POWERS AND JURISDICTION OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA UNDER THE THIRD ALTERATION: A CASE FOR ITS RETENTION AS ENACTED IN THE CONSTITUTION*

INTRODUCTION

A country can rightly be so called when it has sovereignty. Sovereignty itself covers and connotes a wider scope other than ‘territorial sovereignty’, which is the geographical boundary that defines a country and which it (the country) will defend against all forms of encroachment. The sovereignty that is here referred to is the ‘economic sovereignty’ of any country and it entails the right of any country to generate, disburse, manage and dispense with its finances. It means the sovereign country can make and, if so pleases, plunder its wealth to the exclusion of any outside force or factor. The machinery that works this economic sovereignty to life is the country’s workforce/labour force, which is a derivative of its human resources. Labour, as a factor of production, is often treated as coming within the rubric of business. It need not be over-stated that the economic independence of such a country is dependent on the continued operation of its labour force. An incident of down-tool or industrial strike action cripples the nation’s economy for the period it lasts for. An example that is closer home of the economic effects of industrial strike actions is the nationwide labour protest/strike action on the oil subsidy removal in January 2012. The effect it had on the economy of Nigeria within the period it lasted was colossal. It ran the Government back in accruable revenues from crude oil to the tune of N96.764bn

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Hence, it is pertinent to have a medium for the quick, effective and efficient resolution of labour related disputes.

The enactment by the legislature in Nigeria of the Third Alteration Act in 2010 has variously been described as a milestone in judicial reform efforts of the nation. The general acclaim that attended the enactment of the Third Alteration to the 1999 Constitution was not misplaced. Before the advent of the Third Alteration Act, 2010, labour relations and practice in Nigeria were near comatose. This was largely due to the confusion as to the jurisdiction of the various existing courts over the subject-matter of labour. The case of *FRN Vs. Oshiomole* is a perfect example of a situation where uncertainty as to which court had jurisdiction over the industrial dispute declared by the Nigeria Labour Congress (NLC) delayed the speedy resolution of the dispute.

The common practice in the period before the Third Alteration Act, 2010 was for lawyers and labour practitioners to shop for the most convenient courts to resolve labour and industrial relations questions and issues. This practice spawned conflicting judgements from different courts on common labour issues, and resulted in lack of uniformity in labour jurisprudence. The concomitant effect of this uncertainty was that Nigeria ranked very low in international labour practice and naturally, foreign direct investment into the country suffered a decline.

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1. The Governor of the Central Bank of Nigeria, Mr. Lamido Sanusi, estimated that the country lost averagely per day, N96.764bn (THE PUNCH, Jan. 13, 2012) totalling N483.8bn for a period of 5 days that the protest lasted; while the Nigerian Employers’ Consultative Association (NECA), in a report by SATURDAY PUNCH, Jan. 14, 2012, on pg. 26, estimated a higher loss of N794.5bn within that period; See also the case of FGN V. Oshiomohle (2004) 1 NLLR (Pt. 1) 339, where the overall effect of the workers’ strike was a total grounding of the economy while the resolution of the dispute was delayed due to uncertainty as to which court had jurisdiction over industrial disputes.

However, with the coming into effect of the Third Alteration Act, 2010 and the entrenchment of the National Industrial Court of Nigeria as a superior court of record with specialized and exclusive jurisdiction over labour, employment and industrial disputes, labour and industrial relations practice in Nigeria has witnessed a boom, never before experienced in Nigeria. The organized structures of the National Industrial Court of Nigeria and its power to waive the conventional rules of evidence when the justice of the case so demands have ensured that labour and related disputes are expeditiously disposed of.³

This paper seeks to make a case for the retention of the provisions of the Third Alteration Act, 2010 under our constitution. It is our submission that the proposed further amendment to the powers and jurisdiction of the National Industrial Court of Nigeria as contemplated by the Fifth Alteration Bill, 2012 is unnecessary, ill-conceived and should be jettisoned.

THE CONCEPT OF JURISDICTION

Jurisdiction, as defined in *The Chambers Dictionary*⁴ means “…the distribution of justice; legal authority; extent of power; the district over which any authority extends”. Going by this definition, jurisdiction is the extent to which an entity (in this case, a court) can exercise power or authority over a specific matter in an hierarchy or on an horizontal level. The concept of jurisdiction has also been defined as “…a court’s power to decide a case or issue a decree”.⁵ It is

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³ See section 12(2)(b) of the National Industrial Court Act, 2006. See also the provisions of Order 5, Rule 3 of the National Industrial Court Rules 2007, which empowers the court to depart from the rules of the court where the interest of justice so requires. Similarly, the court has also adopted the “frontloading” rule in the filing of every originating process in the court and all motions and applications must be accompanied by a written address. See the NICN Practice Directions 2012.
⁴ (1993 ed.) at Pg. 909.
⁵ Black’s Law Dictionary at Pg. 867.
“...the authority which a court has to decide matters that are litigated before it, or to take cognizance of the matters presented in a formal way for its decision”. Courts have jurisdiction based on the level that each court is placed in the hierarchy of courts. The hierarchy here talked about is entrenched in the Constitution and the 1999 Constitution (as amended) states out clearly the hierarchy and the jurisdiction of the courts in Nigeria. No lesser court can adjudicate on matters that are constitutionally reserved for courts of superior record.

The jurisdictional tussle between the Federal High court and the State High Courts was as a result of the provisions of Section 251 of the Constitution which vested exclusive jurisdiction on matters relating to the Federal Government and its agencies in the Federal High court. This was further strengthened by the provisions of section 272. However, section 286 created a variation of sorts to the arguments for the Federal High court. One of the landmark cases that proffered a resolution to this tussle between the courts was NEPA V. Edegbenro, where it was stated that the State High Courts “would no longer have jurisdiction in such matters... in which the Federal government or any of its agents was a party.”

A tussle of this nature shows the great importance that is placed on the jurisdiction of each court as it reveals its relevance and ensures its functions are carried out without undue hindrances. This was the position in State V. Olu Onagoruwa. On this premise, it can be said that the clamour for exclusivity of jurisdiction on labour, trade union and employment related matters to be granted the NIC is highly in order. Owing to the barrage of cases being handled by regular

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7 (2002) 18 NWLR (Pt 798) 79
8 At Pg. 79 and which also held sway in Cyril O. Osakwe V. Federal College of Education LER(2010) SC 4/2003, Pg. 11
courts and the attendant delays being caused thereby, a specialised court will have matters within its jurisdiction resolved more expeditiously. Election petitions were suffering the same setback. These petitions were jam-packed with all other matters in the courts then before intervention came in the form of Election Petition Tribunals, which have exclusive jurisdiction to attend to matters related only to disputes in elections; although these tribunals are still administered by High Court judges. However, the uniqueness of elections and resultant disputes has been touched on and are being addressed by these special courts. Labour, trade union and employment related cases, by their very nature and centrality to economic development of every state, ought to be decided expeditiously. It is a matter of common knowledge that our various high courts are battling with the challenge of overfilled dockets and the resultant challenge of slow and inefficient justice delivery system. The creation of specialized courts such as the NICN would considerably address the challenge and ameliorate the hardship occasioned by court congestions.

