

A CRITIQUE OF THE JURISDICTION OF THE NATIONAL INDUSTRIAL COURT IN HUMAN RIGHTS ENFORCEMENT IN NIGERIA

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ABSTRACT

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Many reforms aimed at improving the administration of human rights justice system in Nigeria, especially towards curbing delay in such cases, avoiding technicality and improving access to courts, have been undergone in the recent past. Of significant note is the vesting of jurisdiction in the National Industrial Court (NIC) in the enforcement of labour-related human rights violation. However, unlike the hitherto arrangement where both the State and the Federal High Courts exercised concurrent jurisdiction in human rights proceedings, exclusive jurisdiction is vested in the NIC in labour-related human rights matters. This development, like a coin, has its two sides of pros and cons. With the increase in the number of court with jurisdiction in human rights cases it heralded, it creates a wider access to court. Also, it makes human rights-labour related international treaties enforceable by the NIC once ratified by the country without the need for further domestication. On the other side of the coin however, with limitation of the NIC's jurisdiction to labour-related human rights

issues, the court may have to grapple with determination of its jurisdiction and consequently engenders delay which the reforms aimed to eradicate. Besides, it is doubtful whether the Fundamental Rights (Enforcement Procedure) Rules, 2009 would be applicable to human rights proceedings before the court. This is in view of the wordings of section 46 of the Constitution. Also, section 254 (C) stipulates that the human rights jurisdiction vested in the NIC pertain only to “any dispute over the interpretation and application of the provisions of Chapter IV” and not necessarily human rights employment. To this end, adopting analytical legal research approach, this paper critically reviews the jurisdiction of the NIC in human rights enforcement and makes a case for necessary further reforms that would make the jurisdiction better beneficial.

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INTRODUCTION

Since 1948, when the *Universal Declaration of Human Rights* (UDHR) was adopted, respect for fundamental human rights has become a significant global goal. Human rights are inherent rights which every person is entitled to by the only reason of being a human being. Thus, deservedly, everyone aspires to have it protected and enforced in case of infringement. This should not be surprising since fulfilment of these rights is pivotal in giving confidence to the people and for the promotion of equality and freedom in every country. This explains why late Justice Kayode Eso argued that, “freedom and human rights were worth fighting for, to the uttermost.” In pursuit of this goal, the *1999 Constitution of the Federal Republic of Nigeria*, (as altered) (hereafter referred as the “1999 Constitution” or “the Constitution”), specially vests trial jurisdiction in the Federal and State Superior Courts of Record in the enforcement of human rights.

Prior to the year 2011, the National Industrial Court (NIC) was not constitutionally designated as a Superior Court of Record. For this reason, its recognition in its enabling law as a Superior Court of Record stood contrary to the provisions of the Constitution which prohibit declaration and recognition of any court other than those listed in the Constitution as a Superior Court of Record. Again, the NIC was not by then a direct creation of the Constitution, but of an ordinary Act of the National Assembly. For this reason also, the court did not have jurisdiction in the enforcement of human rights as such jurisdiction was only vested in the relevant trial courts by the Constitution.

Given the unique jurisdiction of the NIC in labour disputes and the relevance of human rights issues to labour justice, the need to reposition the court for the deserved place in the Constitution led to the enactment of the *Constitution of the Federal Republic of Nigeria (Third Alteration) Act*, which, among others, vests the exclusive jurisdiction in the NIC in human rights matters arising from the employee/employer relationship. This development was ordinarily commendable, but a critical look at its other side would make one to reflect on the consequential set back it stands to bring to the administration of human rights justice in the country. With limitation of the NIC's jurisdiction to labour-related human rights issues, the court may have to grapple with determination of its jurisdiction from time to time by declaring if any human rights violation was truly committed in labour relation. Consequently, this engenders delay which the reforms sought to eradicate. Besides, it is doubtful whether the *Fundamental Rights (Enforcement Procedure) Rules, 2009* would be applicable to human rights proceedings before the court.

Accordingly, this study undertakes a critique of the jurisdiction vested in the NIC in labour related human rights issues. The study reveals the arrangement as a set back towards achieving fast tracking justice reform introduced in the enforcement of human rights by the *Fundamental Rights (Enforcement Procedure) Rules, 2009* (hereafter called "2009 FREP Rules"). To this end, the paper strongly suggests a review of the jurisdiction of the NIC in labour related human rights disputes from "exclusive jurisdiction" to "concurrent jurisdiction" with other trial superior courts of record to also exercise jurisdiction in the matter.

