

DISCUSSION PAPER

ON

THE ROLE AND PLACE OF THE NATIONAL INDUSTRIAL COURT IN THE DEVELOPMENT OF THE NIGERIAN ECONOMY

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**PRESENTATION TO THE 2009 ANNUAL LECTURE OF CLASS
'86 (THE CENTENNIAL CLASS) OF THE NIGERIAN LAW
SCHOOL ON 18TH AUGUST, 2009 AT AKODO BEACH,
VICTORIA ISLAND, LAGOS**

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1. INTRODUCTION:

- Any study on the role of the National Industrial Court in the development of the Nigerian economy should include a clear understanding of the objectives of the economic policy of Nigeria, the institutions driving the economy, the place of labour in wealth creation and the need to promote industrial peace and harmony.
- The relationship between labour and employers of labour is at serious risk where resources are lean, insecurity prevails and conflict resolution mechanisms are weak. The consequence of this brings endless trade disputes to the detriment of the economy.
- Accordingly, the National Industrial Court plays a key role in ensuring economic growth and development by virtue of its function as a judicial institution meant to legally determine all trade disputes.

2. THE OBJECTIVES OF DEVELOPING THE NIGERIAN ECONOMY:

The basic objectives of our National Economic Development are:

- Achieve a good living standard for the people, higher incomes and wages, better jobs, education, transportation, strong industrial production, agricultural production, etc.
- Increase / expand the distribution of goods and services and achieve sustainable growth in infrastructure, shelter, health, security, etc.
- Prevention of poverty, ignorance and human misery through wide range of economic and social choices or opportunities.
- Growth in macroeconomic indices (Gross Domestic Product, national revenue, per capita income, etc).

The above objectives ensure peace and security, strong trade / industrial institutions, higher welfare benefits and living standard for our people. But these

objectives require strong and virile action plans and institutions for them to be realised.

3. ROAD MAP TO ECONOMIC DEVELOPMENT:

- Generally, multi-dimensional actions are often taken to kick the Nigerian Economy in the right direction (Question: *What is the right direction?*). Suffice to mention here just a few: Operation Feed the Nation (OFN), Green Revolution, War Against Indiscipline (WAI), Structural Adjustment Programme (SAP), Health for all by the year 2000, Free Education, Free water, Petroleum Trust Fund (PTF), Family Support Programme, Vision 2010 (now repackaged to Vision20 20:20), Foreign Direct Investment (FDI), NEEDS and now Seven Point Agenda.
- In the course of our development as a nation, various private and public institutions were established to employ labour, accelerate and act as catalysts for wealth creation and the pursuit of our economic and developmental objectives which *inter alia* include ministerial agencies, banks, insurance and other financial institutions, land, air and sea transport agencies and companies, manufacturers, oil and gas

related Parastatals and Companies, the civil service, professional groups, trade unions, the maritime industry, agro-allied industry, etc.

- Thus, there is an essential linkage between labour, economic growth and development with various institutions playing important roles in driving the Nigeria economy.
- For these institutions to function optimally, it is necessary to employ various classes of competent workers, provide good conditions of service, a conducive environment and adequate and prompt retirement benefits. These may not be realized sometimes for so many reasons like dishonest Board members e.g. as in the case of Enron, bankruptcy, capital market failures, etc. This sometimes leads to trade disputes.
- Anything that negatively affects the welfare and security of employment of workers leads to economic decline and poor production, industrial disharmony and failure in the realization of national growth and economic development.
- Trade Unions are formed to protect workers' interests. Industrial harmony breaks down whenever workers'

demands are not met by employers (sometimes for good reasons).

4. **ESTABLISHMENT OF THE NATIONAL INDUSTRIAL COURT:**

- Section 1 of the National Industrial Court Act, 2006, which partly repeals the Trade Disputes Act, 1976 Cap. T8 LFN, 2004, establishes the National Industrial Court with powers to settle all trade disputes, interpret collective agreements and matters connected therewith. (Question: Why two Legislations on the same matter? Why not enact just one for the Court instead?).
- Section 20(2) of the TDA makes the Court a superior court of record. The position is retained by the NICA under S.1(3)(a). This position seems to conflict with S.6(3) of the 1999 Constitution of Nigeria which states that only the Courts mentioned in S.6(5)(a) to (i) are the superior courts of record in Nigeria.
- The membership of the Court is as per Section 1(2) of the NICA (Question: Why is there difference in the eligibility of the Judges in the light of available experienced persons?).

- Section 48 of the Trade Disputes Act defines trade dispute as: "Any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person". See also S. 54(1) of the NICA.

5. AMENDMENTS TO STATUTORY PROVISIONS ON THE NATIONAL INDUSTRIAL COURT:

- Section 21(2) of the TDA stipulates a time bar for determining disputes not later than thirty working days from the commencement of hearing. The section states:

"The Court shall determine any trade dispute referred to it not later than thirty working days from the day it begins to consider such trade dispute".

