[34]. See Sections 9 (6) (a) and (b) Cap.198, LFN., 1990.
[35]. African Charter on Human and People's Right (Ratification and Enforcement) Act. Cap.10, LFN., 1990.
[36]. Constitution of the Federal Republic of Nigeria 1999 (as amended)
[37]. Danesi, R.A., Op.cit., p.27.
[38]. (2000) 6NWLR (Pt.660) 228 Sc.

Assembly, as was the case with Africa Charter which is incorporated into our municipal law by the African Charter on Human and People's Right (Ratification and Enforcement) Act[39] it becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the court.

4.3.2 Registration of Trade Union in Nigeria

A trade union which is also known as the combination of workers or employers is prohibited from performing any act in furtherance of its purpose, unless it is registered with the Registrar of Trade Unions. However an unregistered trade union may take any step, including the collection of subscriptions or dues, which may be necessary for the purpose of getting the union registered.[40] Section 3(1)(a) and (b) of the Trade Union (Amendment) Act provides that at least 50 workers or in the case of employers association two employers, are qualified to apply for registration and no trade union shall be registered save with the approval of the Minister.

No registration of a trade union whether of workers or of employers is allowed, except with the approval of the Minister, on being satisfied that it is expedient to register the union either by regrouping existing trade unions, registering a new trade union or otherwise.[41] The purpose of registration of a trade union is to regulate the terms and conditions of employment of workers and also to distinguish the characteristic of trade union from other associations.[42]Where the Registrar receives the application for the registration of a trade union, he must cause a notice of the application to be published in the Gazette, stating that objection to the registrations to the

[39]. Cap.91, LFN., 1990.
[40]. Uvieghara, E. E., Op.cit p. 325.
[41]. Agomo, C. K., Op.cit., p.275.
[42]. Uvieghara, E. E., Op.cit., p. 316.

trade union may be submitted to him in writing within three (3) months of the publication of the notice.[43]

Every application must be accompanied with at least two copies rules of the union and by a list showing the name, address, age and occupation of each of the person by whom each of the application is signed and the official title, names, address, age and occupation of each official of the union.[44] The Registrar must within three (3) months after the end of the period for objections, consider any objection submitted to him during the period If he is satisfied:

(1) That no proper objection has been raised; (2) That none of the purposes of the trade union is unlawful, and (3)That the requirement of the Act in Section 4 of the Trade Union Act and of the regulations with respect to the registration of trade unions have been complied with, must, subject to an acceptable name.[45]

If the Registrar refuses to register the union he must forthwith, send to the applicants a notice in the prescribed form to that effect and stating the grounds of the refusal and specifying the date from which the time of appealing against the refusal is to run, and he must publish a notice to that effect in the gazette.[46]

However an appeal from refusal to register a trade union now lies, not to a High Court or the Minister, but to the "appropriate court" which is defined to mean "the Industrial Arbitration Panel and the National Industrial Court as the case may be" presumably this means that an

[43]. Ibid., p.325.
[44]. See Section 3 (6) of the Trade Union (Amendment) Act, 2005.
[45]. Uvieghara, E. E., Op.cit p. 326
[46]. Section 5 (5) (b) of the Trade Union (Amendment) Act, 2005.

appeal must first be referred to the IAP., presumably by the Minister, and thereafter if necessary, by the trade union to the NIC.[47]

Every trade union must have a registered office to which all communication and notices may be addressed. If any union continues for more than thirty days without having a registered office the trade union and every official of the union will be liable, on summary conviction, to a fine of N10 for every day during which, after the end of the thirty days, it continues without a registered office.[48]Like any other organization corporate or unincorporated, members are bound by the union's constitution which is usually referred to as the rule book. This is because a trade union is based on the agreement of the parties and the rights and obligations of the parties as members are determined by the rule book.[49]

In the case of *AlhajiImman N. Abubakri and Ors. vs Abudu Smith*[50] the supreme court held that a member's right is dependent on the constitution of the organization and that the organization was entitled to alter its rules and determine who its officer would be.