JURISDICTION OF THE NIGERIAN COURTS IN HUMAN RIGHTS ENFORCEMENT

To interpret the provisions of the Constitution on fundamental rights in case of conflicts or infringements, some courts have been vested with jurisdiction to entertain matters pertaining to any of the rights listed in the Chapter IV of the 1999 Constitution. As the Chapter IV of the Constitution is however not the only human rights instrument in the country, those courts have also been empowered to enforce human rights provisions in other instruments. Thus, to appreciate the courts vested with jurisdiction in human rights enforcement in the federation and the nature of such

jurisdiction, one must consider the situations before and after the year 2011. This is the approach adopted in this work.

Human Rights Jurisdiction of Courts Before 2011

Before 2011, as far back as 1979, jurisdiction in human rights enforcement has been vested in the High Court in any State where any of the provisions of Chapter IV of the Constitution “has been, is being or likely to be contravened” in relation to the person affected. A glaring challenge in this regard is the absence of a clear definition of what “a High Court in that State” connotes under the 1999 Constitution. However, under the *Fundamental Rights (Enforcement Procedure) Rules, 1979*, which applied till when it was replaced by the 2009 FREP Rules, “Court” was defined to mean “the Federal High Court or the High Court of a State”. From the foregoing, it is safe to posit that before 2011, the High Courts, i.e. both the Federal and the State High Courts, respectively, including the High Court of the Federal Capital Territory, Abuja, were vested with and exercised jurisdiction in the enforcement of human rights. The jurisdiction so exercised was considered to be concurrent except, based on some judicial authorities, to the extent that “where a fundamental rights enforcement action involved the Federal Government or any of its agencies it had been within the exclusive jurisdiction of the Federal High Court”. What has changed in the law since that year till date therefore deserves further examination as done below.

Human Rights Jurisdiction of Courts since 2011: the Relevance of the NIC

The National Industrial Court of Nigeria (hereafter referred to as the NIC), like the State and Federal High Courts, is now vested with jurisdiction to entertain matters or issues relating to human rights. Besides, the NIC is now regarded as a superior court of records, hence, a court of equal or concurrent jurisdiction with the State and Federal High Courts. Essentially, though now a court of equal/concurrent jurisdiction with State and Federal High Courts in entertaining and interpreting human right disputes, such disputes must however relate to labour, employment, trade unions, industrial relations and in the workplace for the NIC to have jurisdiction in entertaining the matter. This should not be surprising because the original jurisdiction vested in the NIC as a superior court of record is meant to be specific to all industrial or employment matters and matters incidental thereto of which human rights disputes form a part. Thus in general terms, regardless of any other provision in the Constitution, the court is empowered, to the exclusion of any other court, to exercise jurisdiction in civil cases and matters “relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith”.

To ensure that no doubt is entertained on whether human rights form part of the civil causes and matters or matters incidental thereto in which the court could exercise jurisdiction, the Constitution further expressly declares that the exclusive jurisdiction of the court shall extend to civil causes and matters “relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer’s association or any other matter which the court has jurisdiction to hear and determine”.

Based on the foregoing, it is clear that exclusive jurisdiction, with regards to human rights disputes arising from all matters relating to employment, industrial relations, trade union and all kinds of issues arising in the workplace, is now vested in the NIC. Interestingly, an appeal can only lie, as of right, from decisions of the court to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of the Constitution alone, while other appeals must be by leave of the court. Whether a person alleging infringement of his fundamental human rights within the workplace or industrial relation can also apply to the State or Federal High Court for a redress or determination of his rights given the fact that both the High Court and the NIC are vested with equal jurisdiction to entertain issues relating to fundamental human rights could have been opened for debates. However, the declaration made in the *Third Alteration Act* to the effect that the exclusive jurisdiction of the NIC would apply notwithstanding anything to the contrary in other provisions of the Constitution, would make it difficult for the High Courts to be clothed with further jurisdiction in labour related human rights issues. But, apart from this, some other issues still call for critical examination on the human rights jurisdiction now vested in the NIC. Such issues may also query the nature of the human rights jurisdiction of the NIC and enquires whether it truly divests jurisdiction from the High Courts in the enforcement of human rights violated within the labour and employment relations. These are reviewed in the next segment.

