

Emerging Trends in Labour Law and Industrial Relations in Nigeria

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Abstract

Labour law seeks to regulate the relationship between an employer or a class of employers and their workmen. The labour market involves interplay of individuals and institutions engaged in the mobilization of the workforce for the production and distribution of goods and services and efficiency in the production processes. The relationships in the labour market, whether at individual or collective levels, are basically contractual in nature. The areas of concern to labor law include formation of the contract of employment, the terms of the contract, including the express and implied obligations of the parties to it as well as termination of the contract and the available remedies thereof. Other areas are largely concerned with the regulatory intervention of the state and they include health, safety and welfare at work, compensation for death, injury, disease or disability arising out of or in the course of employment, pension scheme, health insurance scheme, organised labour relationship, including formation of trade unions, collective bargaining, industrial disputes and actions as well as the institutional framework for the resolution of industrial disputes. The reach of this law is so wide that it touches the lives of millions of men and women who constitute the labour force. The relationship between labor and management is based on a mutual adjustment of interests and goals. It depends upon economic, social and psychological satisfaction of the parties; the higher the satisfaction, the healthier the relationship. In practice, it is however found that labour and capital constantly strive to maximize their pretended values, and by so doing they try to augment their main respective incomes and improve their positions. These create sharply divided and vociferously pressed rival claims, which is not always easy to amenable reconciliation. The state with its ever increasing interest in labour and welfare issues cannot remain silent and helpless spectator in the relationship. So it takes the responsibility of coming up with legislative provisions meant to balance these conflicting interests in the arena of labour management relations. The paper examines the relevant legislations such as the Pension Reform Act 2004, the Trade Unions (Amendment) Act 2005, the National Industrial Court Act 2006, the Employees Compensation Act 2010 and the Constitution (Third Alteration) Act, 2010. The judicial decisions on the development of labour law and industrial relations in Nigeria have been reflected in the examination. The paper concludes that there have been efforts in Nigeria to conform to international labour standards through some of the legislations passed recently, particularly the National Industrial Court Act, 2006 and the Constitution (Third Alteration) Act, 2010. The paper further makes some recommendations that involve the need for the review of the constitution and some of the labour legislations to improve respect for and realisation of the international best practice on labour and industrial relations in the country.

Introduction

Various Phrases¹ like the one used in the title of this paper -Labour Law and Industrial Relations- are used to refer to the framework of the legal relations involved in the employer and employee relationship. Under the relationship, the employee provides dependent or subordinate labour for the employer and receives wages in exchange as opposed to independent labour provided by a self-employed or an independent contractor under the principal and independent contractor relationship. The employer and employee relationship is distinguished from any other similar relationship, including agency, bailment and partnership relationships based on the civil law distinction between contract of employment or contract of service which is used to be known, and still referred to in Nigeria, as 'Master and Servant Contract' on the one hand and contract for services or contract of commission or trust on the other.²

The labour market in the sense of the employer and employee relationship constitutes interplay of individuals and institutions engaged in the mobilization of dependent or sub-ordinate workforce for the production of goods and services and efficiency in the production processes. The market is a network of relations at both individual and collective levels and Labour Law (or Labour Law and Industrial Relations as used in the title of this paper) is concerned with regulation of the relations in the market.

Labour Law is very dynamic and composite in nature emerging from principles of common law and codified and modified from time to time by legislations and having both private and public law flavours as it cuts across the law of contract, law of torts, constitutional and administrative law etc. The idea of global labour standards has increasingly made domestic labour law to bear international dimensions. Besides pervading various areas of law, Labor Law can be said to be both multidisciplinary and interdisciplinary subjects as it relates to almost all areas of study and in particular it straddles the frontiers of human resource management, economics, sociology, psychology, medicine, politics and international relations among others³. Looking at the literatures on labour law across jurisdictions⁴, Labour law as a distinct legal discipline is broad and most importantly classified into two related components, the Individual Labour Law and the Collective Labour Law⁵.

Individual Labour Law is a body of rules concerned with the individual relationship between employers and employees and covers such areas of Labour Law as: (i)the different categories of employees like the blue-collar and white-collar employees, the private sector and public sector employees, the regular and temporary employees, employees on probation, employees with two employers; vulnerable groups including children and young persons, apprentices, women, aged, physically challenged and persons suffering from stigmatised health conditions such as HIV/AIDS; (ii)the individual contract of employment: form and content, the legal capacity to conclude the contract, termination of the contract and available remedies for wrongful termination of the contract;(iii)the implied rights and duties of parties in employment relationship;(iv)working time, rest, holidays, annual vacation and so on;(v)remuneration;(vi)the rules concerning incapacity to work: due to illness, an accident at work, election to a full-time union post and so on;(vii)job security;(viii)protection against discrimination;(ix)competition by former employees;(x)inventions by employees and(xi)individual disputes and their settlement etc.

Collective Labour Law, on the other hand, is concerned with the aspects of the labour law such as:(i)freedom to form or belong to a trade union or the right to organise; (ii)relationship between trade unions and employers or their associations at plant, enterprise, industrial as well as at local and national levels;(iii)collective bargaining;(iv)industrial actions including picketing, strikes and lockouts;(v)collective industrial disputes;(vi)settlement of collective industrial disputes and (vii)the protection of essential needs etc⁶.

¹ Such as: 'Employment and Labour Relations Law', 'Employment and Industrial Relations Law' or simply 'Labour Law' etc.

² For discussion on the Employer and the Employee relationship as distinguished from other similar relationships see for example: Uvieghara, E.E., *Labour Law in Nigeria* (Lagos: Malthouse Press Ltd., 2001) pp. 3-11. See also Hanami, A.A., *Labour Law and Industrial Relations in Japan* (Netherlands: Kluwer-Deventer, 1979) p.31.

³ Agomo, C. K., *Nigerian Employment and Labour Relations Law and Practice* (Lagos: Concept Publications Limited, 2011) p.49.

⁴ Ibid. See also the classification in Japan by Hanami, note 1, P.32-33.

⁵ Other ways of classifying labour law are: Labour Law of the Private Sector and Labour Law of the Public Sector, Domestic Labour Law and International Labour Law etc.

⁶ See Hanami *Supra* note 2.

The employer and employee relationship arises from wage earning employment. It is a widely held view that wage earning employment or paid employment was not known to the indigenous, simple and unindustrialised societies that make up the present Nigeria and indeed to Africa prior to contact with the Europeans⁷. Even in the early colonial administration, the indigenous people were reluctant to engage in paid employment as observed by Lord Lugard in 1918 as follows:

The existence of large areas of fertile vacant lands, the fact that the requirements of the peasantry were few and especially in the southern provinces, the existence of sylvan products which could be cultivated without much labour meant that the natives could take up land for themselves or engage in trade and neither remain as slaves nor seek wages for hire⁸.

The means of rendering services in the pre-colonial and early colonial Nigerian societies generally include by craftsmen for consideration in the form of the then existing means of exchange or any other agreed consideration under a relationship similar to that between the present principal and independent contractor; by slaves compulsorily; by family members, friends or members of a group voluntarily or by members of a communal co-operative group under a co-operative labour system where services are paid back likewise in services rather than money⁹.

