THE WORKPLACE AND CONSTITUTIONALISM IN NIGERIA FOLARIN

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ABSTRACT

The Constitution of every country stands as the most powerful document in that country, written or unwritten. This document gives life to other statutes, and those other statutes are recognized as subsidiary documents to the Constitution. The Nigerian Constitution is no different as it provides that other laws are subject to its provisions, and in a situation where a law is in friction with it, the Constitution will prevail over such law. The article revolves around the labour constitution in Nigeria. It analyses the principles and constitutional provisions on labour rights and obligations before and after the Third Alteration of the Nigerian Constitution. It examines Nigeria's labour law philosophy, rationale and the changing world of works. It further highlights the gradual changes brought about by the Third Alteration, strengthening the role of the National Industrial Court and addressing the need for more legislative activism to accommodate issues brought about by the changing world of work.

Key words: Constitution, Constitutionalism, Workplace, Human Rights,

1.0. Introduction

The crux of this paper is to interrogate the relationship existing between two significant concepts: Constitutionalism and the workplace/labour. Does the Constitution have anything to say about the workplace? To what extent do employees enjoy constitutionally guaranteed rights in the workplace? OR When an employee clocks in at 8 am, does he hang his 'cloak' of human rights at the entrance door to be picked up at the close of work? According to Richard Walton (of Harvard School of Business Administration), there are eight parameters for measuring the quality of work life[1] viz:

- Adequate and fair compensation
- Safe and healthy workplace
- Opportunity for developing human capacity
- Future opportunity for continued growth & security
- Social integration in the workplace
- Work and total life space
- The social relevance of work-life
- Constitutionalism in the workplace.

One of the reasons why people get jobs is to get compensated, and it is only fitting if this compensation is adequate and also fair. The workplace is expected to be safe and healthy for its workers; the recent occurrence of the COVID 19 pandemic has once again shown the importance of having a safe and healthy workplace. Of all these parameters highlighted by Richard,

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[1] Cecily Shibi Netto, "Quality of Work Life: Dimensions and Correlates – A Review of Literature" (2019) Available at: https://anvpublication.org/Journals/HTMLPaper.aspx?Journal=International%20Journal%20of%20Reviews%20and%20Research%20in%20Social%20Sciences;PID=2019-7-1-25 (Accessed 13th April 2022)

Constitutionalism in the workplace is the most important, and this is because it is the hub that others revolve around. It assures the employee of the protection of his rights enjoyed outside the workplace as much as within the workplace. We can keep listing and identifying the rights and potential rights of workers in the workplace. However, without any document to legitimise these rights, it remains nothing but mere words.

2.0. Conceptual Clarification

2.1. Constitution

It is far easier to describe Constitution than to attempt a definition because its definition varies from one writer to the other. However, it is generally accepted that the Constitution is the grundnorm document of every country; the implication of this is that Constitution is considered as a superior statute that legitimises and gives power to other statutes.[2] The consensus among various writers is that the Constitution of any country, written or unwritten, is bound to set out the framework and functions of organs of such society.

According to Hood Phillips, Constitution can be understood in two different senses[3]:

- Abstract sense: Constitution is a system of law, customs and conventions which defines the composition and powers of organs of the state, and regulates the relations of the various state organs to one another and to the private citizens.
- Concrete sense: Constitution is the document in which the most important laws of the state are authoritatively ordained.

It is in the latter sense that Wade conceived the Constitution as a document having special legal sanctity which sets out the framework and principal functions of the organs of government of a state.[4] Bo Li describes the Constitution as a charter of government deriving its whole authority from the governed. The Constitution sets out the form of government. It specifies the purpose of government, the power of each department of the government, the state-society relationship, the relationship between various governmental institutions and the limits of the government.[5]

2.2. Constitutionalism

Without enforcement, a statute is just as good as not being in existence. It is one thing for a state to have a constitution; it is another thing to implement, enforce or adhere to the provisions of the Constitution. Hence having a constitution does not bring about Constitutionalism. Constitutionalism means that government should be limited in its powers and that government authority/legitimacy depends on observing those limitations. Constitutionalism has been defined as the doctrine that governs the legitimacy of government action, and it implies something far more important than the idea of legality that requires official conduct to be in accordance with pre-fixed legal rules. Constitutionalism is a legal limitation on government.[6] It means limited government.