4.3.3 Trade Union Restriction

Public policy in free collective bargaining limits conditions and controls of relationships between workers organization and management. Section 45 of the constitution[51] circumscribes the freedom granted by Section 40 of the Constitution guaranteeing that every person shall be entitle

[47]. Uvieghara, E. E., Op.cit p. 327.
[48]. Section 21 (4) of the Trade Union (Amendment)Act, 2005.
[49]. Idubor, Richard, Op.cit p.140.
[50]. (1973)6 S.C.31.
[51]. Constitution of the Federal Republic of Nigeria 1999 (as amended)

to assemble freely and associate with other persons, and in particular he may form or belong to any…trade union or any other association for the protection of his interests.

Another Legislation is the Trade Union (Amendment) Act, 2005[52] which in Section 11, provides restriction as to categories of persons from forming or joining trade union as follows:

> Section 11(1). This section applies in relation to the following establishments, that is to say-(a) the Nigerian Army, Navy or Air force; (b) the Nigerian Police Force; (c) the Customs Services ,the Immigration Services and the Prison Services; (d) the Customs preventive Service; (e) the Nigerian Security Printing and Minting Company Limited; (f) the Central Bank of Nigeria; (g)the Nigerian Telecommunications Limited; (h) every Federal or State government establishment, the employees of which are authorized to bear arms; and (i) such other establishment as the minister may, time to time, by other specify.
>
> Section 11(2). It shall not be lawful for persons employed in any of the establishment to which Subsection(1) of this section relates to combine, organize themselves, or to be members of a trade union, for purposes of employment, but nothing in this section shall be construed as preventing the setting up of joint consultative committees in the establishment concerned

Section 3(2) of the Trade Union Act[53] also provides inter-alia, that no trade union shall be registered to represent workers or employers in a place where there exist a trade union.[54] Apart from the above restriction, there exists various labour Legislation in support of the institution of collective Bargaining.

A second Provision, which probably among other factors that encourages multiplicity of weak and ineffective union.[55] This Law was substantially reviewed in 1958, and in 1973, underwent a revolutionary review which eventually led to the restructuring of trade union in 1978 that

[52]. Trade Union (Amendment)Act, 2005
[53]. Ibid.
[54]. Idubor, Richard. (1999) Employment and Trade Disputes Law in Nigeria, Sylva publishers Ltd, Akure, Benin City and Lagos First Edition p.172.
[55]. Ibid.

legalized 70 industrial unions and Associations in Nigeria, there were about 1000 registered Trade Unions in the country.[56] As at 5th January, 1996 following the promulgation of Trade Unions (Amendment) Decree,[57] there are in existence in Nigeria, 29 workers union and 33 senior staff unions and Employers Association.[58] This position has been altered by Section 33(1) (g) of the Trade Union (Amendment) Act 2005[59] which now created 29 workers union and 44 senior staff unions and Employers Association.

The position created in section 11 of the Trade Union (Amendment) Act, excludes some institutions from instituting its own union, such provision should be discouraged, in that the Constitution in Section 40[60] provides for freedom of Association to every citizen. Also, any Act or Legislation which is at variance with the Constitution shall be declared null and void to the extent of its inconsistency.[61]

4.3.4 Right to Join a Trade Union or Membership

Section 20(1) of the Trade Union (Amendment) Act[62] provides that a person under the age of 16(sixteen) shall not be capable of being a member of a trade union, and a person under the age of 21(twenty one) shall not be capable of being an official of a trade union.Every Nigerian base on the above Section who is up to 16 years of age and who is an employee is entitle to join a trade union relating to his/her trade or profession.[63] This provision is however made subject to