The entrenchment of the colonial administration by the Britain, and in particular the introduction of the modern money laid down the foundation of wage-earning employment in Nigeria. The epoch-making period of British colonial administration in the country is 1861 when Lagos was ceded to the British Crown and thereafter made a colony or settlement in 1862. The laws of England consisting of the principles of common law, the doctrines of equity and statutes of general application were made applicable in the Lagos colony in 1863 by Ordinance No.3 of that year. These laws of England were eventually made applicable throughout Nigeria with the further acquisition of the territories forming the country by the British Crown. Nigeria inherited the British system of labour law and industrial relations as part of the colonial heritage. The hallmark of the British industrial relations system which started in Nigeria in the 19th century is the assumption of equality of bargaining powers between employers and employees¹⁰.

It follows that the sources of the Nigerian labour law are basically rooted in the English law. Customary law has not significantly contributed to the development of the rules guiding the employer and the employee relationship and thus is not regarded as a source of the Nigerian labour law¹¹. The sources include the constitution, legislation, common law, collective agreements and rules of work, custom and practices and international sources¹².

Many statutes have been passed since the restoration of constitutional government in Nigeria including those amending the constitution in the quest for socio-economic reforms by the civilian government and more importantly to ensure that existing legislations are in conformity with the constitution. These include statutes having direct and indirect bearing on labour matters such as the Constitution (Third Alteration) Act 2010, the Employees Compensation Act 2010, the Trade Unions (Amendment) Act 2005, the Pension Reform Act 2004 as amended, the National Industrial Court Act 2006, the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 as amended etc. The objective of this paper is to explore the emerging trends in labour law and industrial relations with reference to some recent Nigerian statutes. It starts with this introduction which gives general background of labour law and industrial relations covering its nature and scope and its brief history and sources in Nigeria to provide context for the discussion. It goes on to give a brief description of the legal framework of labour industrial relations in Nigeria.

⁷ Ogunniyi, O., *Nigerian Labour and Employment in Perspective* (Ikeja: Folio Publishers Limited, 2004) 2nd ed. P. 1.

⁸ Lugard, F.D., *Political Memoranda* (HMSO, 1918) p.224.

⁹ See Emiola, A., *Nigerian Labour Law* (Ogbomoso, Nigeria: Emiola (Publishers) Limited, 2000) p.1; Adeogun, A. A., *From Contract to Status in Quest for Security* (Lagos: Lagos University Press, 1986) p. 6-7.

¹⁰ For detailed discussion on the evolution and system of industrial relations in Nigeria see Otobo, D., *State and Industrial Relations in Nigeria* (Lagos: Malthouse Press, 1988).

¹¹ Uveighara Supra note 1 p.2.

¹² For discussion on the sources of labour law see for examples Worugji, I.N.E., *Introduction to Individual Employment Law* (Calabar: Adorable Press, 1999)pp3-10 and Ogunniyi supra note 5 pp 5-10.

It further examines, for illustrations, some developments in labour law and industrial relations introduced by some statutes passed after restoration of constitutional government in 1999 in line with the socio-economic reforms of the civilian government. The developments considered are those touching on employees' social security as contained in the Pension Reform Act 2004 as amended and Employees Compensation Act 2010, industrial actions as contained in Trade Unions (Amendment) Act 2005 and adjudication in the resolution of industrial disputes as contained in the National Industrial Court Act 2006 and the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010. As the emerging trends in labour law and industrial relations is the quest by countries to meet international best practice in labour practice, the examination of these developments in Nigeria in this paper will be in comparison with international labour standards and experiences in some other jurisdictions with a view to proffering recommendations for improvement in the country to ensure that Nigeria meets at least the minimum standards of the international best practice in labour practice.

Legal Framework of Labour and Industrial Relations in Nigeria

It is the network of the rules derivable from the sources of labour law in Nigeria highlighted above that constitutes the legal framework of labour and industrial relations in the country. The fundamental source of these rules is the constitution. The emphasis of the discussion under this sub-head is on the constitution where its provisions having bearing on industrial relations, particularly those under the fundamental objectives and directive principles of state policy and those on the power to legislate on labour matters, would be critically examined against international standards and practices in other jurisdictions to draw attention to matters that may require reconsideration for constitutional amendment.

The employer and employee relationship is basically contractual in nature. The relationship is brought about by a contract of employment which is a specialised contract. The formation of the contract of employment and other basic issues relating to contracts generally, including contract of employment such as consideration and capacity and the effect of misrepresentation, duress, undue influence and illegality are largely guided by the common law general contractual rules as part of the English law. There are, however, special rules peculiar to the employer and employee relationship alone developed by the courts over the years, particularly relating to the rights and obligations of the parties involved in the relationship. These rules or rights and duties are implied into a contract of employment, unless excluded by an express term of the contract or by a statute¹³. The general principles of the Law of Contract apply where no such special rules exist¹⁴.

The implied rights of the employee are the duties of the employer and *vice versa*. The duties of the employer include: to pay wages to the employee, to provide work to the employee, to ensure safety of the employee at work, to treat the employee with respect and dignity and to indemnify the employee. The employee on the other hand owes to the employer the duties of obedience, faithful service/fidelity and care¹⁵. This emphasizes the significance of the common law and in particular the decisions of the Nigerian courts in the legal framework of industrial relations in the country.

In view of the multiple sources of labour law, contract of employment is described as 'a blank to be filled from the outside by statutes and other extraneous sources'¹⁶. The statutes referred to here are the regulatory labour legislations passed by the state as the main regulator of industrial relations. These legislations fill in the gap in contract of employment by implying into the contract the mandatory term(s) provided for by a given legislation, but not reflected in the contract and as well render null and void those terms of the contract contravening provisions of a particular legislation. These regulatory statutes together with subsidiary legislations issued pursuant to them constitute the most significant aspect of the legal framework of labour and industrial relations in Nigeria. The regulatory legislations seek, among others, to protect employees or actors who are considered vulnerable in industrial relations against the unrealistic and fictitious English Industrial relations system's assumption of equal bargaining power of the contracting parties in the relations.

¹³ Uvieghara, E. E., *Nigerian Labour Laws-The Past, Present and the Future: An Inaugural Lecture Delivered at the University of Lagos on Wednesday 15th April, 1987* (Lagos: University of Lagos Press, 1987)p.4.

¹⁴ See for example Sanni, A., *Introduction to Nigerian Business Law* (Lagos: Malthouse Press Limited, 2005)p.3.

¹⁵ See Worugji Supra note 10 pp.58-84.

¹⁶ Ibid. p. 4.

And in doing so they tend to abolish or modify the rules of extraneous sources of labour law including the decisions of the courts that proved onerous on the employee¹⁷.

Collective bargaining is defined as “the process of negotiation between an employer or group of employers on the one hand and one or more trade unions on the other, designed to produce collective agreements which may have a number of functions.”¹⁸ These functions include prevention of industrial conflicts and their resolution where they occur and promotion of industrial peace and harmony. Collective agreement has proved to be a very flexible and veritable source of regulation of labour practice in the legal framework of industrial relations in Nigeria.