[2] Definition.Net, "Grundnorm" Available at: https://www.definition.net/define/grundnorm# (Accessed 13th April 2022)
[3] NOU, Available at: https://nou.edu.ng/coursewarecontent/LAW%20243.pdf (Accessed 13th April 2022)
[4] AT Oyewo and JA Yakubu, Constitutional Law in Nigeria, (Ibadan, Jator Publishing Co., 1998), p.1
[5] Bo Li: 'What is Constitutionalism', Perspectives, Vol. 1, No. 6, n.d.
[6] Hilaire Barnett, Constitutional and Administrative Law 5 (London: Cavendish Publishing Limited, 3rd edi., 2000)

There are two types of limitations impinging on government:
- Power is proscribed; and
- Procedures prescribed.

According to Barnett, Constitutionalism embraces limitation of power (limited government), separation of powers (checks and balances) and responsible and accountable government.[7] Henkin[8] identifies popular sovereignty, the rule of law, limited government, separation of powers (checks and balances), civilian control of the military, police governed by law and judicial control, an independent judiciary, respect for individual rights and the right to self-determination as essential features (characteristics) of Constitutionalism.

2.3. Workplace

A workplace or place of employment is a location where people perform tasks, jobs and projects for their employer. Types of workplaces vary across industries and can be inside a building or outdoors. Workplaces can be mobile, and some people may work in different locations on various days. The growth of technology has led to a new type of workplace, a virtual one, allowing people to work remotely.[9] The Covid-19 Pandemic made employers embrace the remote work style, and remote work is currently a well-embraced work style. Examples of the workplace include: Office; Home Office; Factory or Distribution Centre; Farm or Outdoor location and store. However, for the purpose of this paper, the workplace will include the general concept of labour.

3.0. Labour Related Constitutional Provisions

Constitutionalisation of labour law strives to balance unequal bargaining power between the employer and employee with regard to issues in the workplace such as social justice, social dialogue, social protection, social exclusion, and a variety of security concerns in the workplace. It is also recognition of the constitutional labour rights of workers and an attempt to curb the increased violation of labour rights due to the changing world of work as state boundaries are broken down due to globalisation and the rise of the multinationals that have become stateless.[10]

The 1999 Constitution (as amended) has a lot to say about labour and these will be examined in various categories:
- 2nd Schedule to the Constitution;
- Chapter 2 (S.17(3));
- Chapter 4; and
- 3rd Alteration to the Constitution.

[7] Ibid

[8] Michael Rosenfield ed., Constitutionalism, Identity, Difference and legitimacy, Theoretical Perspectives 4042 (Durham: Duke University Press, 1994)

[9] Indeed, "What is Considered a Workplace: A Few Definitions" Available at: https://www.indeed.com/recruitment/c/info/what-is-considered-a-workplace-a-few-definitions (Accessed 13th April 2022)

[10] Harry Arthurs, "The Constitutionalisation of Employment Relations: Multiple Models, Pernicious Problems" (2010) 19(4) Social & Legal Studies 403

3.1. 2nd Schedule

Generally, labour matters are matters for the Federal Government by virtue of it being contained in the Exclusive Legislative List. However, State Governments may also have a fair share of the 'cake' as the Concurrent Legislative List also makes mention of it. However, the shortcoming is that the extent of state involvement in labour matters is not clearly defined. For instance, Item 18 of the Concurrent Legislative List only provides that *"Subject to the provisions of this Constitution, a House of Assembly may make laws for the state with respect to industrial, commercial or agricultural development of the state." The* problem is that the opening phrase of the provision "subject to the provisions of this Constitution" suggests that the Federal Government, through the doctrine of '**covering the field',** may override the state government in any labour area where the federal government has validly enacted a law. The above assertion is oversimplified. However, in practice, things may be more complicated. For instance:

- The current National Minimum Wage issue: Item 17(Concurrent Legislative List) provides that the National Assembly may make laws for the Federation or any part thereof with respect to labour matter
- Item 34 (Exclusive Legislative List) vests in the Federal Government matters relating to labour, including trade unions, Industrial relations, conditions, safety and welfare of labour, industrial disputes, prescribing a "national minimum wage" for the Federation or any part thereof. These provisions suggest that the federal government can fix the minimum wage for both federal and state workers.

