



## **Deconstructing the National Industrial Court Of Nigeria**

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### **Abstract**

Labour and trade conflicts ensue in response to interactions between organized Labour, employer and government. Most of these disputes arise as a result of government or employers' policies which sometimes attack employees' welfare or condition of service. The revolt from labour unions incidents a negotiation between the parties towards finding a resolution to the conflict. A collapse of this said negotiation process ultimately leads to other forms of actions from either sides. Labour may resort to strikes and employer may as well resort to court action to call labour back to work. This challenge led to the establishment of the National Industrial Court of Nigeria with jurisdiction to adjudicate on trade disputes and industrial relations. This article considers the philosophy behind the evolution of this court, its historical underpinning, the legal framework and the present dimension of the Court as it relates to its current activities.

**Key words:** Labour, National Industrial Court, Employers, Employee, Act

### **Introduction**

Industrial, labour and trade conflicts arise as a result of interactions between and within organized labour, employers and government. Government fiscal and physical policies are indeed crucial and play significant role in developing and formulating legal framework for regulating union activities, labour related issues and employment conditions. The role that trade unions play towards negotiation of dispute between employers and workers forms also a key feature of these relationships. A collapse in this negotiation exercise or process ultimately leads to dispute. The recourse towards strikes is the ultimate form of dissent to both government and employers. The adverse effect of strikes to a nation's economy cumulatively is economic loss in all sectors of the national infrastructure and



institutions. Management of trade and industrial dispute has proved to be a difficult challenge with incessant strikes. This challenge led to the establishment of the National Industrial Court with jurisdiction to adjudicate on trade disputes, industrial relations and other labour related issues. It has also been argued that it is probably to replicate international best practices and create a contemporary dispute resolution mechanism that gave impetus to the establishment, in its previous and current forms, of the National Industrial Court.<sup>1</sup>

Therefore, given the dynamics of employment interrelationship and the challenges of ever expanding global society, the need to establish a specialized court to tackle disputes connected with labour and industrial relation became 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. So, in order to be in the same page with countries like Trinidad & Tobago, America, Ghana, South Africa and India, the Nigerian government saw wisdom in establishing a specialized court to handle labour and industrial disputes.<sup>2</sup> This gave birth to the National Industrial Court of Nigeria.<sup>3</sup>

### **Evolution of NICN**

Historically, the Colonial Government in 1941 promulgated the Trade Dispute Institution<sup>4</sup> with a mandate to settle trade disputes within the Lagos area. To a limited extent, it was only able to deal with the need for an efficient legal framework for settlement of disputes. However, it had two fundamental drawbacks:

Firstly, there was no permanent structure for dealing with these disputes, rather *ad-hoc* bodies in form of arbitration tribunals were set up to handle trade disputes as they arise.<sup>5</sup> The Ordinance also left the role of government to be merely discretionary and only applicable to Lagos.

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<sup>1</sup> Onyeanu, A.O., The National Industrial Court: Regulating Dispute Resolution in Labour Relations In Nigeria, accessed at <http://www.gamji.com/article/800/NEWS-8437.htm>, retrieved 3/29/2013.

<sup>2</sup> Adejumo, B.A., The National Industrial Court of Nigeria: Past, Present and Future. A Paper Presented at the Refresher Course Organised for Judicial Officers 3-5 years post Appointment by the National Judicial Institute, Abuja on 24<sup>th</sup> March, 2011, See also <http://nicn.gov.ng/nji.php> accessed 3/29/2013.

<sup>3</sup> Hereinafter called "NICN"

<sup>4</sup> Trade Dispute (Arbitration and Inquiry) (Lagos) Ordinance of 1941

<sup>5</sup> Section 4 (2) Trade Dispute (Arbitration & Enquiry) Act, 1958



Secondly, the Ordinance did not cover the whole country and was only applicable in Lagos.