There are customs and practices in various industries such as the banking and insurance industries which relate to labour practice. These customs and practices which do not contradict legislations, express term of contract of employment and public order are accepted as source of labour law and thus part of the legal framework of labour and industrial relations¹⁹.

The International Labour Organisation (ILO)’s conventions and recommendations are the most important international sources of Labour Law in countries across the globe including Nigeria. Out of the thirty-eight (38) ILO’s conventions ratified by Nigeria, four (4) have been denounced making the existing ratified conventions thirty four (34)²⁰. Ratified conventions which are passed into law acquire the status of domestic statute and are enforced as such. They rank second to the constitution in some countries and that local legislations have to conform to them otherwise they will be declared null and void²¹. There are many Nigerian labour statutes²² designed to conform to ILO standards and there are others that are parallel to them²³. The National Industrial Court is vested with 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.”²⁴ Looking at this provisions and other provisions on the jurisdiction of the National Industrial Court, it is submitted “that technical and literal modes of interpretation will not be used to defeat the spirit and intendment of international conventions, treaties and protocols which Nigeria has ratified, by insisting that each of those instruments must be domesticated under section 12 of the constitution.”²⁵

The labour law as a whole and its two important broad components (individual and collective labour law) have basis in the Constitution as a fundamental source of labour law. There are provisions in Chapter II of the constitution containing guiding principles having bearing on labour law and industrial relations generally and there are some other specific provisions in chapter IV of the constitution on the individual and collective labour law. Thus, the constitution is regarded as the most fundamental source within the legal framework of labour and industrial relations in Nigeria.

¹⁷ For example the case of *Priestly v. Fowler* (1837)3M & W1: 145; 145 failed to establish the duty of care of employer towards his employee where Lord Abinger stated, among others, that “the mere relation of the master and the servant never can imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do of himself”. The duty of care on the part of the employer was later established in *Wilsons & Clyde Coal Co. v. English* (1938) AC 57 where it was held per Lord Wright that “the whole course of authority consistently recognises a duty which rests on the employer and which is personal to the employer, to take reasonable care for the safety of his workman, whether the employer be an individual, a firm or a company, and whether or not the employer takes any share in the conduct of the operations.” The decision and others that followed it were a welcome development as they made the employee entitled to damages for injury he suffered as a result of failure to care on the part of the employer. They were however short of addressing prevention of industrial accidents by the employer. This shortcoming coupled with other common law rules especially the defences of common employment, *volenti non fit injuria* and contributory negligence exposed the employee to difficulties that led to enactment of many legislations such as the Factories Act and the Workmen Compensation Act to address same.

¹⁸ *Ibid.*

¹⁹ See Hanami *Supra* note 1 p.48.

²⁰ Etteh, E., *Rocheba’s Labour Law Manual* (Lagos: Rocheba Law Publishers, 2007) Vol. 1, P. 387-390.

²¹ *Ibid.*

²² For example *Employee’s Compensation Act 2010*.

²³ For example *Trade Unions (Amendment) Act 2005*.

²⁴ S.6, *Constitution of the Federal Republic of Nigeria (Third Alteration) Act*.

²⁵ See Agomo *Supra* note 3 p. 341.

Chapter II of the constitution enjoins the state to direct its policy towards ensuring, among others, that:

- (a) all citizens, without discrimination on any ground whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment;
- (b) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life;
- (c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;
- (d) there are adequate medical and health facilities for all persons;
- (e) there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever;
- (f) Children, young persons and the aged are protected against any exploitation whatsoever and against moral and material neglect.²⁶

Regarding Chapter IV of the constitution, some entrenched rights such as the right to dignity of human person²⁷, the right to fair hearing²⁸, the right to freedom from discrimination²⁹ can be said to have some specific regards to individual labour law and, on the other hand, the provisions on the right to freedom of expression and the press³⁰ and that on right to peaceful assembly and association³¹ are examples of specific provisions significant to collective labour law.

It is important to note at this point that unlike the civil and political rights in Chapter IV of the constitution, the provisions in Chapter II, being about social, economic and cultural rights, are non justiciable and therefore unenforceable.³² The Universal Declaration of Human Rights (UDHR), 1948 accords equal recognition to both civil and political rights and economic, social and cultural rights. Civil and political rights on one hand and economic, social and cultural rights on the other as protected by the International Covenant on Civil and Political Rights (ICCPR), 1966 and International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 respectively are regarded as universal, indivisible, interdependent and interrelated. The civil and political rights cannot be effectively realised without making the economic, social and cultural rights justiciable and enforceable. Thus, the emerging trend is to constitutionally guarantee both sets of rights as is the case in some countries like South Africa or render the economic, social and cultural rights justiciable and enforceable through creative legal reasoning where they are regarded as not so under constitutional arrangement like that in Nigeria as it is the practice in India³³. It is sad that a chain of cases indicates that the courts in Nigeria are even reluctant to allow the justiciable and enforceable civil and political rights enshrined in Chapter IV of the constitution to be invoked or enforced through the Fundamental Rights (Enforcement Procedure) Rules when they involve a labour matter³⁴. Labour is defined in the exclusive legislative list of the constitution³⁵, meaning that it is the federal government that is having the exclusive power to legislate on labour matters³⁶ and that labour statutes apply throughout the country unless a given statute provides otherwise. The concurrent legislative list also vests power in the federal government to legislate on some labour matters already included in the exclusive legislative list³⁷. This appears unnecessary. The concurrent list went on to confer power on the state to legislate on matters falling under labour as defined in the exclusive legislative list³⁸ and as such there is apparent conflict as both the federal and state legislatures can legislate on such matters.

²⁶ S. 17(3) of the CFRN, 1999.

²⁷ Ibid. S. 34.

²⁸ Ibid. S. 36.

²⁹ Ibid. S. 42.

³⁰ Ibid. S. 39.

³¹ Ibid. S. 40.

³² Ibid. S. 6(6)(c).

³³ See Govindjee, A. And Taiwo, E. A., Justiciability and Enforceability of the Fundamental Objectives and Directive Principles in Nigeria: Lessons from South Africa and India in Nigerian Bar Journal Vol. 7 No. 1, August 2011.

³⁴ See for examples Bakare V. Lagos State Civil Service Commission (1992) 8 NWLR (pt 262) 641; National Electric Power Authority V. Adesaaji (2002) 17 NWLR (pt 797) 578; Egbuonu V. Borno Radio Television Corporation (1997) 12 NWLR (pt 531) 29; Sea Trucks Nig. Ltd. V. Anigboro (2001) 10 WRN 78.

³⁵ Item 34, Part I, Exclusive Legislative List, 2nd Schedule of the CFRN, 1999.

³⁶ S. 4(2), CFRN, 1999.

³⁷ Item H 17 (a), Part II, 2nd Schedule, CFRN, 1999.

³⁸ Item H 19, Part II, 2nd Schedule, CFRN, 1999.

This does not pose much problem of resolution as in the situation of any inconsistency or conflict between state and federal law, the federal law prevails³⁹. Review of the situation is, however desired to get rid of the apparent conflict and superfluous provision in the constitution to at least achieve coherence.