The Senate passed the National Minimum Wage bill in March 2019, approving N30,000 as the new national minimum wage as opposed to the previous minimum wage of N18,000.[11] On April 18, President Buhari signed the bill into law which makes it become an Act. The National Minimum Wage Act gives workers the right to sue their employers if they are compelled under any circumstance to accept a salary that is less than 30,000.[12] Interestingly, the impact of this legislation on state governments has drawn more discussions since its enactment. Notably, states argue that the economic capacity of all states are different and that the determination of a general minimum wage at the federal level, notwithstanding the abilities of the states to pay same, is as sign of a defective federal structure.[13] Understandably, the arguments of the states is a strong and cogent one, especially when recourse is made to our American counterparts, where the states determine the minimum wage.[14] However, our constitutional provisions differ and what exists in Nigeria is in adherence to the 1999 Constitution. The result of the above argument is that certain states are yet to implement the minimum wage, such as; Zamfara, Taraba, Benue, Kogi, Cross River, Abia and Imo States.[15]

[11] Cable, "Breaking: Buhari Signs Minimum Wage into Law" (2019) Available at: https://www.thecable.ng/breaking-buhari-signs-minimum-wage-into-law (Accessed 15th April 2022)

[12] National Minimum Wage Act 2019, s. 9(2).

[13] Paul Opone and Kelvin Kelikwuma, "Analysing the Politics of Nigeria's 2019 National Minimum Wage: Towards a Public Policy" (2021) 64 *The Indian Journal of Labour Economics* 1135–1149

[14] Ibid.

[15] The Cable, "At a Glance: States Yet to Implement Minimum Wage — 3 Years After Adoption" (2022) Available at: https://www.thecable.ng/at-a-glance-states-yet-to-implement-minimum-wage-3-years-after-fgs-approval (Accessed 30th May, 2022)

3.2. Chapter Two of the Constitution

The social, cultural, and economic rights in labour relations in Nigeria can be deduced from the fundamental objectives and directive principles of the State provided in the Constitution.[16] These principles are meant to permeate every policy instrument and piece of legislation and to guide official acts in the implementation of such policies in Nigeria. These principles are binding only between the government and the citizens, thus leaving out the relationship between individuals. Specifically, Section 17 (3) includes four key rights:

(a) This bothers on equal opportunity to secure adequate means of livelihood and adequate opportunity to secure suitable employment without discrimination against any group.[17]. These include the right to work, the right against discrimination in securing suitable employment and right to job security.
(b) Conditions of work are just and humane.[18] This includes the right to work in dignity.
(c) Health, safety, and welfare of all persons in employment are safeguarded.[19] These include the right to a safe working environment and the right to social security.
(d) The right to equal pay for equal work without discrimination, on the grounds of sex or any other basis.[20] This includes the right to equal pay.

However, the Third Alteration of the Constitution extends the meaning of Section 17 of the Constitution. It provides a social right to compete for work at an equal level and a right to expect that types of work are not reserved for certain workers other than on the grounds of qualification, ability, or experience.[21] It guarantees the freedom to perform work of one's own choice, freely irrespective of membership of a trade union and protects those who have suitable jobs from losing them except for a valid reason.[22] One may object that this position is a clear invitation to employees, once confirmed, to do as they please, and the employer will be forced to keep undeserving employees on their payroll. This is not the case; the position is no confirmed employees should lose their jobs except for a valid reason,[23] given at the time of dismissal, either connected with the capacity or conduct of the employee or based on the operational requirements of the employment concerned. This simply means the employer will have to be more careful in dealing with the employee. The employer must keep proper records in order to show the trail of events leading to the termination of the contract of service when called upon. Despite all these, bad employees will still have to go but only after following due process of the law.