[56]. Ibid., 174.
[57]. Decree No.4 of Federal Republic of Nigeria 1999
[58]. Ibid.
[59]. Trade Union (Amendment)Act, 2005 (i.e. Part B and C of the Third Schedule to the Act)
[60]. Constitution of the Federal Republic of Nigeria 1999 (as amended)
[61]. Section 1 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)
[62]. Trade Union (Amendment) Act, 2005
[63]. Uvieghara, E.E., Op.citp.138 .

rules of the particular union. This means that a person who is between the age of 16 and 21 years may, by the rules of a union, be precluded from membership.[64]

Note that unless a rule of a trade union otherwise provide, trade union funds cannot be used directly or indirectly for political activities. However, before 2005, employers were to make deductions from the wages of "every worker who is eligible to be a member of any of the trade unions for the purpose of paying contributions to the trade union so registered; and pay any such sum so deducted directly to the registered office of the trade union." The current position is as stated in the Trade Unions (Amendment) Act 2005. The Section 17 of the amended provision now restricts deductions to actual members of a trade union.

4.3.5 Recognition of a Registered Trade Union

Unregistered unions are prohibited from performing any act in furtherance of the purposes for which it was formed except, such steps which are necessary for the purpose of registration are met.The issue of trade union recognition raises a number of pertinent questions. Some of which, will now be considered in the light of Section 25 of the Trade Union (Amendment)Act, and the pronouncement of the National Industrial Court.[65]

Collective bargaining implies the right of trade unions to negotiate wages and conditions of service with employers.[66] This cannot take place unless the parties involved have recognized one another for that purpose. Such recognition may be voluntary; as is the case in some countries where, it is based on agreement or a well-established practice. However, to safeguard against refusal by some employers to negotiate with trade unions representing the employees concerned,

[64]. Section 20 (2) Trade Union (Amendment) Act, 2005.
[65]. Agomo, C.K., Op.cit p.287.
[66]. Okene, O.V.C., (2008) *The Internationalization of Nigerian Labour Law: Recent Developments in Freedom of Association,* 7 University of Botswana Law Journal, p.81.

many countries have adopted legislation obliging employees to recognize a trade union for collective bargaining purposes, subject to certain conditions.[67]The accepted principle is to recognize the most representative union, but the criteria to be used to decide this and by whom has not been clearly spelt out. However, the issue of recognition is crucial to the whole process of collective bargaining.

The most important step in the collective bargaining procedure is for the employer to recognize the trade union as a bargaining agent for the employees within the bargaining unit. Section 25 of the Trade Unions Act[68] provides that "*where there is a trade union of which persons in the employment of an employer are members, that trade union shall, without further assurance on registration in accordance with the provisions of this Act, be entitled to recognition by the employer".* This is a matter of statutory obligation for employers, provided that a trade union has more than one of its members in the employment of an employer.

On the other hand Section 5 of the Trade Union (Amendment) Act[**69**]enjoined all registered trade unions in Nigeria to constitute an electoral college to elect members who will represent them in negotiations with the employer. The problems inherent in the above provisions are as follows;

First, the amendment of the Trade Union Act does not prescribe the modalities for constituting an electoral college. This lacuna will have the tendency to encourage favouritism as employers will try to influence the criteria for the assessment of representative, who would be disposed to management during negotiations. Secondly, the law does not prescribe the procedure to resolve disputes when union represents workers in a collective bargaining.The law ought to have adopted

[67]. See "*Promotion of Collective Bargaining"* International Labour Con Trade Union (Amendment)Act, 2005.ference, 66th Session, 1980 p.15; Section 25 of the Trade Unions Act, 2005.
[68]. Trade Union (Amendment) Act, 2005.
[69]. Ibid

either the "majority principle*"* to avoid possible problems during collective bargaining in the work place. The majority principle means that because a trade union enjoys a majority of members in a particular bargaining unit, it automatically assumes the right to bargain on behalf of all those workers who falls within that bargaining unit to the exclusion of all other trade unions. However, all benefits accruing from the negotiations with management are enjoyed by all workers in the unit.[70] The principle of "Sufficiently representative trade union" may be adopted also. The difference between the two is that a majority trade union can be the only union in a unit while in the case of sufficiently representative union can be several of such unions in one unit.[71]