Many labour statutes are not effectively and efficiently implemented as they are federal laws with the federal government having the primary responsibility to implement them. The federal government has failed to effectively and efficiently implement some of these labour statutes because of lack of manpower or some other constraints. For example, wrongs are routinely perpetrated in factories in the country, but they go unchecked because of lack of manpower on the part of the federal government to ensure inspection of factories throughout the country as provided by the Factories Act. There are state governments in Nigeria desirous of taking legislative action on labour issues for the improvement of the economy of the states, including creating more employment opportunities and attracting foreign investors to the states but they are constrained by the concern that labour falls under the exclusive legislative list of the constitution. In many countries operating federal system, the power to legislate on labour matters is decentralised, enabling the federating units to legislate on the matters. This option may be worthy of consideration by Nigeria.

Social Security

Social security is defined as “the alleviation of income loss and poverty arising from the disruption or cessation of income because of unemployment, old age, sickness, invalidity or death. In a nutshell, social security is a provision for persons and their dependants who are in need because of inadequate or non-guaranteed source of income.”⁴⁰ Nwabueze views Social security as “the social protection; organised collective protection of the individual against the economic consequences-loss or suspension of income, poverty, want, destitution, etc.- arising from certain social risks of life, viz.

- (i) sickness, i.e. a morbid condition due to non-occupational disease or injury which causes temporary or short-term abstention from work;
- (ii) maternity, i.e. childbirth necessitating absence from work during prescribed periods before and after;
- (iii) invalidity, i.e. “permanent or long-continuing and more or less total disablement resulting from non-occupational injury or disease”;
- (iv) death resulting from non-occupational injury or disease;
- (v) old-age, i.e. the attainment of an age, varying from country to country, at which people commonly become incapable of efficient work and are therefore required to retire from regular employment;
- (vi) employment or occupational injury or disease, i.e. injury or disease arising out of an employment, which results in death or in temporary or permanent incapacity to work;
- (vii) Unemployment, i.e. loss of employment for a person who, while capable of and available for regular employment in some occupation, is unable to find a suitable employment.”⁴¹

The above classification of Nwabueze captures the nine (9) branches of social security specified by the International Labour Organisation (ILO)’s Social Security (Minimum Standards) Convention⁴² which are old age, survivorship, industrial injury, disability, family support, maternity, medical care, sickness and unemployment. From the above classification or branches, social security can be broadly categorised into two, the employment or occupational social security and the non-occupational social security. By occupational social security we mean the social security relating to employer and employee relationship which falls under social insurance⁴³ as a form of social security. We are here concerned with occupational social security particularly pension and compensation for occupational accidents schemes premised on the above items (v) and (vi) respectively of the classification.

³⁹ S. 4(5), CFRN, 1999.

⁴⁰ Aji, M.A., “What Social Security for Nigeria by the Year 2010?” 3 No. 4 *MODUS International La & Business Quarterly* 75 (Dec., 1998).

⁴¹ Nwabueze, B. O., *Social Security in Nigeria* (Lagos: NIALS, 1989) pp2-3.

⁴² 1952 (No. 102).

⁴³ Social Insurance is a form of social security open to both employees and self-employed and it usually operates contributory schemes.

By non-occupational social security, on the other hand, we refer to social assistance⁴⁴ (also known as public assistance) as a form of social security. Non-occupational social security (social assistance) schemes are generally financed by the state alone on the premise of its social responsibility to ensure that the needy and economically weak class of people are protected against the risks of life and also that the action or inaction of the state may be a contributory factor in the causation of the risks. This unlike occupational social security (social insurance) schemes which are generally funded in tripartite pattern, by contributions from employers, including the state as an employer and employees based on payroll or the self-employed and plus government subsidy. Depending on the scheme, funding may be by a combination of workers' and employers' contributions or by the employer alone. Workers' contribution imbibes in them, even though compulsorily, the culture of saving against the uncertainties of the future. It also entitles them to benefits as a right and to participation in the management of the protection scheme. The employer's contribution is predicated on the role he plays in causing the risks sought to be protected and the responsibility for the maintenance of the human resources that sustain his enterprise and its profitability. Both occupational and non-occupational social security schemes are generally organised and administered by the government through legislations.⁴⁵ Private and voluntary schemes are exceptionally available under, for example, collective bargaining arrangement.

The ILO's Income Security Recommendation⁴⁶ guides the funding of social security schemes where it states that "the cost of benefits, including the cost of administration, should be distributed among insured persons, employers and taxpayers, in such a way as to be equitable to insured persons and to avoid hardship to insured persons of small means or any disturbance to production." The specific stipulations into which the broad principle stated in this recommendation is explained require employers to bear the entire cost of compensation for employment accidents and contribute not less than half the total cost of the other benefits such as pension scheme⁴⁷. The ILO's Social Security (Minimum Standards) Convention re-emphasises the guiding principle where it provides⁴⁸ that the cost of benefits, including the cost of administration "shall be borne collectively by way of insurance contributions or taxation or both, in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Member and of the classes of persons protected." This convention has not been ratified by Nigeria. It is however against these ILO's recommendations and convention that we will discuss the existing pension scheme and compensation scheme for occupational accidents in Nigeria to see whether they have met the minimum international standards.

Pension Scheme (Pension Reform Act 2004)

A pension can be defined as "a regular payment made to someone, usually by a former employer, who because of disability, old age or illness can no longer earn a living by working or has reached a pre-set pensionable age⁴⁹." This definition apparently views pension in terms of defined benefit pension scheme where payment of pension is entirely the responsibility of the employer. The employee is not required to contribute on a regular basis during his working life. Another way of viewing pension is in term of the defined contributory pension scheme and as such it can be defined as an arrangement under which a person contributes, on a regular basis (usually monthly), a proportion of his earnings during his working life. The contribution is considered as the earned income of the contributor from which he will usually receive a regular payment after a prescribed time.⁵⁰ The arrangement may cover employees and other categories of the working class (self-employed) in the labor market.

The pension is distinguished from gratuity which is a lump sum of money payable to a retiring employee after serving for a minimum period, now five years effective from the 1st June 1992⁵¹. Pension system usually takes care of both pension and gratuity.

⁴⁴ Social assistance is a non-contributory form of social security open to poor and destitute and usually wholly financed by the state.

⁴⁵ Ibid. Pp 5-6.

⁴⁶ No. 67 of 1944.

⁴⁷ Ibid. P.7.

⁴⁸ See Article 71 (1) of the Convention.

⁴⁹ Moloborin, O.O., "Pensions, Savings and Social Security by Year 2010: A capital Market Perspective" 3 No. 4 MODUS International Law & Business Quarterly 65 (Dec., 1998).

⁵⁰ Odia and Okoye *Infra* p.2.

⁵¹ Ibid.

With reference to industrial relations, pension can be said to be an amount received by an employee who, after working for some specific period of time, can no longer earn a living by working because of disability, old age or illness or who has reached a statutory age of retirement.