It was the previous position of the law that an employer is not required to give reasons for termination or dismissal of an employee. The new position of the law is that before termination of employment is carried out by an employer, such employer is required by law to give 'valid

[16] Constitution of the Federal Republic of Nigeria (as amended) 1999 Cap C.23 Laws of the Federation (LFN) 2004, s. 17(3)
[17] Ibid at s. 17(3)(a).
[18] *Ibid*
[19] *Ibid*
[20] *Ibid*
[21] *Ibid at s. 254C(1)(f) and (h).*
[22] *Ibid.*
[23] Article 4, of the Convention concerning Termination of Employment at the Initiative of the Employer (C158), entry into force 1985, adoption: Geneva, 68th ILC session 1982; *Andrew Monye v. Ecobank Nigeria Plc* unreported Suit No. NIC/LA/06/2010, the judgment of which was delivered on October 6, 2011.

reasons' for such termination. In 2015, the NICN decided in *Aloysius v Diamond Bank PLC*[24] that termination of employment must be for a "valid reason" even for an employee whose employment does not have statutory flavour. In this case, the Court relied on Article 4 of the ILO Termination of Employment Convention, 1982 (No.158) and Recommendation No. 166, to hold that international best practice on termination of employment required the employer to give a valid reason which must be either connected with the employee's capacity, connected with the employee's conduct, or based on the operational requirements of the undertaking, establishment or service. In coming to that conclusion, the Court took the view that ILO Conventions or other Labour Standards represented international best practices. This decision of the NICN was re-echoed by the Court in *Bello Ibrahim v. Ecobank Plc*.[25] However, in the case of *Emana Edit v. Fidelity Bank Plc*,[26] the NICN held that although it is empowered to apply international best practices in cases before it, such international best practice must be properly pleaded and proven by the claimant before it may be applied by the Court.

3.3. Chapter Four – Fundamental Rights

The Constitution with relation to labour guarantees two types of principal rights viz: civil and political rights on the one hand and economic and social rights on the other. In essence, civil and political rights are fundamental rights, directly enforceable or justiciable, often traverse conventional political boundaries.[27] On the other hand, economic and social rights are viewed as non-fundamental, non-enforceable rights or non-justiciable and are deemed incapable of being involved in a court of law or applied by judges. Indeed, there are various labour-related civil and political rights, including the rights to: life,[28] dignity of human persons,[29] personal liberty;[30] fair hearing;[31] private and family life;[32] freedom of thought, conscience and religion;[33] freedom of expression;[34] peaceful assembly and association;[35] and freedom from discrimination.[36] However, the most contentious of these rights in the labour sphere are as follows:

3.3.1. Freedom of Association

Section 40 of the Constitution provides for this right. It includes the right to refuse to be a member of an association alongside the right to be a member.[37] However, this right does not explicitly make express provisions for consequential rights such as the right to engage in collective bargaining or the right to strike. However, the Court stretches this right to include the right to engage in

[24] [2015] 58 NLLR (Pt. 199) 92
[25] Unreported decision of NICN in NICN/ABJ/144/2018 decided on December 17 2019.
[26] Unreported decision of NICN in NICN/LA/276/2014 decided on December 17 2019.
[27] Alston P. and Steiner H., International Rights in Context: Law, Politics and Morals (2nd edn. Oxford, 2000) p. 23
[28] Constitution of the Federal Republic of Nigeria (CFRN) 1999, Cap C.23 LFN 2004, s. 33
[29] Ibid s. 34.
[30] Ibid s. 35.
[31] Ibid s.36.
[32] Ibid s. 37.
[33] Ibid s. 38.
[34] Ibid s. 39.
[35] Ibid s. 40.
[36] Ibid s. 42.
[37] *CCB (Nig.) Ltd v. Okonkwo* [2001] 15 NWLR (Pt. 735) 114; 262; *Agbata N. Onuorah v. Access Bank Plc* [2015] 55 NLLR (Pt. 186) 17; *Samson Kehinde Akindoyin v. UBN Plc* [2015] 62 NLLR (Pt. 217) 259 and *Mr. Valentine Ikechukwu Chiazor v. Union Bank of Nigeria Plc* Unreported Suit No. NICN/LA/122/2014, the judgment of which was delivered on July 12 2016)

collective bargaining and the right to strike due to the provisional phase "for the protection of this interest."[38]

3.3.2. The right to dignity of person

This right is guaranteed under section 34 (1) of the Constitution. The right entails that every worker is entitled to non-degrading and humane treatment. Specifically prohibited under this right are forced[39]or compulsory labour.[40] This is in line with international best practices. An interesting query on the scope of this right is however the failure to expressly provide for consequential rights such as the right to job security and the right to work. Essentially, the right to work is an economic and social right, but the enforceability and compliance with such a right is asserted by this writer to be more commanding where it is of a civil and political nature. The importance of having the right to job security and the right to work subsumed under the right to dignity then raises questions as to whether the scope of the right to dignity can be broadened to imply these consequential rights. This paper will not deeply delve into the advocacy the broadening of the right.