**BRIEF HISTORY OF THE NICN**

The National Industrial Court of Nigeria (NICN) is a child of necessity and was given birth to at a period of global economic challenges, the influx into Nigeria by foreign investors and the need for labour competitiveness. According to Justice Adejumo

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\text{“Given the dynamics of employment interrelationship and the challenges of ever} \\
\text{more complex nature, it becomes imperative to have a court that would address the} \\
\text{special needs of the industrial sector.”}
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expanding global society, the need to establish a specialized Court to tackle disputes connected with labour and industrial relations has become poignant. This is because labour and industrial disputes are economic issues which need expeditious dispensation and it was felt that the regular Courts which were already saddled with enough duties should be spared the additional duties of handling labour and industrial cases. It was also felt that the procedures at the non-specialized Courts were too slow and cumbersome such that a nation desirous of rapid industrialization and socio-economic development could not afford to be bogged down by such procedures and delays.”

According to Bamidele Aturu,12 in the 1970s, there was a proliferation of trade disputes cases in the regular courts which were not suited to handle such cases. The unprecedented delays in the resolution of industrial disputes in the regular courts, the concomitant loss of valuable working hours, frequent resort to industrial actions engendered by the delays in the regular courts all had a negative impact on the economy and were thought by many to discourage Foreign Direct Investment (FDI).13 The need was then felt for an industrially informed court and this gave rise to the establishment of the National Industrial Court in 1976. The court was established to provide an avenue or forum for a smooth and flexible industrial dispute resolution regime which objective could not be met by the regular courts. The court started its adjudication functions in 1978.

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12 Bamidele Aturu, op. cit. at pg. 82.
13 Bamidele Aturu, op. cit. at pg. 82.
and its object was to provide for a stable and sustainable economy through quick, effective and efficient resolution of industrial disputes and protection of workers.\textsuperscript{14}

The NIC was first established by virtue of the Trade Disputes Decree No. 7 of 1976, which was subsequently included in the 1990 edition of the Laws of the Federal Republic of Nigeria (Cap. 432) and in 2006, the National Industrial Court Act, 2006, was passed by the National Assembly to widen its jurisdiction. The 2006 Act was partly a response to some of the decisions of the superior courts which held that the NIC was an inferior court and also partly a response to criticism among labour law practitioners that the jurisdiction of the court as contained in the Trade Disputes Act was narrow and unclear.\textsuperscript{15}

According to Hon. Justice B. B. Kanyip\textsuperscript{16} the NIC at inception suffered from a number of shortcomings especially in terms of its then enabling law, the Trade Disputes Act (TDA) 1990. These shortcomings impacted adversely on the workings of the court. These shortcomings may be summarized as follows:

There was the constitutional bottleneck that the NIC was not specifically listed in the Constitution. Moreover, the NIC was the only court of law in the country where litigants could not on their own volition, except when activating the interpretative jurisdiction of the court, approach the court to ventilate their grievances unless referred to the court by the Minister of Labour. The referral and other discretionary powers of the Minister of Labour over matters relating to the NIC meant that the influence of the Minister of Labour was

\textsuperscript{14} Bamidele Aturu, op. cit. at pg. 82.
\textsuperscript{16} Op. cit., at pg. 3.
overbearing; and this called to question the constitutional principle of separation of powers and hence the rule of law.

By section 19(4) of the TDA 1990, the President of the Court was expected to preside over all the sittings of the court. The import of this was that, if for any reason the President of the Court was otherwise engaged, then the court will not be able to sit. The worst case scenario of this fact was when the court lost its President in 2002. For almost a year, the court could not sit as no succeeding President was appointed.

By sections 19 and 25 of the TDA 1990, the NIC was the only court of law with a dual system of appointing those who would adjudicate on matters before it. While the President of the Court was appointed by the President of the country on the recommendation of the Federal Judicial Service Commission, the members of the court were appointed by the President of the country on the recommendation of the Labour Minister. The practical effect of this was the seeming dual control over the court by both the Labour Ministry and the National Judicial Council even when the 1999 Constitution vests control on the latter.

More so, there was continuing doubt as to the scope of jurisdiction of the NIC. Despite the intendment of Decree 47 of 1992 to bring within the purview of Part I of the TDA 1990 and to treat as distinct disputes, inter and intra union disputes, the courts, for instance, held that for the NIC to have jurisdiction in inter and intra union disputes, such disputes had to also qualify as trade disputes. This was the holding of the Court of Appeal in *Kalango V. Dokubo*17 The issue regarding this decision was that it seemed to equate inter and intra union disputes with trade disputes. Not only

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17 Supra.
was this not the case, but it threw spanners into the jurisprudential treatment of the concepts in our labour law regime.

Kalango V. Dokubo had the additional problem of insisting that jurisdiction is conferred on a court only by sections labelled ‘jurisdiction’. In dismissing sections 1A and 19 of the TDA 1990 and in holding that an inter or intra-union dispute must qualify as a trade dispute if the NIC is to have jurisdiction, the Court of Appeal justified this on, inter alia, the fact that inter and intra-union disputes were not reflected in section 20 of the TDA, the section bearing the side note, “Jurisdiction of Court”

Kalango V. Dokubo, applying Western Steel Works Ltd V. Iron & Steel Workers Union of Nigeria had the further problem of reiterating that the NIC could not grant declaratory and injunctive orders.

The absence of clarity as to the jurisdiction of the NIC led to what may be termed a dual jurisprudence in the resolution of labour disputes. Here, both the High Courts and the NIC were generally held to have concurrent jurisdiction in the resolution of labour disputes. To take an example, at the High Court, collective agreements are only binding in honour except incorporated into the conditions of service of employees, but they are legally binding and held as such at the NIC. The side effect of this is that it encouraged forum shopping by litigants.

Section 19(2) of the TDA 1990 provided that the NIC shall be a superior court of record. Although this provision was not declared unconstitutional by the courts, even in view of section 6 of the 1999 Constitution, in practice some lawyers disregarded its provision by asking the Federal High Court in a number of cases, like SGS Inspection Services (Nigeria) Limited V. Petroleum and Natural

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18 Supra
19 as inserted by Decree 47 of 1992.
Gas Senior Staff Association of Nigeria (PENGASSAN)\textsuperscript{20} to judicially review decisions of the NIC. The effect of this was to stall cases and defeat the essence of litigation at the NIC, which is to expeditiously and with less formality decide on matters before the court.

The Supreme Court decision in the case of Western Steel Works \textit{V. Iron and Steel Workers Union}\textsuperscript{21} is particularly illustrative of judicial attitude towards the status of the NIC. In the case, the Supreme Court held that the NIC, being an inferior court, could not grant injunctive and declarative reliefs. What this position of the apex court translated into was that a superior court, such as a High Court could judicially review the decisions of the NIC.