MATTERS ARISING ON THE HUMAN RIGHTS JURISDICTION OF THE NIC

Implications for State and Federal High Courts

The exclusive jurisdiction of the NIC in all matters relating to labour, trade disputes and industrial relations, which extends to employment matters bothering on infringement of human rights, certainly seem to limit the power of other courts in exercising jurisdiction on such fundamental rights matters. As the law stands, all disputes relating to employment and allied matters pending before any State High Courts in Nigeria are required to be transferred to the NIC for determination. A relevant case in this regard is *Josiah Madu vs. Solus Schall Nigeria Ltd* (Unrep).

In that case, the claimant, Josiah Madu, sued the respondent, Solus Schall at the State High Court in Port Harcourt. He claimed the sums of over N538 Million as special and general damages for wrongful termination of his employment with the Company. The Counsel for the respondent challenged the jurisdiction and competence of the suit before the State High Court by way of a preliminary objection. The objection was premised on section 254 of the 1999 Constitution vide the *Third Alteration Act, 2010*, which had divested State High Courts of the jurisdiction to entertain matters relating to and/or connected with labour, employment and other industrial based disputes. This follows exclusive jurisdiction now confers on the National Industrial Court by the same law. At the close of arguments from Counsel for both parties, the Presiding Judge of the State High Court upheld the respondent's arguments and consequently declined jurisdiction to entertain the suit.

Many other cases have also confirmed the exclusive jurisdiction of the NIC in labour and employment disputes. While there has not been specific cases challenging the exclusive jurisdiction of the NIC in human rights that arose from employment/labour relations, that the court truly exercises the exclusive jurisdiction through such human rights cases being filed before the NIC rather than the High Court. Thus, in *Mrs Folarin Oreka Maiya v. The Incorporated Trustees of Clinton Health Access Initiative, Nigeria & 2 O* the applicant commenced her action against the respondents at the NIC (Abuja Division), by way of originating motion pursuant to sections 34(1) (a), 42 and 254C (1) (d) (f) & (g) of the 1999 Constitution. She alleged violation of her fundamental rights to dignity and freedom from discrimination as guaranteed by the aforementioned sections. The violation arose in employment relationship under a labour contract. In overruling the objection to the jurisdiction of the court, the NIC held that it has exclusive jurisdiction to the exclusion of other courts to entertain the suit. Consequently the court assumed jurisdiction and the matter was successfully determined by the court.

Therefore, as the above cases demonstrate, the federal and state high courts have no jurisdiction to entertain any case of human rights violation that arose in the course of the employment relationship between the parties. It also follows that section 46 of the Constitution must no longer be read in isolation but along with other provisions of the Constitution vesting special exclusive jurisdiction in the NIC in human rights cases relating to labour and employment matters. This exclusive jurisdiction of the NIC in fundamental rights cases however raises some concerns that should be addressed as taken up in the next segment.

Concerns for the Exclusive Jurisdiction of the NIC

Fundamental human rights, as declared by both the *African Charter on Human and People's Rights*; including its protocols; and, the *Universal Declaration of Human Rights, 1948*, are inviolable, inalienable and inherent rights that need to be given adequate protection and their

enforcement should be attended to expeditiously. The number of labour related human rights cases that would arise from time to time across the country cannot by any imagination be predicted. Again, when the Constitution left it open for the victim of any human rights violation to approach any High Court in any State where the violation arises, it meant to aid quick and easy access to courts for human rights enforcement. Therefore, the vesting of the exclusive jurisdiction in the NIC to entertain industrial matters touching on fundamental rights is a serious setback that may have the consequence of delaying human rights enforcement, a problem recently addressed through the enforcement rules and procedures. It is arguable that that the NIC has, by this arrangement, been saddled with more responsibilities than it could probably bear.

There are 36 States and a Federal Capital Territory (FCT) in the country. But this singular national Court now has the sole responsibility of handling all human rights issues relating to labour and employment relations emanating from all the States and the FCT. The major first challenge posed by this is that divisions of the court are not yet established in all the states of the Federation to match the responsibility. Even the ten divisions currently created by the Court are not spread evenly to give easy access to its justice in all States. This makes it inaccessible to applicants. Unlike the High Court that constitutionally exists in every State, the Court, there is just “the National Industrial Court” established as a court of the Federation by the same Constitution.