- For a speedy resolution of disputes, an amendment reducing the period to two weeks may serve the Nigerian economy better especially in oil and gas,

health, transportation and telecommunication industrial disputes.

- Section 21(3) of the TDA, which is retained by the NICA under S.9(2), gives room for an appeal only against the decision of the Court on questions of fundamental rights as contained in the Constitution. The section states:

“An appeal from the decision of the Court shall lie as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999”.

- There is a need to amend this provision to embrace other valid grounds of law and or mixed law and facts.
- However, a similar provision also exists in relation to appeals from the Investment and Securities Tribunal which restricts appeals on points of law only. Further consider Amendment No. VII to the Constitution of the United States of America ratified on 15th December, 1791 which restricts the right to appeal in trial by Jury in some civil cases on points of law only.

- Although the National Industrial Court was not specifically mentioned in the 1999 Constitution under Section 6(5) which named 9 Courts, the Court is recognized as a superior court of record in Nigeria by the combined effect of Section 6(3) and (5)(j) of the Constitution as well as the relevant statutes governing the Court. (Question: Is it necessary for the Constitution to be amended to specifically mention the court by name?).
- Compare the position of the 1999 Nigerian Constitution with the Constitution of the United States of America under its Article III ratified in 1787 which states:

"The judicial power of the United States, shall be vested in the Supreme Court, and such inferior courts as the Congress may from time to time ordain and establish".

6. **CONCLUSION:**

- Given the rapid growth of the population of Nigeria which as at 1991 stood at 88.5 million, now almost doubled and with nearly half the population of West

Africa and with a quarter of all Africans living in Nigeria, we stand a very good chance of having industrial disharmony, trade disputes and conflicts as a consequence of massive retrenchment of workers, meltdown in economic and social opportunities, failing public enterprises and infrastructure.

- In order to address these challenges, the National Industrial Court and other institutions of conflict resolution must be strengthened.
- Thus, it is in our strategic interest to place the National Industrial Court at the centre of Nigeria's economic growth and development.

REFERENCES:

1. Trade Disputes Act, 1976.
2. The Investment and Securities Act, 1999.
3. Constitution of the Federal Republic of Nigeria, 1999.
4. The Constitution of the United States of America.
5. Recent Trends in US Corporate Governance by J.R. Thomson & H. Kopps, International Bar Association Newsletter of the Corporate Counsel Committee of the Section on Business Law, Vol. 10 No. 1, May, 2002, p.17 at p.20 on the review of Enron issues.
6. Profile of Abortion in Nigeria, by Dr. E.E. Emuveyan, 1994, Seminar Paper presented in Mauritius.
7. Crises, Conflicts and Incorporation: Options for a Democratic Nigeria, by Father Mathew Kukah, a paper presented at the 2002 NBA Annual Conference in Ibadan.
8. Legal Regime for the Regulation of Capital Market as a tool for Secured Investment in Nigeria: By Chief Anthony I. Idigbe, SAN, 2005.
9. Privatization in Nigeria: Legal issues at Stake by Mrs Irene N. Chigbue, 2005.
10. The National Industrial Court Act, 2006.

POSTSCRIPT

This paper represents the position of the law as at the time it was presented. However, since that time, a lot has changed with the law regarding the National Industrial Court of Nigeria (NICN). Some of the changes are:

1. The Court is now listed as a superior Court of record in the Nigerian Constitution. This became possible by virtue of the Nigerian Constitution (Third Alteration) Act No. 3 of 2011. Currently, Section 254A of the Constitution establishes the NICN while Section 254C vests the Court with jurisdiction in respect of labour and ancillary matters. This automatically divested the Federal High Court and the State High Courts of jurisdiction in labour-related matters.
2. There has been a bit of conflict as to the right of appeal from the NICN to the Court of Appeal. The Court of Appeal did not seem to have helped in this regard as there were conflicting decisions. The Court of Appeal (Lagos Division), in the case of **COCA-COLA (NIG.) LIMITED vs. AKINSANYA (2013) 18 NWLR (Pt. 1386) 225**, limited the right of appeal from decisions of the National Industrial Court to the Court of Appeal, to only cases relating to fundamental rights. On the other hand, the same Court (Akure Division), in **LOCAL GOVERNMENT SERVICE COMMISSION, EKITI STATE & ANOR. V. M. A. JEGEDE (2013) LPELR-21131**, held that the decisions of the NICN were not final and were subject to appeal, whether as of right or with leave of Court.
3. Thankfully, this controversy/conflict has been laid to rest by the Supreme Court in the case of **SKYE BANK PLC V. VICTOR ANAEMEM IWU (2017) LPELR 42595**, where the apex Court held that the right of appeal from the NICN to the Court of Appeal is not limited to questions of fundamental rights alone.