The promulgation of the Trade Disputes (Amendment) Decree No. 47 of 1992\textsuperscript{22} was a reaction from the then military government of Nigeria to the decision of the apex court in the Western Steel’s case. The Decree emphatically made the NIC a superior court of record. The Decree prohibited other regular courts from entertaining trade disputes, or inter or intra union disputes, and vested the exclusive jurisdiction to entertain same in the NIC. This arrangement worked fine for as long as the military were in control, since military Decrees then reigned supreme over all other laws.\textsuperscript{23} Thus, the Supreme Court in \textit{Udoh V. OHMB}\textsuperscript{24} affirmed the exclusive jurisdiction of the NIC to hear and entertain trade disputes, and inter and intra-union disputes. This sovereignty of the NIC over trade disputes was however short-lived. Upon restoration of civilian government in 1999, the regular courts, it would appear, with a few exceptions, rose up in arms against

\textsuperscript{20} (Unreported), CA/L/38/2008
\textsuperscript{21} (1987) 1, NWLR (Pt. 49) 284.
\textsuperscript{22} Now an Act of the National Assembly by virtue of section 315 of the 1999 Constitution.
\textsuperscript{23} See \textit{Labiyi Vs. Anretiola} (1992) 8 NWLR (Pt. 258) 139.
\textsuperscript{24} (1993) 7 NWLR (Pt. 304) 139.
the exclusive jurisdiction of the NIC over trade disputes, and inter and intra-union disputes, as contained under Decree No. 47 of 1992.\textsuperscript{25}

This was the background to the enactment of the NIC Act of 2006. The Act specifically confers the status of superior court of record on the court. It also widens its jurisdiction to include virtually all labour matters.\textsuperscript{26}

The hallmark of the NIC Act, 2006, is that it took the court out of the TDA and gave it a separate enabling law of its own. In this respect, it has resolved some of the shortcomings I identified earlier with the court under the TDA dispensation. For instance, appointment of the President and Judges of the court has been streamlined under one system similar to what obtains with the Federal High Court/the High Court of the Federal Capital Territory (FCT), with the National Judicial Council as the recommending authority. In fact, what obtains in these High Courts in respect of discipline, tenure, salaries and allowances, pension rights, status and powers equally obtains in the NIC under the new dispensation.\textsuperscript{27}

Secondly, the court is no longer bugged down with the problem associated with sittings. Under the old dispensation, the President of the court must preside over all the sittings of the court. Under the new dispensation, this is no longer the case as any of the Judges who is a legal practitioner can preside over the sittings of the court.\textsuperscript{28} In fact, most cases are now handled by a single judge.\textsuperscript{29} Thirdly, the plethora of cases such as \textbf{Kalango} which held that the NIC cannot grant injunctive and declaratory orders is no longer good law going by sections 16 – 19 of the NIC Act. Lastly, the point must be noted that,

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\item \textsuperscript{25} See Dokubo Vs. Kalango (2003) 15 WRN 32; A.G. Oyo Vs. NLC (2003) 8 NWLR 1. The only singular exception to the foregoing judicial authorities was the case of Ekong Vs. Osode (2004) All FWLR 562.
\item \textsuperscript{26} Section 7 of the NIC Act, 2006.
\item \textsuperscript{27} See sections 1 – 5 and 16 – 19 of the NIC Act, 2006.
\item \textsuperscript{28} Ibid, section 21(4).
\item \textsuperscript{29} Ibid, section 21(5).
\end{itemize}
by sections 53 and 54(4) of the NIC Act, Part II of the TDA is now repealed and the remaining provisions of the TDA must be read with such modifications as to bring them into conformity with the NIC Act; and where the provisions of the TDA are in conflict with those of the NIC Act, the latter shall prevail.

Much as the NIC Act, 2006 has tried to put to rest the raging controversies over the jurisdiction and status of the NIC, it has also brought with it its share of the controversy and confusion that has shrouded the NIC since its inception. For instance the Act has been criticized for raising the status of the court to that of a superior court of record and conferring on it exclusive jurisdiction on labour matters and trade disputes without a corresponding amendment to the Constitution of the Federal Republic of Nigeria.\(^{30}\)

It was hardly surprising therefore, that the Supreme Court in the popular case of **NUEE V. BPE**,\(^{31}\) held that the exclusive jurisdiction conferred on the NIC by the NIC Act, 2006 was unconstitutional and that the High Court of the States and of the Federal Capital Territory

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\(^{31}\) (2010) 7 NWLR (Pt. 1194) 538.
had jurisdiction to entertain and hear labour matters under sections 272 and 257 respectively of the 1999 Constitution. The apex court observed that without an amendment to the Constitution, the regular High Courts would continue to exercise jurisdiction on labour matters. This apex court’s decision legitimised forum shopping, a practice which had long characterized labour law and industrial relations practice in Nigeria. This development impacted negatively on the NIC as the court could not effectively discharge its duties. Multiplicity of suits on the same subject-matter became the order of the day as litigants freely filed labour and employment matters in various high courts across the country depending on which court suited them. The confusion on the true status, powers and jurisdiction of the court continued and challenges soared resulting in the filing of numerous appeals against the decisions of the court. Indeed, shortly after this Supreme Court’s decision, high courts across the country started making orders directing the NIC to submit its judgements for review on the ground that the court was an inferior court. There were also instances where litigants sought and obtained from the high courts, orders staying the execution of the judgments of the National Industrial Court. This development is a recipe for a chaotic labour and industrial relations justice administration in Nigeria. It was against this backdrop that it became necessary to amend the 1999 Constitution, with a view to making the NIC a superior court of record and with a widened jurisdictional scope.

The National Industrial Court of Nigeria (NICN) is an offshoot of the National Industrial Court (NIC), which was established pursuant to the Trade Disputes Decree No. 7, 1976 (later enacted as the Trade Disputes Act). The Court, as presently constituted, was re-

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32 For details of the history of the NIC see O. O. Arowosegbe, “National Industrial Court and the Quest for Industrial Harmony and Sustainable Economic Growth and
established as the National Industrial Court of Nigeria (NICN) by the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010.\textsuperscript{33}

Section 6 of the 1999 Constitution was altered to include the NICN in the list of superior courts of record, meaning that it can now exercise all the powers of a superior court of record.\textsuperscript{34} Just like its counterpart in Trinidad and Tobago,\textsuperscript{35} the main functions of the court is to prevent and settle employment, industrial relations, and trade disputes in Nigeria in order to enable the economy run smoothly.

The NIC has done very well thus far and the status of the court as a superior court of record which hitherto had been the subject of criticism has finally been settled by the provisions of the amended constitution. Before now, section 6(5) of the 1999 Constitution, which enumerates the superior courts of records in Nigeria, did not include the NICN. This \textit{lacuna} had an adverse effect on the jurisdiction of the NICN and created room for a lot of confusion as to the status of the court. The Court of Appeal had interpreted the provisions of section 272 of the 1999 Constitution to the effect that the NICN had concurrent jurisdiction with Federal and State High Courts.\textsuperscript{36}

Development at the NIC can be viewed in quantitative and qualitative terms. At the quantitative level, the Court now has eight fully completed ultra-modern court complexes across the country. In addition to these, the NICN has completed phases 1 of the Court’s Judicial Divisions in Lagos, Ibadan, Enugu, Calabar, Akure, Kano,

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\item See s. 254C (3) of the 1999 Constitution (as amended).
\item See s. 6 (5) (c) (c) of the 1999 Constitution (as amended).
\item See National Labour Law Profile: Trinidad and Tobago, www.ilo.org/public/english/dialogue/ifpdial/info/national/tt.htm
\item See Attorney General, Oyo State V. National Labour Congress (2003) 8 NWLR pt (821) 1 at 35. Similarly, in the case of National Union of Electricity Employees & 1 Other Vs. Bureau of Public Enterprises (2010) 7 NWLR (Pt. 1194) 538, the Supreme Court held that the NIC is not a superior court of record as it is not listed in section 6(5) of the 1999 Constitution.
\end{itemize}
Maiduguri, Jos, Makurdi, Yola, Gombe and Abuja. In these divisions, the Court has state of the art courtrooms and facilities comparable to any in the world. Furthermore, in other to make the Court more accessible to the public, the NICN has established *Filing Registries* in the states where it is yet to establish judicial divisions. At the qualitative level, the Court now has its enabling law, the National Industrial Court Act 2006 and Rules of Court, the National Industrial Court Rules 2007. The court is also in the process of appointing more judges for the court. It is important that this appointment process is carried out expeditiously to enable the court meet the current challenge of increasing volume of cases filed in the court across the country as a result of exclusive jurisdiction which the court now enjoys. The current number of NICN judges is still short of the statutory minimum of twelve judges excluding the President of the Court enjoined under section 1(2) of the NIC Act 2006.