Another Ordinance<sup>6</sup> came into effect in 1957. This new Ordinance had a generally spread jurisdiction across the whole country. These earlier enactments did not resolve settlement of disputes and therefore the continuous need for improvement in this regard.<sup>7</sup> Two Decrees were promulgated in 1968 and 1969 by the then Military Government in Nigeria.<sup>8</sup> The latter Decree of 1969 banned strike and lock-outs and imposed a penalty of imprisonment without option of fine for defaulters. It also provided that both employers and employees must report strikes and lock-out within 14 days to the Inspector-General of Police. This Decree however established a permanent tribunal known as the Industrial Arbitration Tribunal for the purpose of handling trade disputes.

The etiology of today's NICN can be traced to the trade disputes Act<sup>9</sup> which actually took off two years later in 1978. It is pertinent to note that prior to the establishment of the National Industrial Court,<sup>10</sup> industrial relations law and practice was modeled on the non-interventionist and voluntary model of the British System.<sup>11</sup> As shown earlier, the statutory mechanism for the settlement of trade disputes was found in the Trade Disputes (Arbitration and Enquiry) Act.<sup>12</sup> This Act gave powers to the Minister of Labour to intervene by way of conciliation, formal inquiry and arbitration where negotiation had broken down. The major features of the non-interventionist model were that it was totally at the discretion of the parties to determine whether or not they would surrender to the jurisdiction of the Minister. Thus, the Minister could not compel the parties to accept his intervention but could only appoint a conciliator upon the application of the parties and could only set up an Arbitral Tribunal by the consent of both parties.

**Section 19(1)** of the Trade Dispute Decree<sup>13</sup> created the court. The legislative arm of government made provisions for the National Industrial Court Act and **Section 7 (1)** provides that the Court shall have and exercise jurisdiction in several causes and matters relating to labour, including trade unions and industrial relations,

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<sup>6</sup> Trade Disputes(Arbitration and Inquiry) (Federal Application) Ordinance 1957

<sup>7</sup> Gadzama J.K. & Partner; National Industrial Court Act, 2006; A Short Appraisal, Newsletter Vol. 2 Number 3 (July – September 2008), PI

<sup>8</sup> Trade Disputes (Emergency Provisions) Decree No. 21 of 1968 and Trade Disputes(Emergency Provisions) (Amendment No. 2) Decree No. 53 of 1969

<sup>9</sup> Trade Disputes Decree No. 7 of 1976

<sup>10</sup> Hereinafter called "NIC"

<sup>11</sup> Agomo, C.K., Encyclopedia of Laws 2000, pp. 38-39

<sup>12</sup> Section 3 Cap. 201, Laws of the Federation of Nigeria and Lagos, 1958

<sup>13</sup> See Decree No 7 of 1976



environment and conditions of work, health, safety and welfare of labour, collective agreement, any circumstances relating to or seeking orders to restrain any personal body from taking part in any strike, lock-out or industrial action;<sup>14</sup> any question as to the interpretation of any collective agreement; any award made by an arbitral tribunal in respect of a labour dispute or an organizational dispute; the terms of settlement of any labour dispute, organizational dispute as may be recorded in any memorandum of settlement and any award or judgment of the court. The court has jurisdiction and power to hear cases arising from labour, trade dispute, employment matters and all other matters relating to trade activities. It is also charged with the responsibility of interpreting trade union contributions. It must be noted here that the Trade Disputes Act 1976 was later amended by the Trade Disputes (Amendment) Act of 1992.<sup>15</sup>

The National Industrial Court of Nigeria has been beset with myriads of challenges and constraints. It has suffered various acceptability problems and issues from legal practitioners in view of its non definitive roles and status in the past. The argument had been that **Section 6 (5)** of the 1999 Constitution provides a complete listing of superior courts of records in Nigeria and that the National Industrial Court is not one of those listed therein. Accordingly, the provisions of both the Trade Disputes (Amendment) Act and crucially, the latter National Industrial Court Act 2006 declaring its superior court status, were incapable of curing the defect. This was given judicial confirmatory seal in the cases of **Attorney-General, Oyo State V. Nigeria Labour Congress**,<sup>16</sup> and **Western Steel Works Ltd V. Iron and Steel Workers Union of Nigeria**.<sup>17</sup> In these cases, the courts held that the NIC was not a superior court of record. Also it was held that the Court has no exclusive jurisdiction in relation to the areas it covers. Its exclusive jurisdiction status was affected by the application of **Section 272** of the 1999 Constitution to the extent that its jurisdiction is, at best concurrent with both State and Federal High Courts.