The principle of representative ensures that employers do not find themselves in a position where they are expected to incorporate in negotiations every single trade union which has members, no matter how insignificant the membership. Only those trade unions which could, to a meaningful extent influence relationships between the employers and the employees within an agreed bargaining unit are to be allowed at the negotiation table. Both principles are accepted practices in international law.[72] The present practice of trade union recognition for collective bargaining is a huge challenge as it does not meet the requirements of international practice and needs to be amended.[73]

Another challenge bedeviling collective bargaining in Nigeria as raised is the absence of "*obligation to bargain in good faith" or "willingness to negotiate",* which is not explicitly contained in any of the laws dealing with employment matters and collective bargaining, such as

[70]. Forde, M., *(*1984) *Trade Union Pluralism and Labour Law in France,* 33 International and Comparative Law Quarterly, pp.135-157.
[71]. Ibid.
[72]. Ibid., p.83.
[73]. Okene, O.V.C.(2008) *The Internationalization of Nigerian Labour Law: Recent Developments in Freedom of Association,* 7 University of Botswana Law Journal, p106.

the Trade Disputes Act. This however appears to be one of the challenges facing collective bargaining in Nigeria. In the public sector, for example, the failure to acknowledge the principle of good faith in bargaining is attributed to the limited authority of civil servants who represent government on the bargaining table.[74] There exist a chain of decision-making process which may originate from the negotiating table but goes on to the various governmental agencies up to the highest level in the political authority. Government officials lack the authority to firmly and in good faith commit the state at negotiations with the workers or their representative union.[75] Collective bargaining is workable, only if the parties, bargain in good faith. Having been duly recognized, a trade union would expect the employer to be prepared to enter into genuine negotiations with it. It is obvious that most employers are not willing to negotiate voluntarily and faithfully. This has caused or necessitated the need to impose on employers not only an obligation to bargain collectively, but also the duty to do so faithfully.

Section 25 of the Trade Union (Amendment) Act[76] provides that where there is a trade union of which persons in the employment of employer are members, that trade union shall, without further assistance, on registration in accordance with the provisions of the Act be entitled to recognition by the employer.

The compulsory recognition of a registered trade union by an employer as provided for, by the Act, implies that this recognition is for the purpose of collective bargaining. This was upheld by the NIC in the case of *Patovilki Industrial Planners Ltd. vs National Union of Hotels and Personal Services Workers.*[77] The court held that it was unlawful for an employer to deny its

[74]. Fajana, S.,(2000) *Industrial Relations in Nigeria: Theory and Practice*, Lagos: Labofin and Company, p.274
[75]. Ibid.
[76]. Trade Union (Amendment) Act, 2005.
[77]. Suit No.NIC/12/89,Digest of Judgments National Industrial Court (1978-2006)pp.288-289.

workers' recognition once it has been registered as a union under schedule 3 of the Trade Unions (Amendment) Decree[78] which is now Section 25 of the Trade Union Act.

See also the case of *Corporate Affairs Commissions vs Amalgamated Union of Public Corporations,* Civil *Services Technical and Recreational Service Employees.*[79]

In the case of *Mix and Bake Flour Mill Industries Ltd. vs National Union of Food, Beverage and Tobacco Employees,*[80] a branch union of the respondent was inaugurated in the appellant's company on 29th October, 1996. By a joint communiqué signed by both the appellant and the respondent, the appellant acknowledged the existence of the branch union in the company. It asked for a four week period from the date of inauguration within which to formally recognize union in the company. Before the election, the appellant terminated the employment of those elected as branch executive officials of the union, employment of some 140 eligible members of the union was terminated. One of the issues that were referred to the Industrial Arbitration Panel (IAP) by the Minister of Labour, Employment and Productivity was that of non-recognition of the union. The other two were unlawful retrenchment of the 140 junior staff, and unfair labour practice. The IAP found and decided three in favour of the union.