**THE JURISDICTION OF THE NIC UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (THIRD ALTERATION) ACT, 2010**

The challenges and constraints the NIC had faced was enormous. It was a court that had suffered non acceptability from even legal practitioners owing to its non definitive roles and status. But for the visionary and purposeful leadership of its current President, its status might still have remained in imbroglio. The National Assembly finally amended the provisions of the Constitution to accommodate the NICN as a superior court of record with clearly defined jurisdiction.

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37 See the Court’s functional website [www.nic.gov.ng](http://www.nic.gov.ng). See also Labour Law Review Journal (Back cover page)
38 Dayo Adu, op. cit. at p. 5.
39 This is provided for in the Constitution (Third alteration) Act, 2010.
Section 254C (1) of the 1999 constitution (as amended) which clothes the NICN with jurisdiction provides thus:

254C (1) Notwithstanding the provisions of section 251, 257, 272 and anything contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters –

(a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service including health, safety, welfare and matters incidental thereto or connected therewith;

(b) related to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employee’s Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;

(c) relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action and matters connected therewith or related thereto;

(d) relating to or connected with any dispute arising 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, 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 national minimum wage for the Federation or any part thereof and matters connected therewith or arising therefrom;

(f) relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;

(g) relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;

(h) relating to, connected with or pertaining to the application or interpretation of international labour standards;

(i) connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;

(j) relating to the determination of any question as to the interpretation and application of any –

(i) collective agreement;

(ii) award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute;

(iii) award or judgment of the court;

(iv) term of settlement of any trade dispute as may be recorded in a memorandum of settlement;

(v) trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or work place;

(vi) disputes relating to or connected with any personnel matter arising from the free trade zone in the Federation or any part thereof;

(k) relating to or connected with disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any civil or
public servant in any part of the Federation and matters incidental thereto;

(l) relating to –

(i) appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith;

(ii) appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations; and

(iii) such other jurisdictions, civil or criminal and whether to the exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;

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

(2) Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the 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 establish an Alternative Dispute Resolutions Centre within the Court premises on matters which jurisdiction is conferred on the Court by this Constitution or any Act or Law;

Provided that nothing in this sub-section 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 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 enquiry 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 power in criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this section or any other Act of the National Assembly or by any other law.

The foregoing provisions highlight the jurisdiction of the NICN which clearly covers all matters connected and incidental to labour law, trade disputes and industrial relations. It is also instructive to note that Section 254 (c) grants exclusive jurisdiction to the NICN on labour, trade dispute and other ancillary matters that may arise out of same which hitherto had been within the confines of the concurrent jurisdiction of the State High Courts and Federal High Court at first instance. Furthermore, appeals from the criminal causes or matters that arise from any cause or matter of which jurisdiction is conferred on the National Industrial Court of Nigeria shall lie as of right to the Court of Appeal.40

40 s. 255C (6) of the 1999 Constitution (as amended)
The overriding objectives of the Third Alteration Act, 2010, which has been lauded as a most welcome development in numerous quarters,\(^{41}\) is to make the NICN a specialized court, with exclusive jurisdiction in labour, employment and industrial relations matters, as it is the practice in other climes.\(^{42}\)

Quite often, the advantages of specialized courts can be seen in terms of the problems they are set up to resolve. In this regard, specialization of the judiciary through the use of courts with exclusive jurisdiction is seen as solving certain basic problems, which are as follows:

1. **The caseload crisis** – This term is used to refer to the ever-accelerating growth in the volume of cases coming before the courts. The general thinking here is that the problem of exploding caseloads can be resolved in three ways: diverting cases to specialized courts, fashioning procedures for the rapid disposition of large number of cases, or creating additional judgeships. In the main, we have pursued more of the second and third approaches than we have of the first. In this regard, both the State and Federal Governments have appointed

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\(^{42}\) The trend in labour and employment matters the world over is to establish specialized courts in different areas of the law. In England, for instance, employment matters has since been removed from the realm of the common law to statute law, with detailed regulations enacted on a regular basis to cover employment issues. More significantly, it is the Employment Tribunals (known until 1998 as ‘Industrial Tribunals’ and originally created in 1964) that are vested with the power to handle employment matters. This is also the practice in many other climes like Gambia, Malawi, Namibia, Botswana, Republic of South Africa, Zimbabwe, Tanzania, Kenya, Zambia, Germany, Italy, Spain, France, Sweden, Austria, Argentina, Northern Ireland, Brazil, Portugal, Luxemburg, Trinidad and Tobago, Hong Kong, Swaziland, etc. See Mrs. Justice Slade DBE, *Tolley's Employment Handbook*, 24th Edition, 2010, LexisNexis, p. 458.
more judges across the respective courts and the judiciary itself has embarked on procedural reforms to ease the disposition of the cases that come before the courts. New civil procedure rules, for instance, have generally been adopted by virtually all the courts in this regard. The sad thing is that the appointment of more judges and the reform of civil procedure rules are nothing more than stopgap measures, for the benefits of more efficient case disposition will come at too high a price to the quality of decision-making. For instance, the appointment of more judges may only yield to more fractious interpretation of the law and hence incoherent doctrinal pronouncements; and the adoption of such efficiency measures as the necessity for frontloading, the preference for written in place of oral argument may arguably be detrimental to the quality of advocacy and judging.

It is no longer news that perennial delay in the determination of cases has become almost a permanent feature of Nigerian judicial system. The increasing case explosion being experienced by our various state high courts across the country is largely due to the very wide and general jurisdiction vested on the High Courts by the 1999 Constitution. The High Courts across the country has jurisdiction over the following:

(i) commercial matters
(ii) land matters
(iii) fundamental human rights matters
(iv) family and probate matters
(v) criminal matters
(vi) appeals from Magistrates/Area Courts
(vii) appeals from state revenue courts
(viii) appeals from Local Government Election Tribunals.

It is also worthy of note that judges of most election petitions tribunals are drawn from the state High Courts across the country.
The High Courts, no doubt, enjoy the widest and the most expansive jurisdiction under the Nigerian constitution.

The Third Alteration Act, therefore, in our view, is a major reformist step to ease the High Courts of its overloaded dockets. The removal of only Labour and Employment matters from the expansive jurisdiction of the State High Courts and vesting same on the NIC should be a welcome relief to the High Courts across the country.