### **Innovations of the National Industrial Court Act, 2006<sup>18</sup>**

The NICA entered into effect on the 14<sup>th</sup> day of June, 2006 when it was assented to by the President. From its Explanatory Notes which forms part of the Act (for purposes of interpretation), the NICA re-established the Court as a superior court of record. This is an attempt to correct the seeming shortcomings identified in the previous Act. One major innovation of the Act is that it took the National Industrial

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<sup>14</sup> Section 7(1) (a)-(c) National Industrial Court Act CAP. N155 LFN 2004

<sup>15</sup> See Decree No. 47 of 1992

<sup>16</sup> (2003) 8 NWLR (Pt. 821) 1 at 35

<sup>17</sup> (1987) 1 NWLR (Pt. 49)284

<sup>18</sup> Hereinafter called "NICA"



Court out of the Trade Disputes Act and gave it a separate enabling law. In view of this, the appointment of the President and the other Judges of the Court were normalized and put firmly within the National Judicial Council. Thus what obtains in other known superior courts of record in Nigeria as regards discipline, tenure, allowances, pension, salaries, status and powers were similarly applicable to the NIC under the NICA regime.<sup>19</sup> Again, the Act was able to obviate the problem associated with the sitting under the Trade Dispute Act when the court could not exercise its jurisdiction except the President presided as the court could competently sit with any of the legally qualified judges presiding.<sup>20</sup>

Again, the long line of cases<sup>21</sup> that fettered the power of the NIC to grant injunctive and declarative reliefs were made inapplicable by virtue of **Sections 16-19** of the NICA. Also by virtue of **Sections 53 and 54 (4)** of the NICA, Part II of the Trade Disputes Act was repealed while the remaining provisions of that Act were made subject to the NICA. They, therefore must be read with such modifications as to bring them into conformity with the provisions of the NICA. However where there is conflict the provisions of NICA were to prevail. Another development was that unlike under the Trade Disputes Act where the NIC could only entertain group employment dispute,<sup>22</sup> under the NICA individuals could approach the Court with their grievances once the matter was cognizable under the **section 7** of the NICA.<sup>23</sup> By this, the distinction between individuals and group employment disputes which held sway under the Trade Disputes Act was nullified.

In the same vein, **section 7(1)(9) (i)** of the NICA provides another innovation. Prior to the enactment of the NICA and taking cognizance of the definition of “Trade Dispute” in **section 47 (1)** of the Trade Dispute Act, the NIC had held that only registered trade unions had the right to come before it on behalf of workers.<sup>24</sup> As a result, associations that were not registered as trade Unions but had the capacity to sue and be sued were not entertained at the NIC. This was the situation in **Senior Staff Association of University Teaching Hospital, Research Institutions and Associated Institutions and Ors. V. Federal Ministry of Health and Anor;**<sup>25</sup> where the NIC had turned down professional associations in the health sector that were not registered as trade unions from further participating

<sup>19</sup> See Section 1-5 and 16-19 of NICA 2006

<sup>20</sup> Section 21 (4), *ibid*.

<sup>21</sup> *A.G. Oyo State V. Nigeria Labour Congress etc.* *supra*

<sup>22</sup> See *Chemical and Non-Metallic Products Senior Association V. BCC (2005) 2 NLLR (Pt. 6) 446 at 474-475*

<sup>23</sup> See *Godwin Tosanwumi V. Gulf Agency and shipping Nig. Ltd*, Unreported Suit No. NIC/14/2006, which ruling was delivered on 14/11/2007

<sup>24</sup> See *Nigerian Union of Pharmacists, Medical Technologists and Professions Allied to Medicine V. Obafemi Awolowo University Teaching Hospital Complex Management Board*, in *Re: Medical and Dental Council of Nigeria and Nigerian Medical Association*, Unreported Suit No. NIC/8/2006 delivered on 22/5/2007

<sup>25</sup> NIC/12/2000, Unreported decided on 15<sup>th</sup> Nov.



in the case before the Court. Given the wide provisions of **section 7(1)(a) (i)** of the NICA, these bodies are now covered and therefore have access to the NIC.