The matter was subsequently referred to the NIC. The NIC dealt with whether a branch union must be formed in the premises of an employer for the union to enjoy recognition. In addressing the said issue, the NIC held that "Once the trade union indicates its willingness to unionise by

[78]. Decree No.22 of the Federal Republic of Nigerian1978.
[79]. Suit No.NIC/1/2003, DJNIC 1978-2006, p.478.
[80]. (1978-2006) DJNIC P.277.

workers who are eligible to be its members, an employer is obliged to accord recognition and not pose obstacles in the way of such unionization."[81]

If an employer deliberately fails to recognize any such registered trade union to which his employees belong as members, he is guilty of an offence and liable, on summary conviction, to a fine N1000[82] and the offence continues until recognition is granted.[83] This position was affirmed in the case of the *Austrian-Nigerian Lace Manufacturing Company Limited vs National Union of Textile, Garment and Tailoring Workers of Nigeria*.[84] The court held that Section 24 now Section 25 of the Act confers automatic recognition on registered trade unions, and an employer's refusal to deal with the representatives of registered union is contrary to the law.

Four years after, in 2005, the NIC also held in the case of *Management of Harmony House Furniture Company Limited vs. National Union of Furniture, Fixtures and Wood Workers,*[85] that Section 24 now Section 25 of the Act stipulates that recognition of a trade union in an organization is obligatory, and non-recognition is regarded as punishable offence.

Note that 2005 Trade Union (Amendment)Act in Section 33 as amended now allows registration of Federation of trade unions; provided that, the proposed federation shall be made up of 12 or more trade unions none of which shall have been a member of another registered federation of trade union.

Before 2005, affiliation to the Nigeria Labour Congress (NLC) was open to the industrial union listed in part A of the third schedule to the Trade Union Act. This is no longer so. Any duly registered trade union can now officiate with any federation of trade unions registered in Nigeria,

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81. Agomo, C.K., Op.cit p.282.
82. Section 25 (2) of the Trade Union (Amendment)Act, 2005.
83. Uvieghara, E.E., Op.cit., p.339
84. Suit No.NIC/1/81 DJNIC (1978-2006) P.104.
85. DJNIC (1978-2006) p.186.

provided it is not already officiated with another registered federation of trade unions. There are currently two registered central labour organizations, namely; The Nigeria Labour Congress (NLC), the Nigeria Employers Consultative Association (NECA) and the Trade Union Congress (TUC). TUC is an umbrella body of senior staff associations. Those bodies have so far worked together in matters affecting the economic interests of their members.[86]

Conclusion

It can be concluded that collective bargaining is aimed at keeping good relations between the employer and employee and to obtain and maintain labour peace. It is a process aimed at avoiding and solving industrial conflict. The status of collective Bargaining agreement as it relates to enforceability or otherwise has generated divergence view as a result of which this chapter narrowed its discuss down to Collective Bargaining as a means of settlement of Labour Dispute in Nigeria via the principles associated in enforcement of collective agreement being the end product of collective bargaining. In the light of an effective Collective Bargaining, collective bargaining is the most preferred means of trade dispute resolution, as it always ensures equal power between the employer and employee during conflict and focus on mutual matters of interest cum industrial democracy of employees. Trade union recognition by employers is very vital in Collective bargaining, this is because trade unions assist and represent employees in dispute and foster the labour relationship that exist between employers and employees.

[86]. Agomo, C.K., Op.cit., p.270

CHAPTER FIVE

5.0 SUMMARY

5.1 Summary

The neglect of the principle of collective bargaining is a major challenge, which if not properly addressed on the part of the employer, will no doubt continually hamper the peace and harmony in industrial relation and will in turn affect production of goods and services.