The words of his Lordship, Honourable Justice L. H. Gummi, the Chief Judge of the High Court of the FCT, in his paper titled: “National Judicial Policy: An Imperative for the Sustenance of Judicial Ethics” at page 20 is very apt on the perennial problem of case explosion at the High Courts:

“Generally, the backlog of undecided cases becomes a bottleneck for even flow and orderly disposition of cases because the cases keep piling up, and the time between filing of a lawsuit to ultimate disposition keeps increasing. For example, in the close of 2009/2010 legal year, in Abuja, we had 6, 109 un-disposed cases while at the end of the current year, we had a total of 9, 083 cases pending. This is an increase of about 30%. In the same 2010/2011 legal year, we had a total of 17, 269 cases to grapple with compared to 12, 269 in the previous year, 5000 cases more. Going by my guesstimate, at the end of this legal year, we may have about 25, 000 or more cases given that at the end of the 2008/2009 year, only a little above 5000 cases were pending. That is the enormity of the situation we are faced with. I am sure our colleagues from the commercial cities like Lagos, Kano etc may have equally startling statistics.”
It is against this background that we submit, with respect, that the idea of giving the High Courts, across the country, concurrent jurisdiction over labour and employment matters (as currently being contemplated by the Fifth Alteration Bill, 2012) is illogical, retrogressive and uncalled for. The obvious negative implication of this proposed bill is a return of the Court to the pre-Third Alteration Act era when forum shopping, conflicting judgments and orders, uncertainty and perennial delay in the determination of labour and employment cases, were the order of the day. The proposed amendment contemplated by the Fifth Alteration Bill, if allowed, would simply take the court, and indeed, the nation, backward as same would throw out of gear the already settled status, powers and jurisdiction of the NICN under the Third Alteration Act.

Specialized courts have the advantage and utility of quick dispensation of cases. Disputes, labour disputes especially, unlike wine, do not improve with age. The National Industrial Court of Nigeria, in the resolution of labour and employment disputes, is guided by informality, simplicity and speed. This is unlike the regular courts where cases are approached, most times, from the adjudicative stance. The proposed Alternative Dispute Resolution Centre of the NICN is also a very useful tool in achieving the much needed expeditious and efficient resolution of labour and employment matters in Nigeria.43

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43 One of the innovative provisions of the Third Alteration Act is section 254(c)(3) which empowers the NICN to establish an Alternative Dispute Resolution (ADR) Centre within the court premises on matters within her jurisdiction. For further readings on the proposed NICN ADR Centre, see Bimbo Atilola & Michael Dugeri, “National Industrial Court of Nigeria and the Proposed Alternative Dispute Resolution Centre: A Road Map” in Labour Law Review (NJLIR) Vol. 6, No. 1, March 2012, pp. 1 – 62; Alero Akeredolu, “The Proposed Alternative Dispute Resolution Centre of the National Industrial Court of Nigeria: Prospects and Challenges” in Labour Law Review (NJLIR) Vol. 6 No. 1, March 2012, pp. 63 – 88; Oyesola Animashaun “Court-Connected ADR and Industrial Conflict resolution: Lessons from South Africa and Guatemala” in Labour Law Review (NJLIR) Vol. 6 No. 1, March 2012, pp. 89 – 116; Ayodele Morocco-Clarke, “The Concept of the Multi-Door Courthouse in Nigeria: Lessons to be Learnt by the National Industrial Court for the Proposed Court-
The court is already putting machinery in place for the establishment of a pilot Alternative Dispute Resolution (ADR) Centre in Abuja and Lagos Judicial Divisions. With these innovative reforms ushered in by the regime of the Third Alteration Act, perennial delay in the resolution of labour, trade union and employment related matters as witnessed in the cases of *FRN V. Oshiomole,* *Amadi V. NNPC,* and *Obiuweubi V. Central Bank of Nigeria* will now be a thing of the past.

2. **Need for Expertise** – Specialized courts of limited and exclusive jurisdiction are seen as fulfilling a growing need for expertise in increasingly complex areas of law. This expertise in turn yields to other advantages, namely, resolution of questions of law more efficiently and effectively; devotion of more time to individual matters, without having to give priority to others such as criminal cases; adoption of informal approach to procedural matters; and because specialist judges can give better directions with more authority, specialized courts are known to have a significant higher percentage of settlements. Using an expert judiciary when the law itself is complex or when the facts of the case are difficult for non-specialist to grasp improves the quality of judging and the quality of the law. Generalist judges handle all areas of the law and so may be unable to develop expertise in any one area. Giving a specialized court jurisdiction over a

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46 Supra (2000) 5 WRN 47 SC. This matter took 13 years to resolve the preliminary objection on which court had jurisdiction in a case of wrongful dismissal from employment.

47 Supra (2011) 7 NWLR (Pt. 1247) 465 SC. This matter took 23 years to resolve the question as to which court had jurisdiction between the Federal High Court and the State High Court.
complex body of law (as labour law is increasingly becoming) helps alleviate problems as the judge can draw from stores of deep knowledge about a particular subject matter to decide cases.

3. **Need for Certainty in the law** – The general thinking here is that specialized courts give decisions with better quality leading to more predictability. In other words, specialized courts, by their decisions, promote certainty of and consistency in the law and so eliminate non-uniformity in particular areas of the law. The law consequently becomes reliable and predictable. Exploding caseloads and increasing complexity in certain areas of the law work together to exacerbate such non-uniformity.

5. **Need to Eliminate Forum Shopping** – Specialized courts with limited and exclusive jurisdiction have the tendency of narrowing down the forum of litigation to the specified court in question. The history of the Federal High Court regarding its relationship with State High Courts was one of jurisdictional conflict and hence forum shopping by litigants. This was not the case regarding the erstwhile Federal Revenue Court. What specialization does is to narrow with specificity the jurisdictional scope of the court in question as to discourage the necessity for forum shopping among litigants.

6. **Centrality to Economic Development** – In general, and particularly in the area of business (labour as a factor of production is often treated as coming within the rubric of business), it is argued that specialized business courts play an important role in the economic development of regions and countries in that they can be used to attract businesses, investments and investors to a given jurisdiction or to prevent them from leaving. In other words, the specialized court
gives added value to companies and investors. This argument of the competitive advantage of specialized courts is important for courts that specialize in business law and fields of law related to business such as labour law.

It is instructive to note that judicial reform globally is tilting towards specialization of courts; as the saying goes: *if you cannot specialize the court, specialize the judge*. Maher Abdel Wahed\textsuperscript{48} has opined thus:

> “Specialization is a way of achieving excellence and thoroughness. Judicial specialization in a specific type of conflict has become necessary to improve performance and reach just rulings in an environment marked by increasing conflict proliferation and diversification. Therefore, specialized training courses and seminars are organized to handle civil, trade, summary, and criminal justice cases as well as family and labour disputes.”

The case may be strongly made therefore that taking employment matters only out of the numerous subject-matter jurisdiction of the High Court of the States and vesting same on a specialized court like the NICN will do no harm to our High Courts. Rather, it will reduce their heavy workload and facilitate the nation’s economic growth through speedy resolution of employment and labour disputes in Nigeria.

It is also necessary to point out that specialization of employment, labour and industrial relations disputes resolution will give room for the building of necessary jurisprudence in the country in line with international labour and employment jurisprudence as well

\textsuperscript{48} Rudolf V. Van Puymbroeck (ed) *Comprehensive Legal and Judicial Development: Towards an Agenda for a Just and Equitable Society in the 21\textsuperscript{st} Century*, at p. 163.
as international best practices and standards. Furthermore, it will make the law certain and ascertainable, reliable, dependable and consistent, which all investors are looking for to secure their investments. Otherwise, vesting concurrent jurisdiction on the NICN and the High Courts on labour and employment matters will create a dual jurisprudence in labour law, which will make the law uncertain, unreliable, undependable and inconsistent and which situation will not be attractive to investors in our economy.