The provisions of **section 7(1) (b)** of the NICA for the first time gave the NICA the jurisdiction to grant order to restrain any professional body, association or person from taking part in a strike or any industrial action. This is in view of the fact that **section 7** is couched in a general term as it relates to “any person or body”. Again, before the passage of the NICA, parties to a suit before the Industrial Arbitration Panel were not allowed access to the decision or award of the panel in respect of their cases by virtue of the provisions of Part 1 of the Trade Disputes Act. It was only the Minister of Labour who had the right to disclose and it was felt that this practice did not accord with the rules of natural justice and fair hearing. **section 7(4) and (5)** of NICA was enacted to rectify this anomaly. In doing this the NICA did not do away altogether with the requirement that some disputes need to undergo arbitration and conciliation before they could be brought to the NIC as prescribed in Part 1 of the Trade Disputes Act. This would be understood if **section 7(1)** of the NICA which grants jurisdiction to the NIC is read subject to **section 7(3)** which provides that National Assembly may make an Act that any matter under **subsection (1) (a)** of **section 7(3)** may go to conciliation or arbitration before such is heard in the Court.

The NIC had the opportunity to construe the purport of the word “notwithstanding” introducing **section 7 (3)** of the NICA in **AUPCTRE V. FCDA**<sup>26</sup> and held thus: the word, “Notwithstanding”, in Section 7(3) is meant to qualify the jurisdiction granted the NIC until conciliation and arbitration, if provided for, have been done. It is to reinforce this stance of the law that Section 7(4) of the NIC Act provides that an appeal shall lie from the decision of the arbitral tribunal to this court as of right in matters of disputes specified in Section 7(1) (a) of the NIC Act. In appropriate cases...the jurisdiction of this Court, may, by an Act of the National Assembly, be made, contingent upon exhausting the processes of conciliation and arbitration. Where this is the case, the position is not that jurisdiction of the court has been ousted, only that it is contingent upon those processes being exhausted.

A novel provision was introduced by the NICA as contained in **section 7(6)**. This section provides that the Court is permitted and enjoined to take into cognizance international best practices in industrial and labour relations in arriving at decisions in cases before the Court. What amount to international best practices in a particular instance is a question of fact to be proved by the person urging the court. This provision permits the court to borrow from foreign jurisdiction in line with

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<sup>26</sup> NIC/17/2006, Unreported, delivered 23/5/2007



global best practice system. Under the NICA, by virtue of **section 9**, only issues relating to fundamental rights could be appealed against. The implication of this is that what the NIC decides to be international best practices might not be appealed against being a question of fact. In **Oyo State Government V. Alhaji Bashir Apapa and Ors;**<sup>27</sup> the NIC in construing **section 7(6)** held that:

We cannot conclude this judgment without a remark or two on the application of Section 7(6) of the NICA. The respondent had argued that it is not good international practice to brand all public servants, and teachers specifically as being on essential services and so cannot embark on strike. Section 7(6) cannot be appealed in this general and sweeping form. A litigant that seeks to rely on best international practice must be prepared to establish or prove same as what is best practice in industrial relations is a question of fact.

### **The Present Dimension of the Court**

On the 4<sup>th</sup> day of March, 2011, a positive dynamics greeted the Court when the President of Nigeria assented to the Constitution (Third Alterations) Bill, 2010 which amended the 1999 Constitution to include the NIC in the relevant sections of the Constitution. This constitutional exercise produced the greatest innovation long ever required towards the fulfillment of the mandate and philosophy behind the concept and establishment of NIC.

A new **section 254A** was introduced into the constitution which provides:

- (1) There shall be a National Industrial Court of Nigeria
- (2) The National Industrial Court shall consist of:
  - (a) President of the National Industrial Court;
  - (b) Such number of judges of National Industrial Court as may prescribed by an Act of National Assembly.

By virtue of the wordings of this section, a new court was created called “National Industrial Court of Nigeria” which replaced the former National Industrial Court. This creation also got completed by the amendment of **section 6** of the Constitution which lists the superior courts of record to include the National Industrial Court of Nigeria in its new **sub-section 5 (cc)**.