Secondly, the *Fundamental Right (Enforcement Procedure) 2009* now charges courts handling human rights with speedy and efficient enforcement human rights. The exclusive jurisdiction of the NIC may cause delay in the dispensation of justice in industrial or employment matters relating to fundamental rights as a result of workload or many files to deal with it. This may lead to justice denial and popularly expressed, ‘*justice delayed is justice denied*’. Certainly, expeditious determination of fundamental matters before the court must be a major concern for the intention and purpose of vesting the exclusive jurisdiction in the court not to be defeated.

Therefore, rather than vesting exclusive jurisdiction in the NIC in human rights cases arising from labour and employment relations, the jurisdiction in such special human rights cases would be better made to be exercised concurrently by both the NIC and the High Courts. With this review, the status of the NIC as a Specialised Court in labour and employment related matters would be maintained while it would still exercise concurrent jurisdiction with High Courts in human rights issues that emanate from labour and employment relation. To achieve this without further conflicting constitutional provisions, sections 254C (1) (d) of the Constitution (as altered) are strongly recommended to be redrafted to read as follows:

254C (1) Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National

Assembly, but without prejudice to, and also subject to the jurisdiction conferred on the High Court in section 46 (1) of this Constitution, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters - relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine, subject to and without prejudice to the jurisdiction conferred on the High Court in section 46 (1) of this Constitution, which shall also include labour and employment related human rights issues. Once section 254(C), as drafted above, no longer constitutes any prejudice to section 46 (1) of the Constitution, but rather being made subject to it, the logical interpretation of section 254(C) (d), which again has also repeated the same restrictions to the exclusive jurisdiction conferred on the NIC, would mean that while the NIC can only exercise jurisdiction in human rights that relate to labour and employment matter, the High Court can exercise jurisdiction in all matters of human rights, including those that emanate from labour and employment relations. Consequently, jurisdiction of the NIC in labour related human rights would no longer be exclusive, but concurrent with the High Court.

Queries on the Jurisdiction of NIC in the Enforcements of Human Rights

Aside the limitation and exclusion of jurisdiction in labour related human rights to the NIC, there is a very more serious marked difference between the jurisdiction conferred on the NIC and the one conferred on the High Court with respect to Chapter IV of the Constitution. This has the likely consequence that the FREP Rules 2009 may not be applicable to the NIC. In this regard, the NIC is conferred with jurisdiction "relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution". On the other hand, with respect to the same Chapter IV, the High Court is vested with jurisdiction "to hear and determine any application made to it". The High Court is also extensively empowered to "make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcement or securing the enforcing within that State of any right to which the person who makes the application may be entitled under this Chapter".

From the forgoing, it is clear that the jurisdiction vested in the NIC with respect to Chapter IV of the Constitution, after it is certain that the human issues involved relate to labour and employment can only be invoked in disputes "over the interpretation and application of the provisions of Chapter IV". The implication of this is that the NIC cannot constitutionally be taken as having jurisdiction in human rights "enforcement" other than to resolve disputes "over the interpretation or application" of Chapter IV and not enforcement of violation of the rights

conferred in the Chapter. Many other provisions of the Constitution make this conclusion logical and reasonably correct.

First, an individual whose right is violated, being violated or likely to be violated, even in the course of his employment, is required to approach the High Court in the State where the alleged violation occurs or threatens for redress. Upon doing this, the person seeking such redress can make any application to the court which may include praying the court to interpret and apply the provisions of Chapter IV, among other things. Even though, by the nature of the jurisdiction conferred on the NIC, it may be taken that the High Court will no longer have jurisdiction to “interpret and apply” the provisions of Chapter IV when it relates to labour matters, the NIC can still not be taken to have jurisdiction on labour disputes relating to Chapter IV generally other than when the dispute is “over the interpretation and application of the provisions of Chapter IV”. Thus, unlike the High Court, the NIC does not have jurisdiction in human rights when approached other than when the human rights dispute is “over interpretation and application” of the Chapter and not for such other purposes like enforcing “any right to which the person who makes the application may be entitled” under the Chapter IV.