In lauding the wisdom of the Nigerian legislature in enacting the Third Alternation Act, the Chief Judge of the Federal High Court, Honourable Justice L. H. Gummi⁴⁹ opined thus:

The amendment to the 1999 Constitution is a positive step for labour jurisprudence in Nigeria. The conferment of specialist powers on the National Industrial Court and the fact that the Decisions of the Court of Appeal on appeals stemming from the civil jurisdiction of the National Industrial Court are final, are important to Nigerian labour and industrial relations. These developments will aid the speedy resolution of labour disputes and promote industrial harmony. Further, the inclusion of the National Industrial Court as a superior court of record eliminates the confusion surrounding the status of the court. The amendment can also be described as a commitment of our country to international best practice in labour relations. It will ultimately serve as a means of increasing foreign investments.

CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999
(FIFTH ALTERATION) BILL, 2012

It is apposite at this juncture to highlight the relevant sections of the 1999 Constitution as altered by the Third Alteration Act, 2010, which the Constitution of the Federal Republic of Nigeria, 1999 (Fifth Alteration) Bill, 2012 presented and sought to further amend.

At page 13 of the said Fifth Alteration Bill, at paragraph 20 it is proposed that section 254C of the 1999 Constitution, as amended by the Third Alteration Act be further amended by deleting subsection (1) – (d), (i) and (k). For ease of reference, the affected subsections are reproduced hereunder in bold italics:

254C (1) Notwithstanding the provisions of section 251, 257, 272 and anything contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters –

(a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service including health, safety, welfare and matters incidental thereto or connected therewith;

(b) related to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employee’s Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;

(c) relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in
furtherance of a strike, lock-out or any industrial action and matters connected therewith or related thereto;

(d) relating to or connected with any dispute arising 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, 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 national minimum wage for the Federation or any part thereof and matters connected therewith or arising therefrom;

(f) relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;

(g) relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;

(h) relating to, connected with or pertaining to the application or interpretation of international labour standards;

(i) connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;

(j) relating to the determination of any question as to the interpretation and application of any –

(i) collective agreement;

(ii) award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute;

(iii) award or judgment of the court;

(iv) terms of settlement of any trade dispute as may be recorded in a memorandum of settlement;
(v) trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or work place;

(vi) disputes relating to or connected with any personnel matter arising from the free trade zone in the Federation or any part thereof;

(k) relating to or connected with disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any civil or public servant in any part of the Federation and matters incidental thereto;

It is also proposed that sections 254C be amended at subsection (j) at paragraph (iii) by inserting immediately after the word “Court”, the words “in a trade dispute.”

Another proposal of the Fifth Alteration Bill is that subsection (1) of 254C be amended by creating a new subsection 1A to read thus:

“Notwithstanding the provisions of subsection 1 of this section, the National Industrial Court shall have and exercise concurrent jurisdiction with other High Courts in civil causes and matters –

(a) relating to or connected with any dispute over the interpretation and applications of Chapter IV of the Constitution as it relates to any employment, labour, industrial relations, trade unionism and employer’s associations;

(b) specified in subsections (a), (b) and (f) where they relate to contract of employment;

(c) by deleting subsection (5).

Subsection 5 of section 254C provides thus:

(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 or
any other Act of the National Assembly or by any other law.

It is hereby submitted that the enactment of the Third Alteration
Act in itself was the very first reform of its kind in the most recent time
as far as the Nigerian Judiciary is concerned and therefore, any
further reform on the NICN as at now and under the on-going
constitutional review exercise, must be seen as being premature,
unnecessary; and an attempt to throw out of gear the already settled
status, power, jurisdiction and reposition of the NICN in the 1999
Constitution (as amended) which the Third Alteration Act, 2010 had
painstakingly and adequately provided for, in its well considered
provisions and intendment.

It is further submitted that the NICN was created as a
specialized court for purposes of hearing and determining labour and
employment matters and cases hitherto been heard by the High
Courts, thereby aligning Nigeria with other civilized climes where
labour causes and matters have been given specialized courts in
accordance with the dictates and recommendations of International
Labour Organization (ILO). In effect therefore, the Third Alteration Act,
without doubt, is a product of consensus building amongst all
stakeholders including the Nigerian Judiciary, the Nigerian Legislature
and the generality of Nigerians who hitherto had craved for specialized
labour court that is capable of resolving disputes with commendable
speed and efficiency without sacrificing merit or fairness.

It is important to reiterate that very wide and extensive
consultations were made in arriving at the Third Alteration Act, 2010.
Memoranda were invited from the relevant stakeholders and extensive
public hearings were held on the Bill at both the National Assembly
and state Houses of Assembly across the country. It is instructive that at none of the public hearings was any opposition or objection whatsoever raised to the proposed alteration of the constitution to confer exclusive jurisdiction in labour and employment matters on the NICN. The Third Alteration was accordingly passed by both Chambers of the National Assembly and thirty-three of the thirty-six states Houses of Assembly in Nigeria also unanimously passed resolutions approving the said constitutional alteration in accordance with section 9 (2) of the 1999 Constitution. The Act was consequently signed by the President, Federal Republic of Nigeria on 4th March, 2011.

Thus, the proposed amendments sought by the Fifth Alteration Bill is not only premature but an abuse of legislative process. The Third Alteration Act was only signed into law last year. The law has not been sufficiently tested and as such any further amendment such as those contemplated by the Fifth Alteration Bill is premature. Every law needs time to grow and be tested before we can think of any further amendment, especially where the proposed amendment, as in this case, seeks a return to the pre-status quo era. Stability and consistency is the hallmark of an efficient justice delivery system and indeed, if there is any court in Nigeria which enabling laws need to be urgently reviewed, it is certainly the laws establishing the high courts in Nigeria. The enabling laws, establishing the high courts in Nigeria are as old as the history of the high court itself.

JUSTIFICATION FOR THE RETENTION OF THE THIRD ALTERATION ACT, 2010

A critical examination of the provisions of section 254C (1) subsection (d) of the 1999 Constitution (as amended) proposed for deletion by the Fifth Alteration Bill 2012 would reveal that it does not confer on the NICN an unlimited jurisdiction to interpret Chapter IV of
the 1999 Constitution, at large, as is erroneously being canvassed by the proponents of its deletion. But rather, the provision clearly delimits the scope of the interpretative powers of the court only as it relates to 'any employment, labour, industrial relations, trade unionism and employer’s association.’

It is beyond doubt that the NICN is created and established as a specialized labour court, with limited exclusive jurisdiction. It follows logically that any transaction concerning labour or employment, child abuse, and human trafficking would naturally fall within the court’s jurisdiction. A careful perusal of some of the provisions of Chapter IV would show that the constitutional provisions have aspects of labour and employment in respect of which exclusive jurisdiction had already been given to the NICN. For example, section 34 of the 1999 Constitution (as amended), which deals with the right to dignity of the human person, provides in sub-section (c) that no person shall be required to perform forced or compulsory labour. Similarly, section 40 of the 1999 Constitution provides as follows:

“Every person shall be entitled 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 its interest.”

Also, section 42 of the 1999 Constitution (as amended) makes provisions for right to freedom from discrimination at the workplace, an aspect of industrial relations.

In view of all the above, it is respectfully submitted that the NICN, having been vested with exclusive jurisdiction over labour, employment and industrial relations matters is better positioned to interpret, and apply aspects of Chapter IV of the Constitution as it affects labour and industrial relations practice. To this end, therefore,
the proposed deletion of paragraph (d) of sub-section (1) of section 254C is therefore absolutely unnecessary in the circumstances.