3.3.3. The right against discrimination

Section 42 of the Constitution provides for the right against discrimination. This right is essential, noting the prevalence of the discussion on equality in the workplace and the eradication of discriminatory practices in the workplace.[41] Issues like bullying, sexual harassment, equal pay and treatment, gender issues, HIV/AIDS, and health discrimination are lost in the broader context of the Constitution because of its peculiarity to the workplace.[42] The broad nature of the right and the non-specific reference issues of discrimination in the workplace results in a loss of peculiar issues of workplace discrimination in the broader context. The courts are then left with the task of interpreting this section to cover those instances.

3.3.4. Right to fair hearing

Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees the right to fair hearing in any organisation, inclusive of the workplace.[43] In *University of Calabar v Essien,*[44] Iguh JSC stated: Where an employer dismisses or terminates the appointment of an employee on the ground of misconduct, all that the employer needs to establish to justify his action is to show that the allegation was disclosed to the employee, that he was given a fair hearing, that is to say, that the rule of natural justice was not breached and that the disciplinary panel followed the laid down procedure, if any, and accepted that he committed the act after its investigation.

3.3.5. Right to privacy

Section 37 protects individuals' right to privacy. Enjoyment of this right in the workplace has been a subject of controversy. The question is whether certain employer's practices are an infringement

[38] *Mr George Uzoaru & Anor v. Dangote Cement Plc & Anor* Unreported Suit No. NICN/LA/26/2012; *Union Bank of Nigeria Ltd. v. Edet* (1993) 4 NWLR (Pt 287) 288 at 291

[39] Ibid; Constitution of the Federal Republic of Nigeria (as amended) 1999, s. 34(1)(c); Labour Act, s. 73(1)

[40] See *Ineh Monday Mgbeti v. Unity Bank Plc* Unreported Suit No. NICN/LA/98/2014

[41] Dumebi A. Ideh, Okwy P. Okpala and Christopher O. Chidi, "Towards Eliminating Discriminatory Employment Practices in Nigerian Organisations" (2020) 2:1 LASU Journal of Employment Relations & Human Resource Management 75

[42] Ibid.

[43] *Agbapuonwu v. Agbapuonwu* [1991] 1 NWLR (Pt. 165) 33 at 38

[44] [1996] 10 NWLR (Part 477) 225, 262

of employees' right to privacy, e.g. installation of CCTV in the workplace, monitoring of employee's email/correspondence, staff medical tests, etc.

3.3.6. Right to freedom of religion

S.38 protects the right to freedom of religion in the workplace. The NICN has been called severally to pronounce on the propriety or otherwise of employees dressing in a particular religious way (i.e. the use of hijab) in the workplace.

3.4. Third Alteration to the 1999 Constitution

Nigeria looked towards constitutionalisation of labour law to resolve a lot of labour challenges, such as industrial unrest. Challenges such as the melting boundary between employment and unemployment with job insecurity elevated into a market asset, the threat posed by globalisation in undercutting basic social rights yielding to the necessity to counterbalance the hegemony of free trade ideology,[45] and the growing inability of trade unions to cater for those out of work or even marginal workers.[46] In response to these challenges came to the Third Alteration of the 1999 constitution.[47] The Third Alteration Act has been applauded, among other things, for introducing two significant innovations which will eventually positively shape the future of labour in Nigeria:

3.4.1. **Direct Application**

Section 254C(1)(f)[48] and (h), and (2) of the Constitution[49] and section 7(6) of the NIC Act empowers the National Industrial Court to apply international best practice in labour, and conventions, treaties, recommendations and protocols ratified by Nigeria. The above provision has two implications. Firstly, the spirit and letter of these provisions, as well as the intendment of it, is that they operate to create and set a standard as a benchmark against which labour and industrial relations in Nigeria are to be measured. The second implication is that these provisions make Nigeria a monist state with regard to international labour conventions and recommendations. Thus, international best practices in labour or industrial relations can be applied where it is pleaded and proven by the party alleging their existence, as seen in the case of *Aero Contractors Co. Nigeria Limited v. National Association of Aircraft Pilots and Engineers*,[50] where the Court held that Section 245C of the Constitution grants the Court the jurisdiction and power to apply any international convention ratified by Nigeria. Thus, a case like *The Registered Trustees of National Association of Community Health Practitioners of Nigeria and two ors v. Medical and Health Workers Union of Nigeria*[51] that held that an ILO Convention, which has not been enacted into law by the National Assembly, has no force of law in Nigeria and so it cannot apply relying on *Abacha v. Fawehinmi*,[52]