Pension system in Nigeria had experienced enactments of various legislations since the enactment of the early legislations namely, the Pension Ordinance, 1951 and National Provident Fund Act, 1961 for the public and private sectors respectively. This culminated with the enactment of the Pension Reform Act 2004 (the PRA, or the Act). The PRA was fashioned on the Chilean model and has introduced some radical and unprecedented reforms in the Nigerian pension industry. It has for the first time established a contributory pension scheme applicable to both public and private sectors and in all industries and as well unified the administration and management of pension in the sectors and industries. It has stemmed and addressed pension liability problem experienced especially in the public sector. It seeks to guarantee prompt payment of retirees, eliminate the hardships they suffer in the process of collecting their pensions and improve their standard of living.

PRA provides for the establishment of contributory pension scheme and the extent of the application of the scheme as follows⁵²:

- “(1) There shall be established for any employment in the Federal Republic of Nigeria, a contributory Pension Scheme (in this Act referred to as “the Scheme”) for the payment of retirement benefits of employees to whom the Scheme applies under this Act.
- (2) Subject to Section 8 of this Act, the Scheme shall apply to all employees in the Public Service of the Federation, Federal Capital Territory and the Private Sector-
- (a) In the case of the Public Sector, who are in employment; and
- (b) In the case of the Private Section, who are in employment in an organisation in which there are 5 or more employees.”

The above sub-section (1) establishes a ‘defined contribution’ pension scheme as against the old ‘defined benefit’ pension scheme in the public sector. The new defined contribution scheme is contributory and fully funded by the employer and the employee in case of their participation in the scheme. The old defined benefit on the other hand is mostly unfunded and a pay as you go (PAYG), payable out of the Consolidated Revenue Fund or some other public fund. The implication of defined contribution schemes, among others, is that in the case of the employer and employee relationship, the pension amount becomes the earned income of the employee so that even dismissal, which is considered penal in nature will not deprive the employee of the benefit of the accrued amount. In other words, whereas dismissal from service may disentitle an employee to pension benefits under the old defined benefit scheme, he will be entitled to full pension rights under the present defined contribution scheme⁵³.

As to the application of the scheme, sub-section (2) covers only “employees in the Public Service of the Federation, Federal Capital Territory and the Private Sector”. Employees of state governments are not covered. This is because item 44 of the exclusive legislative list, Part I, 2nd Schedule of the CFRN, 1999 provides for “pensions, gratuities and other like benefits payable out of the Consolidated Revenue Fund or any other public funds of the Federation.” The pension of the employees of a state are not paid from the Consolidated Revenue Fund or any other funds of the Federation but that of the respective state. States can however choose to adopt the scheme under an enabling law.

Regarding the application of the PRA to employees in the Public Service of the Federation, the categories of the employees falling under section 8 of the Act are exempted from the scheme. The Act was amended by Pension Reform (Amendment) Act, 2011. The explanatory memorandum of the amending Act explains that “this Act amends the Pension Reform Act No. 2 of 2004 in order to, among other things, exempt members of the Armed Forces of the Federation and members of the Intelligence and Secret Services from the application of the scheme so as to eliminate the problems associated with the contributory pensions scheme as it concerns the military personnel and members of the intelligence and Secret Services in line with International best practices”. Section 8 of the PRA has therefore been amended to expand the categories of the federal employees exempted from the application of the Act.

Section 2 of the Pension Reform (Amendment) Act, 2011 provides thus:

⁵² S. 1, PRA, 2004.

⁵³ See Odia and Okoye *Infra* note 45 p. 14.

“Section 8 of the Principal Act is amended by substituting for section (2), a new subsection “(2)”-“(2)The categories of persons mentioned in section 291 and members of the Armed Forces of the Federation in section 217 of the Constitution of the Federal Republic of Nigeria, 1999 and members of the Intelligence and Secret Services shall be exempted from the Scheme”.

This amendment is a welcomed idea as it seeks to conform to international best practice as explained in the explanatory memorandum to the amending Act. In many developed countries military personnel and other security agents have separate pension plans and that worked well for the countries. Even in Nigeria it used to be the case under the defunct defined benefit pension system.

Sub-section (2) (b) qualifies the employees of the private sector that can enjoy the benefit of the Scheme by providing that “in case of the Private Sector, who are in employment in an organisation in which there are 5 or more employees”. This excludes employees employed by an individual private person no matter their number and employees in the employment of a private organisation with less than five employees. You may have a private individual employer with many domestic workers. It appears that these categories of private employees are left unprotected even though looking at one of the objectives of the scheme contained in S.2 (a) of the Act, there can be said to be an arrangement for voluntary participation for all working people including the self-employed. By S. 2 of the Act, the objectives of the Scheme shall, *inter alia*, be to-“(b) assist improvident individuals by ensuring that they save in order to cater for their livelihood during old age”. The private employees in question may not have the culture of saving for the future that may propel them to participate in the voluntary pension scheme under the Act. It is difficult for one to rationalise the exemption of these categories of private employees especially in view of the fact that the scheme is robust, flexible and portable. Private employees, especially domestic servants, are susceptible to exploitation. It is hoped that the Act will be amended to bring under the scheme the private employees left out. This will be in the spirit of the most recent ILO convention, a convention that seeks to protect domestic servants.

Looking at S. 9 of the Act, which provides with the rate of contribution to the scheme, it can be said that the provisions satisfy the minimum international standard as none of the categories of the employees is required to contribute more than 50% of the contribution in line with the provisions of the ILO Income Security Recommendation and the ILO Social Security (Minimum Standards) Convention discussed above.

The new defined contribution scheme is primarily and directly regulated and supervised by the National Pension Commission (PENCOM) as against under the old largely defined benefit scheme where you had the Securities and Exchange Commission (SEC), the National Insurance Commission (NAICOM) and the Joint Tax Force (JTB) regulating the pension industry. The major players in the administration and management of the Retirement Savings Account (RSA) are the Pension Fund Administrators (PFAs) and the Pension Fund Custodians (PFCs). The new legal regime provides for the investment of the pension fund⁵⁴. Indeed, the pension fund is a veritable source of institutional investment in capital markets around the world including Nigeria. This will bring SEC on board in the protection of the pension fund as the regulator of the capital market. It is proper regulation, co-ordination and monitoring by the regulatory agencies concerned particularly the PENCOM that can make the scheme a success. These agencies should ensure good corporate governance and risk management by the PFAs and the PFCs especially as there is adequate provision on risk management under the new scheme⁵⁵. Pension reform is a continuous process and should not always be considered in isolation. Reforms necessary to make the Nigerian financial market robust and strong are always necessary for the success of pension scheme as pension industry is part and parcel of the financial market. It is important regarding the need for reform on continuous basis to note that at the time Nigeria was coping with the old largely defined benefit pension system, Chile was preparing for an alternative social pension scheme and “...while the Nigerian Government was beginning to give serious attention to pension reform (using the Chilean model) in early 2005, the Chilean model was being criticized by supporters of the scheme and the World Bank had come to conclude that the Chilean reform model has not delivered the benefits that it was set out for from the beginning because of the too many assumptions made”⁵⁶.

⁵⁴ See Ss 72-78 of the PRA, 2004.

⁵⁵ Ibid. See generally Part VIII and S. 66 in particular

⁵⁶ Odia, J.O. and Okoye, A.E., “Pension Reform in Nigeria: A comparison Between the Old and New Scheme” 3, No. 3.1, Quater 1 Afro Asian Journal of Social Science p.4 (2012).