**Proposed Concurrent Jurisdiction of the NICN and the High Courts Over Labour and Allied Matters**

A major proposal of the Fifth Alteration Bill is that subsection (1) of 254C be amended by creating a new subsection 1A to confer concurrent jurisdiction of the NICN and the High Courts over labour and allied matters. This proposal is, with due respect, totally misconceived. It is submitted that the idea of the High Courts having concurrent jurisdiction with the National Industrial Court in respect of labour matters, interpretation and application of the provisions of Chapter IV of the Constitution as it relates to employment, child labour or abuse, award or judgment of the court etc. will not augur well for our justice system for reasons which we shall advance below:

(a) **Congestion of the High Courts**: Returning labour matters to the High Courts will further congest the courts and lead to delay in the administration of justice in respect of labour matters due to the already overfilled dockets of the High Courts. This will immediately rubbish the establishment of the National Industrial Court and ultimately defeat all efforts so far made in justice reform in this country. It is pertinent to note that only recently the immediate past Chief Justice of Nigeria, Honourable Justice Dahiru Musdapher, CJN\(^{50}\) lamented that over 110, 000 cases are pending before the High Courts across the country, which situation is truly worrisome. He went on to suggest that *more avenues to justice should be provided and which should lead to a satisfactory outcome*. Needless to say that the re-organisation of the NICN came in very handy in decongesting the High Courts and creating more satisfactory avenues to justice. Creating

\(^{50}\) The *PUNCH*, May 25, 2012.
concurrent jurisdiction with the High Courts would further overburden the High Courts and lower the pace of quick dispensation of justice. And indeed, if the High Courts across the country are grappling with the burden of overfilled dockets, one cannot but wonder why the idea of an additional jurisdiction for the high courts is being muted.

(b) **Proliferation of cases:** The rationale behind the exclusive jurisdiction given to the NICN in matters relating to labour disputes is to avoid proliferation of labour and trade union cases in several High Courts in Nigeria and to ensure their litigation at the NICN only. This was most aptly stated in the case of **MADU VS. N.U.P**\(^51\) thus:

> I agree with the scheme of the legislation as interpreted in **Tidex Nig. Ltd. Vs. NUPENG** (Supra) at page 277 to be – “... that the mischief aimed at by this amendment to the Trade Disputes Act by Decree No. 47 of 1992 is to avoid the proliferation of trade union cases in several High Courts in the country and to ensure their litigation in the National Industrial Court only.” It should be noted that the spate of injunctive orders by courts both interim and interlocutory became a source of worry to government. To avoid injunctive orders which could unleash a mis-hap akin to a catastrophe which may be caused by “the avalanche, the whirl-wind and the tornado roaring forth in a triple alliance”, the Government wants the cases filed by unions including the 1\(^{st}\) Defendant whose members, as I have stated, should be taken seriously to go before

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\(^{51}\) (2001) 16 NWLR (Pt. 739) 346 per FABIYI, JCA (as he then was) at pages 361 – 362, paras. G – B.
a serene atmosphere at the National Industrial Court where injunctive orders will not freely fly in the sky like kites. I strongly feel that there is sense behind the law. (Underlining ours)

(c) **Conflicts on judgments**: The High Courts, though of co-ordinate jurisdiction, may upturn the decisions of the NICN even when they know there is no jurisdiction to do so. This will consequently create confusion even amongst litigants and the general public in the judicial system. It would be recalled that it was the same trend that reigned supreme at the height of the Babangida transition programme when different High Courts in the country were handing down several conflicting judgments particularly with regards to the Federal Government’s electoral and electioneering processes. The unwholesome scenario prompted the Abacha Government to promulgate the Constitution of the Federal Republic of Nigeria (Amendment) Decree No. 107 of 1994, which gave the Federal High Court exclusive jurisdiction on actions affecting the Federal Government and its agencies.\(^{52}\)

(d) **Constitutional Effect**: Creating concurrent jurisdiction between the High Courts and the NICN in labour matters will reduce the constitutional significance of the NICN. The mischief and gains of the exclusive jurisdiction which hitherto helped in quick resolution of labour matters would have been lost. Although the NICN would remain a court of superior record, some litigants may prefer going to the High Courts instead, and that will invariably result in the NICN being regarded as an inferior court to the High Court, and that certainly will lead to unnecessary acrimony and uncertainties.

\(^{52}\) This is what we now have in section 251 (1) (p), (q), (r) and (s) of the 1999 Constitution (as amended).
Concurrent jurisdiction between the NICN and the High Courts in labour matters will bring about confusion in the judicial system as was the position when the Federal High Court had concurrent jurisdiction with the State High Courts with respect to banking, maritime and other matters. Those cases may ultimately have to get to the Supreme Court and in some cases, it may take considerable length of time for the Supreme Court to make pronouncement on them. This may not augur well for the justice system and is not good for our jurisprudence, as one cannot predict what the position is likely to be until there has been a pronouncement on them. This was the situation in the case of *Shell Petroleum V. Isaiah.* The case lasted from 1988 – 1997 before the Court of Appeal finally held that the Federal High Court (Amendment) Decree No. 60 of 1991, which removed State High Courts’ jurisdiction on mining operations had been restored by the Federal High Court (amendment) Decree No. 16 of 1992, contrary to the contention that it was only the Federal High Court that had jurisdiction over it.

Equally, in *Savannah Bank V. Pan Atlantic Shipping & Transport Agencies Ltd,* the matter lasted from 1980 – 1987 before the Supreme Court made a pronouncement on the position of the law. Other cases in the same line include the following: *Bronik Motors Limited V. Wema Bank Limited; Jamal Steel Structures V. A.C.B Limited,* and most recently, *NDIC V. Okem Ent. Limited.*

(e) **Erosion of Expertise:** To be qualified for appointment as a Judge or President of the NICN, a person must have been qualified as a legal practitioner for a period of not less than 10 years and must

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53 (1997) 6 NWLR (Pt. 508) 236.
54 (1987) 1 NWLR (Pt. 49) 212.
56 (1973) 1 All NLR (Pt. 2) 208.
have considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria. Thus, the Judges are specially qualified for applying and administering labour, employment and industrial relations laws. Therefore, the composition and qualification of judges in the NICN create more confidence in the system and as such makes it the appropriate court for the resolution of industrial disputes. Consistent with the Adam Smith’s theory of division of labour, specialization leads to the development of expertise.

**CRIMINAL JURISDICTION OF THE NICN**

It is also the proposal of the Fifth Alteration Bill, 2012 that Section 254C (5) of the 1999 Constitution, as amended, which confers criminal jurisdiction on the NICN be deleted. It is humbly submitted that the proposed amendment in this respect is entirely needless. It is pertinent to note that the criminal jurisdiction conferred on the NICN by the said section 254C (5) is only in respect of the criminal matters that may arise from any of the jurisdiction conferred on the NICN by the Constitution and not general criminal jurisdiction created by the Criminal Code or Penal Code. This jurisdiction, therefore, relates to the offences created by relevant labour related statutes such as the Labour Act, the Trade Unions Act, Trade Disputes Act and other statutes relating to or dealing with workplace matters. It does not confer jurisdiction on the NICN to hear and determine all criminal cases simply because they arose in the course or out of employment or place of work. For example, a trade union leader who is found to have committed fraud on union funds, in the course of holding him to account for such funds, cannot be tried for such fraud by the NICN. It is the regular courts with jurisdiction that would try him for such fraud.