In the same vein, **sections 84 (4), 240, 243, 287, 289, 292, 294,295,316**, the **Third Schedule** and the **Seventh Scheduled** to the constitution were also altered to reflect the firm standing of the National Industrial Court of Nigeria as a Court

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<sup>27</sup> NIC/36/2007, Unreported, delivered 18/7/2008



created directly by the Constitution like other superior courts of record in Nigeria. The NICN is therefore now a member of the Federal Judicial Service Commission and the National Judicial Council.<sup>28</sup> With the present status and placement of the NICN, the controversy as to whether it is a superior court of record or not has finally been buried. There is no longer room for application for judicial review of the decisions of the Court as it is now a superior court of record in Nigeria.

### **Jurisdiction and Power of NICN**

The Court has exclusive jurisdiction in civil causes and matters relating to or connected with any labour, employment, trade unions, industrial relations and matters<sup>29</sup> arising from workplace, the conditions of service, including health, safety, welfare of labour, employees, workers and matter incidental thereto or connected therewith.<sup>30</sup> The Court also has exclusive jurisdiction in civil matters relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Workman's Compensations Act or any other Act or Law relating to labour employment, industrial relations, workplace or any other enactment replacing the Acts or Laws.<sup>31</sup> Appeals also lie from the Court to the Court of Appeal<sup>32</sup> as contained in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999. The NICN consists of the President of the Court and not less than twelve Judges. At the moment, the Court is constituted by the President and nine other Judges. The decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court is final.

The jurisdiction of the NIC include matters relating to grant of any order restraining a person or body from taking part in strike, lockout or any industrial action<sup>33</sup> relating to or connected with any dispute over interpretation and application of the provisions of Chapter IV of the Constitution as it relates to any matter which the Court has jurisdiction to hear and determine;<sup>34</sup> minimum wage dispute or matters connected thereto,<sup>35</sup> unfair labour practice or international best practice in labour matters,<sup>36</sup> matters relating to discrimination or sexual harassment at workplace,<sup>37</sup> child labour, child abuse human trafficking or matter related

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<sup>28</sup> See new paragraphs 12 (d) and 20(e) of the Third Schedule to the 1999 Constitution.

<sup>29</sup> Section 254 c(1) of the 1999 Constitution (Third Alteration) Act 2011

<sup>30</sup> Section 254 (c) (1) (a)

<sup>31</sup> Section 254 (c) (1) (b)

<sup>32</sup> Section 254 (c) (6)

<sup>33</sup> Section 254 (c) (1) (c)

<sup>34</sup> Section 254 (c) (1) (d); see also Section 243 (2) and (3)

<sup>35</sup> Section 254 C (1) (e)

<sup>36</sup> Section 254C (1) (f)

<sup>37</sup> Section 254C (1) (g)



thereto,<sup>38</sup> matters relating to any question as to interpretation and application of an Arbitral Tribunal of a trade dispute, terms of settlement of any trade dispute, Trade Union Constitution, the Constitution of an Association,<sup>39</sup> disputes arising from payment or non-payment of salaries, wages and related matters of any employee, workers, political or public office holders, judicial officer or any civil or public servant in any part of the Federation.<sup>40</sup>

## **Powers of the NICN**

**Section 254D** of the Constitution provides thus:

- (1) For the purpose of exercising any jurisdiction conferred upon it by this Constitution or as may be conferred by an Act of the National Assembly, the National Industrial Court shall have all the Powers of a High Court.
- (2) Notwithstanding subsection (1) of this section, the National Assembly may by law, make provisions conferring upon the National Industrial Court powers additional to those conferred by this section as may appear necessary or desirable for enabling the Court to be more effective in exercise its jurisdiction”.