Second, there is a clear difference between jurisdiction of courts in Nigeria in relation to “enforcement” of rights under Chapter IV upon their violation and their “interpretation” like any other provision of the Constitution. Generally, the Constitution did not make separate provisions on interpretation of Chapter IV as different from what applies to interpretation of other provisions of the Constitution. Rather, the separate emphasis on jurisdiction of courts in relation to Chapter IV is connected to “enforcement” of rights under it when faced with violation and not their mere “interpretation and application.” By therefore specifically declaring jurisdiction of the NIC in relation to the Chapter to be merely connected to any dispute “over interpretation and application” of the Chapter, the issue of enforcement is not within the jurisdiction of the NIC. Determining when dispute “over interpretation and application” of Chapter IV as it relates to labour and employment may arise is however another cup of tea entirely.

Third, the constitutional power that enabled the Chief Justice of Nigeria (CJN) to make rules in the form of the FREP Rules, 2009 requires specifically that the rules must be made “with respect to the practice and procedure of a High Court for the purposes of section 46.” Certainly the NIC is not a High Court in respect of whose practice and procedure the FREP Rules could have been made. The provision of section 46 only empowers any person who alleges actual or likely violation of his rights under Chapter IV to apply to the High Court in the relevant State, regardless of whether the contravention arises in the course of employment or labour relation. The NIC’s jurisdiction in relation to the Chapter only arises when there is “any dispute over interpretation and application” of the provisions of the Chapter. Again, the FREP Rules clearly defines Court to whom it applies thus: “*Court*” means the Federal

High Court or the High Court of a State or the High Court of the Federal Capital Territory, Abuja.

There is no other provision in the Constitution to suggest or justify applying the FREP Rules to the NIC. Since human rights in Nigeria can only be enforced through application of the FREP Rules and not any other Rules of Court, it can be concluded that the NIC is not empowered to enforce human rights even as it relates to labour and employment. Rather, the power of the court relates and connects to “any dispute over interpretation and application” of Chapter IV and not “enforcement” of the rights conferred under the Chapter. It is therefore not little surprising that the NIC strictly requires any human rights application filed before it to comply with its normal Rules and Procedure and not necessarily the FREP Rules. This reality may be one of the weaknesses of the FREP Rules which has not yet been addressed in works that appraise the FREP Rules. It must be stated clearly that when other courts are involved in the interpretation of Chapter IV rather than for enforcement of the rights under it, whether at the trial or the appellate level, the exercise has different connotations. For instance, with regard to when appeals will go to the Supreme Court as of right, a distinction is made between appeals on decisions bothering on “interpretation of any provisions of the Constitution (including Chapter IV)” and decisions on contravention of the rights stipulated in Chapter IV which will involve enforcement of the rights.

CONCLUSION AND RECOMMENDATIONS

For the exclusive jurisdiction of the NIC in matters bothering on fundamental human rights not to form a set back to the improved administration of human rights justice system recently advanced in the country, it is necessary for the National Assembly to review the jurisdiction. Thus it would be better vested in both the High Court and the NIC such labour related matters while the High Court retain its own jurisdiction in all matters relating to human rights, whether labour related or not. This would help to expeditiously resolve fundamental rights issues; otherwise, it would limit access to court and could lead to an impediment to the enforcement of fundamental human rights in the country.

Furthermore, since the NIC is the only court vested with exclusive jurisdiction to entertain industrial suits, there is need for the judicial divisions of the court in all states of the federation, with more judges and competent administrative staff. This will enable the court achieve the set goals for which it was created.

Similarly, a critical look at section 254 (C) (d) of the Constitution would show clearly that the NIC is only vested with jurisdiction in disputes over interpretation and application of Chapter IV and not enforcement of the rights conferred under the Chapter. This has been further fortified by the reason that section 46 of the Constitution relates to the High Court in respect of the FREP Rules by which human rights can

be enforced. It therefore becomes imperative for section 254 (C) to be reviewed to clearly stipulate the power of the NIC to entertain applications for enforcement of rights in Chapter IV. Similarly, section 46 should be altered to include the NIC while the relevant provisions of the FREP Rules should also be amended to define “Court” to mean High Courts and the NIC.

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