It is the apparent imbalance of power between employees and the employers that has necessitated the desire of workers to come together. Workers discovery of the fact that collective bargaining will place them nearly at equal pedestal with their employer; have resorted to collective action, because by coming together their strength is consolidated and far more effectively than they could as individuals. This work seeks to analyze the applicability of collective bargaining in resolving labour disputes in Nigeria. It is a known fact that disputes in the labour industry is inevitable, Government effort and responsibilities derives from the economic and social objectives of the government as enshrine in the Section 17 of the Constitution (as amended) is paramount if we must ensure a harmonious and conducive atmosphere in labour industry/relation.

Collective bargaining which is viewed as a concept of settlement of labour disputes, in Section 91 of the Labour Act[87] is a process of arriving or attempting to arrive at a collective agreement. The knowledge of the importance of collective bargaining positions one on a better pedestal. outside seeing and considering collective bargaining as a vital process of settlement of labour disputes in Nigeria, mediation, conciliation, arbitration cum Industrial Arbitration Panel(IAP)

[87]. Cap.L1, The Laws of the Federation of Nigeria, 2004

and National Industrial Court were also considered as other ways of resolving trade disputes. The sources of the right to freedom of Association for the purpose of collective bargaining between unions and management were traced to the Constitution of Federal Republic of Nigeria, the Trade Union Act, the Labour Act, and the African Charter on Human Right.

However, despite the existence of a trade union, for recognition to be accorded to it, it must have to be registered by the Register of the Trade Unions duly appointed in accordance with Section 45 of the Trade Union Act.[88]

Although, in theory it is settled law that failure to accord recognition to a registered trade union during collective bargaining by the employer or employers union is unlawful which if convicted shall be liable to a fine of N1, 000.00 hence the discuss of the essence of the International Labour Organization to the world and Nigeria. The position of the law that collective bargaining entered into should be deposited by the parties with the Minister of Labour within thirty days of its execution is also considered, this gives the parties therein the right to enforce or take legal action to enforce the agreement once it is confirmed by the Minister.

The National Industrial Court as a mechanism for the enforcement of collective agreement and extensively addressed its jurisdiction with respect to the recent amendment of the constitution which now gives it a constitutional flavor to exclusively handle labour issues and the court is now saddled with the power of being a court of first and last instances as its decisions are generally not appealable, except when it borders on fundamental right.

However the year 2013 was quite eventful with the academic staff union of Universities (ASUU) strike that lasted for six months. That was perhaps the longest strike in the history of the labour

[88]. Trade Union Act, 2005.

movement in Nigeria is a clear example of breakdown in collective bargaining, the said strike inflicted serious setback on student academic calendar and as a result stalled the progress in the academic industry thereby affecting the economy of the country.

5.2 Findings

Following the above research, findings reveals as follows;

1. That Collective Bargaining can only succeed in an atmosphere of peace, concord and operates best in the spirit of "give and take", mutual understanding and the ability to appreciate the viewpoints of each other and make concessions, where necessary. Collective Bargaining cannot take place unless the parties involved have recognized one another for that purpose. Such recognition may be voluntary and it is the voluntariness of Collective Bargaining that makes it more preferred to other means of settlement of labour disputes. Despite some legal frame work to safeguard against refusal by some employers or managements to recognize and negotiate with trade unions representing the employees concerned, the trend still persist. The current legal framework in relation to the process of Collective Bargaining is not adequate.
2. Finding also discovered that status of Collective Agreement in Nigeria before the regular court is that Collective Agreement are binding in honour only, and are regarded as mere gentleman's agreements that are not judicially enforceable unless incorporated into the employee's contract of employment.[89]
3. The National Industrial Court regards collective agreements as binding and enforceable by the parties to it, regardless of whether or not incorporated into the employee's contract