Industrial Accidents Compensation Scheme (The Employee's Compensation Act, 2010)

The Workmen's Compensation Act (WCA) which came into force on the 12th June 1987 was the principal legislation containing the immediate past legal regime of compensation for industrial accidents in Nigeria. Over the years, WCA became obsolete and therefore suffered a lot of criticisms as its application is restrictive, leaving out and not covering certain categories of industrial accidents and employees. The phrase 'arising out of and in the course of the employment'⁵⁷ received restrictive interpretation by the courts for the purposes of claim under the WCA. The compensation prescribed in WCA proved grossly inadequate and claim under the Act was surrounded with uncertainties. The Employees Compensation Act, 2011 (ECA or the Act) was therefore passed to repeal and replace WCA. ECA seeks to put in place a transparent and fair system of guaranteed and adequate compensation for employees or their dependants in the event of death, injury, disease or disability arising out of, or in the course of, employment thereby expanding the scope of accidents that can ground claim under the Act. In addition, the Act does not only improve compensation system for employees who suffered industrial injuries, it also takes necessary measures to ensure prevention of workplace accidents and safe working conditions for employees.

In addressing the problem of restrictive definition of a worker under WCA, the Act changes the term worker as used in the defunct WCA to employee which is more encompassing and it defined it as "a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in the Federal State, and Local Governments, and any of the government agencies and in the formal and informal sectors of the economy"⁵⁸. Employer, on the other hand, is defined in the section to include "any individual, body corporate, Federal, State or Local Government or any of the government agencies who has entered into a contract of employment to employ any other person as an employee or apprentice"⁵⁹. The Act applies to all employers and employees in the public and private sectors in the Federal Republic of Nigeria⁶⁰ except an employee who is a member of the armed forces of the Federal Republic of Nigeria other than a person employed in a civil capacity⁶¹ and in the case of an insolvent employer⁶².

An important feature of the Act is the responsibility placed under it on the Nigeria Social Insurance Trust Fund Management Board (the Board) for the co-ordination and implementation of the provisions of the Act and managing the Employee's Compensation Fund ("the Fund") established under the Act⁶³. The sources of financing the Fund are take-off grant from the Federal Government, mandatory contributions by employers, gifts and grants from national and international organisations, and proceeds derived from investment by the Board. The Act creates an Independent Investment Committee to serve in an advisory capacity to the Board⁶⁴.

Employees do not contribute to the Fund. Indeed, contribution by employees is prohibited and sanctioned. The Act provides that "No employer shall, either directly or indirectly, deduct from the remuneration of an employee any part of a sum which the employer is or may become liable to pay into the Fund established under section 56 of this Act, or to require or permit the employee to contribute in any manner towards indemnifying the employer against a liability which the employer has incurred or may incur under this Act."⁶⁵ It further sanctions contravention of the provisions⁶⁶. An employer, therefore, is to pay the contributions he is liable to pay under the Act entirely without any contribution from the employee. This is in line with International best practice as it conforms to the principle enshrined in the ILO Income Security Recommendation which stipulates that "the cost of benefits, including the cost of administration, should be distributed among insured persons, employers and taxpayers, in such a way as to be equitable to insured persons and to avoid hardship to insured persons of small means or any disturbance to production." This as noted earlier is interpreted to mean that employers should be made to bear the entire cost of compensation for employment injury.

⁵⁷ S. 3(1) WCA, 1987.

⁵⁸ S. 73 ECA, 2011

⁵⁹ Ibid.

⁶⁰ Ibid. S. 2(1).

⁶¹ Ibid. S.3

⁶² Ibid. S.70.

⁶³ Ibid. Part V.

⁶⁴ Ibid. Part VIII.

⁶⁵ Ibid. S. 14(1).

⁶⁶ Ibid. S.14(2)

Another important feature of ECA is an expansion of the scope of the phrase ‘arising out of and in the course of the employment’ which was subjected to restrictive interpretation by the courts. The Act provides for injuries occurring outside the normal workplace and for the meaning of the expression ‘course of employment’. The Act provides⁶⁷ for compensation of employees for occupational diseases and injuries sustained outside the normal workplace if the:

- (a) The nature of the business of the employer extends beyond the usual workplace;
- (b) The nature of the employment is such that the employee is required to work both in and out of the workplace;
or
- (c) The employee has the authority or permission of the employer to work outside the normal work place.

On the meaning of ‘course of employment’, it provides that ‘employee is only entitled to compensation with respect to accidents while on direct way between his place of work and his primary or secondary residence, the place the employee usually takes his meals, and the place where he receives his remuneration, provided that the employer has prior notification of such place.’⁶⁸

The ECA as a whole represents a paradigm shift from individual employer liability-based compensation scheme under the defunct WCA to now public social insurance-based compensation scheme. It has provided for a robust system involving conditions of liability for compensation claims, procedure for making claims, nature and forms of compensation, categories of injuries and beneficiaries as well as the institutional framework for the implementation of the scheme. It is early to assess the success or otherwise of the new scheme. The challenge, however, is with the effective and efficient implementation of the scheme under the Act, especially as it involves a government agency (the Board). By the way government agencies operate and are managed in Nigeria, it is hoped that the Fund will be efficiently managed and that beneficiaries will not be confronted with delays in the process of recovery of their claims.

Industrial Actions (Trade Union (Amendment) Act, 2005

Industrial relations involve power relationship among the actors in the relations. The principal actors in industrial relations are workers, employers or their organisations and government or governmental agencies. The power relationship among the actors often results in conflict. Conflicts in industrial relations may be resolved by negotiation between the parties concerned which leads to a consensus or by involvement of a third party through mediation, conciliation, arbitration or adjudication. Grievances in industrial relations are manifested through industrial actions usually in the form of picketing, strikes and lockouts⁶⁹. The Trade Unions Act 1974 (the Principal Act) regulates industrial actions. It has been amended by the Trade Unions (Amendment) Act 2005 (the 2005 Act). The 2005 Act was apparently passed in response to the successive general strikes by the Nigerian Labour Congress which preceded its enactment. The NLC embarked on the series of the strikes to challenge some socio-economic policies of the Federal Government particularly relating to fuel price increase. The 2005 Act, among others, amended sections 33 and 34 of the principal Act to derecognise Central Labour Organisation and retain federation of trade unions. Thus, the NLC has ever since been deemed to exist as a federation of trade unions. Our emphasis is on the amendment of the principal Act that seeks to curtail industrial actions.

The relevant provisions of the 2005 Act on industrial actions are contained in sections 6 and 9. Under section 6, section 30 of the principal Act has been amended to introduce new subsections (6), (7), (8) and (9). Section 9 amended section 42(1) of the principal Act to add new subsections (1) (A) and (1) (B) thereto. The new subsection (6) of the principal Act thus provides:

“No person, trade union or employer shall take part in a strike or lockout or engage in any conduct in contemplation or furtherance of a strike or lockout unless.

⁶⁷ Ibid. S. 11.