[45] Robert Blanton and Shannon L. Blanton, "Globalization and Collective Labor Rights" (2016) 31:1 Sociological Forum 181

[46] Samson A. Adewumi, "Employment casualisation and trade union survival strategies in the beverage sector in Lagos, Nigeria" (2020) 21:3 Journal of Public Affairs 1

[47] Constitution of the Federal Republic of Nigeria (Third Alteration) Act No 3, 2010

[48] The National Industrial Court shall have powers to adjudicate on matters relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters.

[49] Constitution of the Federal Republic of Nigeria (Third Alteration) Act No 3, 2010

[50] [2014] 42 NLLR (Pt. 133) 664 NIC

[51] [2008] LCN/3648(SC)

[52] SC 45/ 1997, (2000) 6 NWLR 228

can no longer be said to be the valid position of the law. In the case of *Aero Contractors Company of Nigeria v. National Association of Aircraft Pilot & Engineers*,[53] the Court held that:

> Section 7(6) of the NIC Act declares that what amounts to good or international best practice in labour or industrial relations is a question of fact. It means that such a practice is not already codified in the conditions of service and would thus require to be pleaded and proven by the party alleging their existence on a case-by-case basis.[54]

4.0. Introduction of the Concept of Unfair Labour Practice

The Third Alteration Act introduced the concept of unfair labour practices,[55] a concept unknown to the Nigerian Labour Law before the third Alteration. Even though the provision of the Constitution does not define what unfair labour practices are, this is not peculiar to the Nigerian Constitution as other nations' constitutions failed to define the concept also. In the South African case of *National Education Health & Allied Workers Union (NEHAWU) v. University of Capetown,*[56] the Constitutional Court of South Africa (SA), *inter alia*, held that although s.23 of the SA Constitution guarantees the right to fair labour practice, the Constitution failed to define the concept probably because the concept is "incapable of precise definition and the problem of definition is compounded by the tensions between workers' and employers' interests inherent in labour relations. Hence what is fair depends on the circumstances of a particular case and essentially involves value judgment. As such, it is neither necessary nor desirable to define the concept.

The National Industrial Court is expressly empowered to adjudicate on matters relating to or connected with unfair labour practice or international best practices in labour, employment, and industrial relation matters. This has revolutionised the Nigerian Labour Law jurisprudence considerably because unfair labour practice has an extensive coverage. The limit of this provision is yet to be known.[57] In the absence of a constitutional definition of unfair labour practice, the NICN has risen to the challenge of expounding the concept. Hence labour practices pronounced as unfair by the NICN include: vindictive suspension and denial of promotion;[58] non-recognition of a registered trade union;[59] unfair dismissal & unlawful suspension;[60] non-issuance of payslips and termination letter to employees;[61] unilateral alteration of terms of employment/conditions of

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[53] *Aero Contractors Co. of Nigeria Limited v. the National Association of Aircrafts Pilots and Engineers, the Air Transport Senior Staff Association of Nigeria and the National Union of Air Transport Employees,* 4 February 2014, Case No. NICN/LA/120/2013

[54] *Adewale v. Project Debbas Nig. Ltd* unreported Suit No. NICN/LA/261/2014, the judgment of which was delivered on February 21 2017; *Ademola Bolarinde v. APM Terminals Apapa Ltd* unreported Suit No. NICN/LA/268/2012, judgment of which was delivered on February 25 2016.

[55] Constitution of the Federal Republic of Nigeria (Third Alteration) Act No 3, 2010, s. 6 (which inserts section 254C (1)(f) into the 1999 Constitution).

[56] [2003] 2 BCLR 154

[57] It guarantees employees' individual right and collective rights such as to collective bargaining and to strike, it ensures fair labour practice in order to strike a balance, example the employees have a right to strike but employers have only recourse to lockout.