From the above provisions therefore, the NICN has the jurisdiction;

- (a) To confirm a judgment, an award or order made by the Court, tribunal or body mentioned in the matter before it;
- (b) To vary a judgment, an award or order made by the Court, tribunal or body mentioned therein.
- (c) To set aside a judgment, an award, or order made by the Court, tribunal or body mentioned therein.
- (d) To order rehearing and determination on such terms as it thinks just.
- (e) To make an order of mandamus requiring any act to be done.
- (f) To make an order of prohibition prohibiting any proceedings, cause or matter.
- (g) To make an order of certiorari removing any proceedings, cause or matter into the Court for any purpose.<sup>41</sup>
- (h) To grant urgent interim reliefs and make declaratory orders.<sup>42</sup>

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<sup>38</sup> Section 254C (1) (i)

<sup>39</sup> Section 254C (1) (k)

<sup>40</sup> Section 254C (1) (k)

<sup>41</sup> Order 22 of National Industrial Court Rules 2007

<sup>42</sup> Orders 13 and 14, *ibid.*



### **Operations of the Court**

The Court combines the rule of Law applicable in conventional Courts with flexibility, expediency, reliability and affordability often associated with specialized courts. In civil matters, the Court is bound by the Evidence Act. In exercise of its criminal jurisdiction, the Court applies the Criminal Code, Criminal Procedure Act, Criminal Procedure Code and Evidence Act in the determination of criminal matters brought to it. The Procedure before the Court is regulated by the Constitution of the Federal Republic of Nigeria 1999 (as amended), National Industrial Court Act, 2006, the National Industrial Court Rules 2007, and the Trade Disputes Act, 1990 (as amended).

The Court encourages parties to exhaust reasonable avenues to resolve their disputes before having recourse to litigation. These other means of resolving labour, employment and industrial relations dispute include; dialogue, mediation, conciliation and arbitration. The Court recognizes the importance of these methods and when parties are not satisfied with the decisions from these avenues, they can then appeal the decision or bring it up as original application. In this regard, the 1999 Constitution (third Alteration) Act 2011 provides for the establishment of an Alternative Dispute Resolution Centre within the premises of the Court. The Centre offers varied alternative means of dispute resolution on matters which jurisdiction is conferred on it.

### **Innovations of the Present Dimension**

The first is the enlistment of the Court as a superior court of record.<sup>43</sup> Again, the Constitution now directly mandates the Court to take cognizance of international best labour and industrial practices in arriving at a decision.<sup>44</sup> Now, the Court effectively applies or enforces an International Panel Award and other similar awards without legal hinderance.<sup>45</sup> Again, the Court has now been expressly conferred with criminal jurisdiction on some matters such that the controversy surrounding the circuitous manner by which the Trade Union (Amendment) Act, 2005 conferred criminal jurisdiction on it and the attendant uncertainty has been removed.<sup>46</sup>

The problem created when the Factories Act 1990 and Workmen Compensation Act 1990 (now repealed) simultaneously conferred jurisdiction on occupational health and safety issues on both the Federal High Court and the State High Court respectively alongside the jurisdiction conferred on the same issues by **section 70 (a) (ii)** of the NICA, 2006 and the attendant confusion has been effectively

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<sup>43</sup> Sections 6 (c) and 254A (1) 1999 Constitution (as amended)

<sup>44</sup> Section 254C (4) *ibid.*

<sup>45</sup> Section 254C (4) *ibid.*

<sup>46</sup> Section 254C (5) *ibid.*



resolved.<sup>47</sup> The other novel provisions contained herein deal with issues ranging from fundamental rights provisions of the Constitution in relation to labour, national minimum wage, discrimination in workplace and sexual harassment at workplace, child labour and human trafficking, payment or non-payment of salaries, application of any international convention or treaty which Nigeria has ratified and the power to establish ADR Centres.<sup>48</sup>

### **Conclusion**

The intendment of the Third Alteration of the 1999 Constitution is to create a specialized Court of superior record that would expeditiously resolve employment and labour related issues to create harmonious industrial relation. Under the current status, the court is better positioned to tackle effectively trends in labour, employment and industrial relations. The exclusive jurisdiction given to the Court in areas critical to the economy is expected to be handled timeously in line with international best practices.

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<sup>47</sup> See Section 254C (1) (b) *ibid*.

<sup>48</sup> Section 254C (1) (b), (d) – (e), (g), (i), (j) (vii), (k) and (1) (ii) and Section 254C (2) and (3) *ibid*.