⁶⁸ Ibid. S.7 (2). With this provision, ECA has abolished the common position as for example stated in *Smith v. Elder Dempster Lines Ltd.* (1937) 17 N.L.R. 145 where the Supreme Court held that the general rule is that a man’s employment does not begin until he has reached the place where he has to work or the ambit, scope or scene of his duty and it does not continue until he has left it and the periods of going and returning are generally excluded.

⁶⁹ For definition of strike and lockout see S. 47(1) of the Trade Disputes Act 1976 and see also *Tram Shipping Corporation V. Greenwich Marine Incorporation* (1975) 2 All ER 898 at 990 for definition of strike by Lord Denning.

- (a) the person, trade union or employer is not engaged in the provision of essential services;
- (b) the strike or lockout concerns a labour dispute that constitutes a dispute of right;
- (c) the strike or lockout concerns a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of the employee, trade union or employer;
- (d) the provisions for arbitration in the Trade Disputes Act...have first been complied with; and
- (e) in the case of an employee or a trade union, a ballot has been conducted in accordance with the rules and constitution of the trade union at which a simple majority of all registered members voted to go on strike.

Subsection (7) provides that any person, trade union or employer who contravenes any of the provisions of this section commits an offence and is liable on conviction to a fine of ₦10, 000.00 or six months imprisonment or both the fine and imprisonment.

The 2005 Act seeks to restrict industrial actions, particularly strikes. It has categorized disputes into disputes of interest and right disputes. It allows industrial actions only in respect of right disputes after satisfaction of some conditions stated above which appear stringent. The Act can be said to have virtually outlawed industrial actions and thus is unpopular and not in conformity with international best practice. It has therefore received both national and international condemnation.⁷⁰ The above provision on industrial action in the 2005 Act is in particular a retrogressive step that “must be reversed to allow for realistic exercise of the right to strike.”⁷¹

Adjudication (The National Industrial Court Act, 2006 and the Constitution of the Federal Republic of Nigeria (Third Alteration Act, 2010)

The importance of a special court for the adjudication of industrial disputes cannot be over-emphasized. Conflicts arising from labour and industrial relations impact significantly on socio-economic development, thus the search for an industrial dispute resolution mechanism or approach that would minimize the adverse effect of industrial unrest is important to every country. Labour courts are established in almost all countries across the globe and they vary from one country to another, depending on the needs and circumstances of a country. They however have some common features that can be identified in terms of composition and structure, scope and jurisdiction, court access and court proceedings.

Labour court was for the first time established in Nigeria with the establishment of the National Industrial Court under the Trade Disputes Act 1976.⁷² The then operative constitution (the 1963 Constitution) was amended to accommodate the court among the constitutionally recognised courts. With the advent of the 1979 Constitution, there was a problem regarding the status, powers and jurisdiction of the court as it was neither included among the superior courts nor its power and jurisdiction defined in the constitution. The constitutionality of the status, powers and jurisdiction of the court was therefore subjected to challenge.⁷³ This anomaly was addressed with the promulgation of the Trade Disputes (Amendment) Decree 1992. The Decree conferred the NIC with the status of a superior court of record and the exclusive jurisdiction to entertain industrial disputes including inter and intra union disputes. The situation remained without problem until after the restoration of constitutional government in 1999 when the constitutionality of the position became an issue. The enactment of National Industrial Court Act 2006 also conferring the status of a superior court of record on the court with exclusive jurisdiction to entertain industrial disputes and powers of a High Court could not help the situation. Decisions of the Court of Appeal⁷⁴ and finally of the Supreme Court⁷⁵ declared the provisions of the National Industrial Court Act 2006 on the status, powers and jurisdiction of NIC null and void in view of the provisions of the Constitution of the Federal Republic of Nigeria 1999.

⁷⁰ See for example Danesi, R. A., “The trade Union (Amendment) Act, 2005 and Labour Reform in Nigeria: Legal Implications and Challenges”, in *Labour Law Review-Nigerian Journal of Labour Law and Industrial Relations* Vol. 1 No. 1 January 2007.

⁷¹ See Agomo *Supra* note 3 p. 303.

⁷² Then Decree No. 7 of 1976.

⁷³ See *Udoh v. Orthopaedic Hospitals Management Board & Ors.* (1993) 7 NWLR, Pt. 254 488.

⁷⁴ See *Kalango v. Dokubo* (2003) 15 WRN 32; *Attorney General of Oyo State v. Nigeria Labour Congress, Oyo State Chapter* (2003) 13 8 NWLR 1 and *Bureau of Public Enterprises (BPE) v. National Union of Electricity Employees (NUEE)* (2003) 13 NWLR (pt.837) 382.

⁷⁵ See *National Union of Electricity Employees & Anor. V. Bureau of Public Enterprises* (2010) 7 NWLR (pt. 1194) 538 SC.

The Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 was enacted to amend the relevant sections of the constitution and make adequate provision to lay to rest the controversies surrounding the establishment and composition of NIC, status of NIC and its judges, powers and jurisdiction of NIC etc. to enable it play its supposed role.

On the status of the court, section 6 of the CFRN 1999 was altered to include the NIC among the superior courts listed in subsection (5) of the section and consequentially other relevant sections of the constitution were altered to put the NIC and its judges on the same footing as the Federal High Court and its judges. The jurisdiction of the NIC is as provided for in the constitution and conferred by an Act of the National Assembly. The court has all the powers of a High Court in the exercise of its jurisdiction and the National Assembly may by law confer additional powers on the court to enable it to exercise its jurisdiction more effectively. The NIC is therefore legally empowered to play its supposed role in the employment and industrial relations practice in Nigeria. All the controversies brought by the provisions of the Trade Disputes (Amendment) Act 1992 and the National Industrial Court Act 2006 have now been resolved by the Third Alteration Act.

Looking at the civil jurisdiction of the NIC as stated in the Act, there is the need to address some questions regarding its jurisdiction over collective agreement and pension. Collective agreement is very vital to industrial relations as a product of a collective bargaining. It is indeed a veritable source of labour law that regulates a number of relationships in the labour and industrial relations including wages, condition of service and resolution of disputes. The Trade Disputes Act 1976 requires parties to a collective agreement for the settlement of a trade dispute to deposit at least three copies of the agreement with the minister of labour⁷⁶. Disputes usually arise from non-implementation and interpretation of collective agreements. Interpretation of collective agreement has been part of the jurisdiction of the NIC right from its inception in 1976. The cumulative effect of the provisions on the jurisdiction of the NIC under the Trade Disputes Act, the National Industrial Court Act 2006 and the Third Alteration Act 2010 is that the court has jurisdiction over determination of any question as to the registration, interpretation and application of any collective agreement. The NIC has exclusive jurisdiction to entertain civil causes and matters “relating to or connected with the registration of collective agreements”⁷⁷. It seems there is no clarity as to the authority responsible for the registration of collective agreements.. The Trade Disputes Act 1976 only requires deposit of copies of collective agreement for settlement of disputes with the minister of labour⁷⁸. In view of the importance of collective agreements to industrial relations and in line with the provisions of the Third Alteration Act that allows enlargement of the jurisdiction of the NIC by an Act of the National Assembly, it is desirable to amend the National Industrial Court 2006 to provide for the compulsory registration of collective agreement with the registry of the court. This will give some sanctity to collective agreement.