[58] *Mariam v. Unilorin Teaching Hospital Management Board* [2013] 35 NLLR at 66

[59] Non-Academic Staff of Education & Associated Institutions v. Akwa Ibom State University (2013) Unreported)

[60] *Chiagorom v. Diamond Bank* [2014] 44 NLLR (Pt.140) p. 401. 41.

[61] *Ogunyale v. Globacom* [2009] 14 NLLR (Pt 39) 434.

service by the employer;[62] refusal to pay gratuity and compelling employees to invest the gratuity in a particular bank;[63] and suspension of trade union activities by the employer,[64] amongst others.

However, it is essential to note that in explaining what an unfair labour practice is, such practice is presumed can be perpetrated only by an employer against an employee as a result of the superior position of employers. This is in a bid to balance the unequal power relationship between the employer and employee, by the elevation of the weaker position of workers. Furthermore, international best practices in labour or industrial relations are usually mirrored in the light of the conduct of the employer; the actions (or inaction) of the employee are seldom, if ever, the subject of consideration in this regard. The National Industrial Court, in given content to this concept, is guided by the jurisprudence generated by the Conventions and Recommendations of the International Labour Organisation, comparative labour law and the European Social Charter,[65] where it is pleaded.

5.0. Are All Labour Disputes Constitutional Matters?

Having considered the relationship existing between the Constitution and Labour, it is pertinent to interrogate whether every labour dispute constitutes a constitutional issue.

In *NEHAWU v. University of Capetown*,[66] the Court held that since the purpose of the Labour Relations Act (LRA) is to give effect to Section 23 of the South African Constitution, any dispute arising from the Labour Relations Act may as well constitute a constitutional concern. NEHAWU's case is on all fours with a plethora of cases in Nigeria. First, the Nigerian courts have held in *Shitta-Bey v. Federal Public Service Commission*[67] and severally in other cases[68] that civil service rules being made pursuant to the Constitution have constitutional force in them. Also, in *Bewaji v. Obasanjo*,[69] the Court held that any statute made pursuant to the Constitution enjoys constitutional flavour.

6.0. Conclusion

The crux of this paper as espoused in the introductory paragraphs is to assert that the recognition and protection of the rights of workers are entrenched in the constitution, which is the grundnorm, to which other laws are subject to. However, the assertion of the said rights as discovered in this research does not reflect the ease which might be expected. This is especially because a bulk of worker's rights are provided in Chapter two of the 1999 Constitution which are mostly unenforceable. These rights guarantee humane working conditions, as well as the health and safety of workers. This research however exposed that the court, especially the NICN, can interpret laws and conventions ratified in making Chapter provisions justiciable. This is in light of growing jurisprudence on the redefinition of the rights of workers. The most instrumental innovations for

[62] *Adebusola Adedayo Omole v. Mainstreet Bank Microfinance Bank Ltd* Unreported Suit No. NICN/LA/341/2012
[63] *Onuorah v. Access Bank* Unreported Suit No. NICN/ABJ/30/2011
[64] *Non-Academic Staff Union of Educational & Associated Institutions (NASU) V. Governing Council of Kwara State polytechnic Ilorin & another* (2003) 34 NLLR (pt. 101) 576 NIC at page 615
[65] European Social Charter 1961
[66] (CCT2/02) [2002] ZACC 27
[67] [1981] LPELR-3056
[68] *Olaniyan v. University of Lagos* [1985] 2 NWLR 599; *Iderima v. Rivers State Civil Service Commission* (SC 45 of 2001) [2005] NGSC 20 (15 July 2005)
[69] [2008] 9 NWLR (Pt. 1093) 540 at 578 – 579.

constitutionalising labour rights however exists under the Third Alteration to the 1999 Constitution. The NICN's jurisdiction and its interpretative capacity largely rests on this alteration. This research showed that the NICN has been given broad powers to address a myriad of issues in the labour sphere and has empowered the court to enforce social rights. The provision of these rights and obligations as well as a viable dispute resolution mechanism is shown in this research as an instrument in drastically reducing the injustice brought about by the traditional principles and thinking in labour law, a thinking significantly shaped by years of the dominance of the common law. In summary, the Third Alteration to the 1999 Constitution is a giant stride in constitutionalising labour rights as well as the development of the labour sphere in Nigeria. However, the NICN has a greater challenge now more than before in further expanding the frontier of labour jurisprudence. This research has shown that the task at hand is surmountable.

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