[89]. *Nwajagu vs Basico* (2000)14NWLR (pt.687)356; *Afriban k (Nig.) PLC vs Kunle Osisanya (*2000) 1NWLR (pt.642)598; *Anaja vs UBA Plc* (2011)15 NWLR (pt.1270)pg.377; *Unity Plc. vs Owie (*2011)15 NWLR (pt.1240)p.273

of employment, once a claimant can show that he/she is a member of a signatory trade union to the collective agreement.[90] This gave rise to labour organizations insistence on implementation of collective agreement reached with Government, except the unattractive side of the law relating to NIC, which makes its decisions not appealable except one's that borders on fundamental rights. Findings also shows the expansion of the jurisdiction of the National Industrial Court Section 254C(1) of the 1999 Constitution (as amended) that granted the National Industrial Court Constitutional recognition and further expanded its jurisdiction beyond simple labour and employment disputes to include criminal jurisdiction arising from any cause or matters over which the court has civil jurisdiction, ancillary matters such as child abuse, human trafficking, personnel matters arising from free trade zones, discrimination and sexual harassment in the workplace. Although these matters were incidental to labour and employment disputes. The express inclusion of the items in the jurisdiction of the NIC settles the restrictive provision of Section 7 of the NIC Act 2006, which give room for conflicting interpretations.

The NIC is properly constituted if it consists of a single judge. Also, the president and judges of the NIC are now mandatorily required to be legal practitioners with at least ten(10) years' experience, as oppose the previous situation.

5.3 Recommendation

In the light of the above findings and challenges the recommendations herein are geared toward addressing the posed challenges for effective determination of labour and employment disputes.

[90]. *Gbadegesin vs Wema Bank Plc*. (2009)15 NLLR (pt.40)p.1; *PENGASSAN vs Schlumberger* (2008)11 NLLR (pt.29)P.164; *National Union of Civil Engineering Construction, Furniture and Wood Workers vs Beten Bau Nigeria Ltd and Anor*, Unreported Suit No: NIC/8/2002

1. The Government should come up with an instrument where management(Government) shall be compelled to recognize employees and their Union(s) in collective bargaining, and to see the act of non recognition of employees union(s) as a criminal offence for peace and growth of the nation's economy and to abolish every laws and practices that bars some public officers (e.g.) Uniform jobs from forming trade union for the purpose of Collective Bargaining. Also, promoting "willingness" among parties and ensure managements are decisively penalized for any attempt for failure to recognize Labour union(s) and the law is to clearly spelt out the process to be adopted when resorting to Collective Bargaining. The Ministry of Labour and Productivity should also be given more powers it deserves not to only bark, but bite where necessary.
2. Government should ensure that Collective Bargaining goes beyond the process of negotiation between unions and employers on issues directly effecting conditions of employment, and as a means of limiting unilateral decisions and action by employer and should via legislation ensure effective implementation of Collective Agreement Via mandating management to obey such agreement and incriminate their act of non implementation of collective agreement. Although, judges of the court have been alive to their responsibility and have in some cases shunned technical justice,[91] but should intensify in such act by encouraging accelerated hearing of matters hinged on Collective Agreement.

   The law is pactasuntservanda meaning agreement must be obeyed, Federal Government and Organized Labour Unions should honour various agreements reached in the bid to forestall future strike actions and ensure industrial harmony in various sectors of the

[91]. *Uzoigwe M.C. vs Agboeze & Ors.* (2011)22 NLLR (pt.42) p.443

nation's economy and if parties had obeyed previous agreements executed between (e.g.) NMA and representatives of the Federal Government, the strike would have been averted and those that died because of the strike for failure to be attended to probably could not have died and cannot be raised by the doctors or Federal Government among other losses.

3. The NIC should be structure not to be seen as a court of last instance, should there be need to appeal its judgment. Urgent review of the NIC Act 2006 is therefore needed to address the current position wherein decisions of the National Industrial Court are not allowed on Appeal, except it is based on fundamental right. This call for a review, is quite crucial, because it is an established fact that no man is a repository of knowledge and in the case where decisions is entered in error by any judge of the National Industrial Court on the ground of man's imperfection it can easily be redeemed on appeal and failure to address this, renders efforts made in increasing the court jurisdiction .

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