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To use the Child Rights Act for example, by virtue of section 254C – (1) (i) of the 1999 Constitution (as amended) the NICN has exclusive civil jurisdiction over issues of child labour, child abuse and human trafficking. By virtue of section 254C – (5) of the 1999 Constitution (as amended) the NICN is conferred with criminal jurisdiction on any criminal cause or matter arising from any cause or matter of which jurisdiction is conferred on the NICN. Therefore, the NICN will have jurisdiction over the criminal causes and matters arising from the Child Rights Act, being an Act dealing with subject matters over which it has jurisdiction. It is necessary to state that the NICN would not have both civil and criminal jurisdiction over issues covered by the Child Rights Act not bordering on child labour, child abuse and human trafficking. The NICN will however, have jurisdiction over offences committed under sections 21 and 22 of the Child Rights Act, which prohibits child marriage; section 24 of the Act, which prohibits subjecting a child to tattoos or marks; section 25, which prohibits the exposure of children to narcotics and activities relating thereto; and section 26, which prohibits the use of children in criminal activities.

It is pertinent to note that section 254C (5) of the 1999 Constitution (as amended) is similar to the powers conferred on the Federal High Court by section 251 (3) of the 1999 Constitution. In interpreting that section, the Court of Appeal in the case of Momodu Vs. The State\(^{59}\) held that “the Federal High Court has no exclusive jurisdiction under that section of the constitution and that both the Federal High Court and the State High Courts have concurrent jurisdiction over criminal matters.” It is humbly submitted that it is clear that the decision above will apply when interpreting section 254C (5) of the 1999 Constitution (as amended).

\(^{59}\) (2008) All FWLR (Pt. 447) 67 at 103 – 105, per Ogunwumiji, JCA.
The Third Alteration Act has further placed the Country in its rightful position among the comity of nations in the area of compliance with international law on labour and industrial dispute resolution. The repositioning of the NICN in order to enable it render specialized service to stakeholders in labour and industrial disputes resolution has not gone unnoticed by the international community. The Third Alteration to the 1999 Constitution has assisted Nigeria, to a large extent, in discharging its public international law obligations especially regarding the provisions that permit the NICN to apply international best practices and international treaties, conventions and protocols ratified by Nigeria when adjudicating in furtherance of Nigeria’s membership of the International Labour Organisation (ILO). Before the advent of the Third Alteration Act, Nigeria had always been queried by the ILO for failure to implement the ILO conventions, standards, treaties and protocols. These incessant queries adversely affected the image of the country as a member of the ILO and consequently confidence of investors was at the lowest ebb.

All these have changed for the good with the advent of the Third Alteration Act and the entrenchment of the National Industrial Court of Nigeria as a superior court of record with specialised and exclusive jurisdiction over labour, employment and industrial disputes. The organised structures of the National Industrial Court and its power to waive the conventional rules of evidence when the justice of the case so demands, have ensured that labour and related disputes are expeditiously disposed of. The conferment on the Court with exclusive jurisdiction over matters relating to international best practices in labour and application or interpretation of international labour
standards will also reposition the country not only at the ILO but in the international community generally.60

Reference must be made here to the remark of His Excellency, Dr. Goodluck Ebele Jonathan, GCFR, President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria after the signing into law of the Third Alteration Act, 2011. Excerpts of his remarks is quoted as follows:

“... It is my hope that with the Constitutional establishment of the National Industrial Court of Nigeria, we have institutionalized the process for quick, fair and efficient resolution of disputes relating to labour, employment, industrial relations, workmen compensation, child labour, discrimination, pension, health and safety at workplace.

This Court is conferred with exclusive jurisdiction in those areas considered critical to the sustenance of our economy and industrial development. Its effective discharge of its mandate will serve, not only to promote industrial harmony, but also to boost the confidence of both local and foreign direct investors in our national economy”. (Emphasis supplied)

RECOMMENDATIONS

One of the laudable provisions of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 is the provisions in section 254(3) which permits NICN to establish, within its premises,

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60 Ibid, section 254 (c) (1) (f) and (h) and section 254 C (2). See also Bimbo Atilola and Ayodele Morooco-Clark, “National Industrial Court and Jurisdiction Over International Labour Treaties under the Third Alteration Act” in Labour Law Review (NJLIR) Vol. 5, No. 4, December 2011, pgs. 1 – 6.
an Alternative Dispute Resolution (ADR) Centre to aid in the speedy disposition of cases that come to the court.

Section 254(3) of the 1999 Constitution (as amended) provides thus:

254(3) The National Industrial Court may establish an Alternative Dispute Resolution Centre within the Court premises on matters which jurisdiction is conferred on the Court by this Constitution or any Act or Law;

Provided that nothing in this sub-section 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 other matter as may be prescribed by an Act of the National Assembly or any Law in force in any part of the Federation.

It is submitted that this provision is particularly necessary in view of the fact that the NICN now has jurisdiction to the exclusion of any other Court over labour, trade union and industrial relations disputes. Since it no longer shares such jurisdiction with the Federal and State High Courts, it is bound to witness an upsurge in the number of cases that will now be instituted thereat, which if not properly managed, would stifle the smooth and speedy resolution of disputes that would come before it. The provision allowing the Court to open more doors for dispute resolution within its legal framework is therefore a welcome development.
The adjudicatory process is in need of change. The adversarial model used mostly by judicial bodies has proved to be inefficient, expensive, and conflict-producing procedure. It is particularly ill-adapted to resolving issues of great public policy concern such as labour and trade disputes, and hence the ever-growing concern for Alternative Dispute Resolution (ADR) methods to address the resolution of labour and trade disputes between the various players in the world of work. But for the new system to work, there must be an enabling legislative framework, a culture of mediation, and the parties must trust the neutral process.

It is also our recommendation that the on-going judicial reform agenda should consider an amendment of section 2(3) of the National Judicial Institute Act\textsuperscript{61} to include the President of the NICN as a member of the Board of Governors of the Institute. This step would enable the President of the NICN to take part in taking decisions likely to affect the NICN among other judicial institutions, and take its rightful of place among other superior courts of record in Nigeria.

Closely related to the above is the need to make the President of the NICN a member of the Body of Benchers through the amendment of section 3(1) of the Legal Practitioners Act\textsuperscript{62}. However, in the interim, the Chief Justice of Nigeria is most respectfully urged to invoke the powers conferred on him by section 3(1) (l) of the Legal Practitioners Act to appoint the President of the NICN as a member of the Body of Benchers pending the amendment of the Act.

**CONCLUSION**

Judicial reform, globally, is tilting towards specialization of courts. The idea of creating labour court with exclusive jurisdiction

over labour, employment and industrial relations matters is a global practice. The rationale for this is the recognition of the centrality of labour to economic development of any state. Labour is, perhaps, the most important factor of production and thus deserving of a special legal framework to achieve optimal and sustainable productivity. Labour and employment matters are too important to be left in the hands of regular courts with history of perennial delays in disposing cases. No nation develops in a perennially chaotic industrial atmosphere and no foreign investor goes to industrial crisis prone environment.

The regime of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 has not only repositioned the court to meeting the challenges of the 21st century industrial relations, it has also brought relief to labour law and industrial relations practitioners, including the litigants in that the Act has settled, with finality, the long controversies and uncertainties over the true status and powers of the National Industrial Court of Nigeria.