The importance of pension in employment and industrial relations cannot be over-emphasised. Matters relating to pension and gratuity involving employees or ex-employees should be central to employment and industrial relations. Pension as discussed above is now essentially regulated by the Pension Reform Act as amended. The Third Alteration Act, among others, confers exclusive jurisdiction on the NIC on civil causes and matters “relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees’ Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws.”⁷⁹ It is interesting to note that the Pension Reform Act is not mentioned among the statutes listed in the provisions. The question is: Can the Pension Reform Act which is not expressly included fall under “any other Act or Law relating to labour, employment, industrial relations...”⁸⁰ in the provisions as an Act relating to labour, employment and industrial relations? The answer appears to be in the affirmative. Another provision on the exclusive jurisdiction of the NIC on civil causes and matters confers the court with jurisdiction “relating to or connected with disputes arising from payment or non-payment of salaries, wages, **pensions**...”⁸¹ By this provision it can be concluded that the NIC has, at least, the exclusive jurisdiction regarding disputes arising from payment or non-payment of pensions.

⁷⁶ S. 2 (1) Trade Disputes Act 1976.

⁷⁷ S. 6 of Third Alteration Act.

⁷⁸ See S. 2(1) Trade Disputes Act Supra note 76.

⁷⁹ See section 6 of the Third Alteration Act.

⁸⁰ Ibid.

⁸¹ Ibid.

The Pension Reform Act however only the Federal High Court as the court having the jurisdiction to entertain both civil and criminal causes and matters arising from it. This is understandable as there was doubt as to the status, powers and jurisdiction of the NIC when the Pension Reform Act was enacted. Now that the NIC is repositioned and freed from legal entanglements and that there is mention of pensions in the provisions on the jurisdiction of the court, it is high time to amend the Pension Reform Act to confer jurisdiction on the NIC to entertain both civil and criminal causes and matters arising from the Act. The Federal High Court should cease to have jurisdiction on pension matters as the NIC is better positioned to handle such matters particularly in view of the expertise in its composition and that cases are likely to be disposed more expeditiously in the court. And most importantly to save the constitutionality of the Pension Reform Act from being challenged in view of the Third Alteration Act.

The National Industrial Court Act and the Third Alteration Act make adequate provisions to enable the NIC to play its supposed role. They can thus be said to be in conformity with international best practice. This coupled with the right attitude on the part of the court will lead to the development of industrial relations practice in the country and the labour law jurisprudence in particular, including relating to the application or interpretation of international labour standards.

Conclusion and Recommendations

Emerging trends in labour law and industrial relations with particular reference to Nigeria is the quest by the country to attain international best practice in her labour and industrial relations practice at both individual and collective labour law levels. This is sought to be achieved through legal and regulatory frameworks that aim at the attainment of the international labour standards set out by the ILO. Nigeria has made major strides in this direction since restoration of democratic government in 1999 with the enactment of legislations such as the Pension Reform Act 2004, the National Industrial Court Act 2006, the Employee's Compensation Act 2010 and the Constitution (Third Alteration) Act 2010. However, the enactment of the Trade Unions (Amendment) Act 2005 tends to demonstrate one step forward and two steps backward in the process. The Act has been widely criticized and thus rendered unpopular by both local and international condemnation as it is not in harmony with international labour standards and the practice of industrial relations in countries with developed labour and industrial relations systems. Nigeria can therefore be said to have missed the tract by the enactment of the Act. Paradoxically, the enactment of the Constitution (Third Alteration) Act 2010 that throws off the NIC's legal shackles and enhances its prospects is a welcome development that can be said to have brought the country back to the tract. This is because looking at the status, powers and jurisdiction of the court as now guaranteed by the constitution, it will be right to submit that in the exercise of its adjudicatory and other functions, the NIC will certainly overcome the challenges posed by some rules of the common law⁸² and the statutes⁸³ that are apparently contrary to international best practices in labour and industrial relations.

The conclusion of this paper is that there is generally conducive legal and regulatory environment for the practice of labour and industrial relations in Nigeria that can be said to have met the minimum International labour standards. This coupled with right attitude on the part of the judiciary and by the agencies charged with the responsibilities of the implementation and enforcement of labour law in the country will no doubt cure the seeming lapses in the environment and enable the country to join countries with developed and good labour and industrial relations practice in the near future.

As improvement of labour and industrial relations is a continuous process, the following are some recommendations touching on the constitution and some labour statutes in the country:

1. There is the need to review the provisions in the constitution on the power to legislate on labour matters to make the provisions coherent and devoid of apparent conflict and superfluity as observed above.
2. The power to legislate on labour should be decentralized to enable effective implementation of labour legislations. Legislations like the Factories Act are poorly implemented because they are federal legislations and the federal government is responsible for their implementation from their provisions. Lack of manpower, among other factors, makes the federal government fail to effectively implement the legislations.

⁸² For example the present position of the law as established by a plethora of cases that emphasizes on notice regarding termination of employment and which does not require the employer to give reason for termination of employment.

⁸³ For example the Trade Unions (Amendment) Act, 2005.

States are constrained from passing labour legislations to improve employment conditions and attract both domestic and foreign investment because labour appears on the exclusive legislative list. The important thing is that any labour legislation passed by any legislative body, whether federal or state as the case may be, should conform to international labour standards.

3. The dichotomy between civil and political rights on one hand and economic, social and cultural rights on the other should be removed from the constitution to enable treatment and enforcement of both the sets of the rights as enshrined in the constitution as it is the case in South Africa noted above. Meanwhile, the judicial activism in labour matters in the country as demonstrated in the cases of *Shitta-bey*⁸⁴ and *Olaniyan*⁸⁵ should be sustained and improved to bring about enforcement of the provisions of Chapter II which deals with the economic, social and cultural rights in the constitution through creative legal reasoning as it is the practice in India, a country with constitutional and labour and industrial relations arrangements similar to that of Nigeria.
4. The Third Alteration Act has constitutionally enlarged the jurisdiction of the NIC to entertain matters that can be said to be core to labour and industrial relations and those that are ancillary to it such as matters concerning trafficking in persons which are hitherto entertained by High Courts. It has also enabled the National Assembly to legislate further on the jurisdiction of the court as the need arises. There is the need to exercise caution not to unnecessarily overburden the NIC through enlargement of jurisdiction to defeat the purpose for which it is established which include expert handling and speedy disposition of labour matters.
5. Pension being a core labour issue, the Pension Reform Act ought to be amended to substitute the Federal High Court for the NIC regarding the exclusive jurisdiction to entertain civil causes and matters relating to Pensions.
6. The jurisdiction of the NIC should be reviewed to provide for a compulsory registration of collective agreements with the registry of the court as it is the practice in some other jurisdictions.
7. There are several legislations on labour and Industrial relations in Nigeria. A single Industrial Relations Act captures various aspects of labour relations if not all, is recommended for Nigeria as it will be useful to achieve harmony of the existing legislations and ease of reference. Some countries like England have comprehensive single Industrial Relations laws that contain many of the aspects of individual and collective labour relations that are scattered in various legislations in Nigeria.

⁸⁴ (1981) 1 SC 40.

⁸⁵ (1985) 2 NWLR 599.