



LABOUR LAW NEWSLETTER

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EDITOR'S NOTE

***"The Nigerian Labour Courts will have to decide on wider matters, beyond traditional trade disputes as Nigerian Labour Law has become dynamic factoring in international best practice and policies"-
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In this quarter's newsletter we take a look at current trends in Nigerian Labour Law, this focus is inspired by the theme of the recently held memorial lecture of G.O Sodipo and Co. Consequently we will be analyzing the adverse prevalence of Human Trafficking and the enlarged jurisdiction of the National Industrial Court.

The reality is that despite the abolition of slave trade all over the world, human beings, whether by deception or coercion are still being bought and sold. The situation is grossly offensive as it is no respecter of persons. All manner of people, children, disabled, poor and even the rich are trafficked for a reward, monetary or otherwise.

The Key note speaker at the above mentioned memorial lecture, Professor Chioma Kanu Agomo of the Faculty of Law, University of Lagos gave amongst other things, a robust presentation on the state of the National and International Laws governing human trafficking. After in-depth research on this menace to societies globally, she opined that the United Nations Convention against Transnational Organized Crime, (UNTOC) and its Protocol which was adopted by the General Assembly in 2000 and came into force in 2003, is the main international instrument in the war against crime. Nigeria became a signatory to the convention in 2000 and subsequently enacted an act against human trafficking. The most recent law in Nigeria governing human trafficking is the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015. The employment of children as domestic workers and the infliction of grievous harm on them is an offence under the aforementioned Act, which is in line with the International Labour Organizations fight against Child Labour which is a most disheartening part of Human Trafficking.

In summary therefore, Nigeria has shown great interest in implementing best global practice in relation to the fight against human trafficking and securing justice for victims of human trafficking.

Trafficking has been described as the recruitment/transfer/receipt of people whether by force, abduction or deception for the purpose of forced labour, sexual exploitation etc. Human trafficking victims have had their human rights violated, therefore their consent to being trafficked is irrelevant. Most of them undergo torture, slavery, arbitrary detention inhumane and degrading treatment. Most of them, especially the children are vulnerable to physical, psychological and sexual abuse, they are often isolated from their families and become highly dependent on their employers. Thankfully national and international laws agree that the word victim, includes anyone who is a recipient of physical, emotional or financial harm as a direct result of a Crime; the spouses and children of the person who has suffered, the Parents, foster parents, siblings, guardians or other custodians of minor victims, mentally or physically incapacitated victims, or victims of homicide and so in securing justice the whole chain of victims are eligible. The enlargement of the Jurisdiction in Nigeria of the National Industrial Court is also instructive in showing the nation's interests in combating Human Trafficking. Further analysis is given below. Do have a pleasant read.

The National Industrial Court (NIC) was established by the Trade Disputes Decree No 7 of 1976. Section 19 provided that:

“There shall be a National Industrial Court for Nigeria...which shall have such jurisdiction and powers as are conferred on it by this or any other Act with respect to the settlement of trade disputes, interpretation of collective agreements and matters connected therewith”

Therefore the jurisdiction of the NIC was originally limited to collective Labour disputes. The National Industrial Court Act 2006 went beyond the collective labour jurisdiction via section 7 where it listed some civil matters in which the Court would now have jurisdiction.

In 2010, the Constitution of the Federal Republic of Nigeria (Third Alteration) Act further enlarged the jurisdiction of the NIC to cover novel areas such as unfair labour practice, sexual harassment, child labour, child abuse, human trafficking or any other matter connected therewith or related thereto.

Section 254C (1) of the Act provides that:

“Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

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

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

Section 254C (2) is also instructive and provides that:

“Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.”

Sub section 5 of the same section also confers on the NIC the power to exercise jurisdiction in criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the Court by this section or any other Act of the National Assembly or by any other law. Subsection 6 provides for appeal as of right to the Court of Appeal from matters in subsection 5.

With the above it is clear that the frontiers of Labour law in Nigeria is expanding to accommodate international standards in the International Labour Organization. In reality however this has confused many practitioners and rocked the boat.

For instance at the memorial lecture mentioned above, a true life scenario was painted where a foreigner sued his Nigerian Employers for terminating his appointment on the grounds that by bringing in his spouse (who was a man) to live with him in Nigeria he had committed a crime pursuant to Nigerian Law. However in his action at the National Industrial Court he contended that his termination was against International Labour Laws (to which Nigeria is a signatory) which are generally against discrimination on the basis of sexual orientation.

It is clear that in recent time's international labour law has moved from labour/trade union issues, to encompassing issues such as employability in the labour market, connections between working conditions and economic/social rights as a citizen.

The jurisdiction of the National Industrial Court has consequently been equally broadened to accommodate international best practice in this field of Law, both in civil and criminal matters, thereby making it, as Prof. Agomo said in her keynote address, a "One stop shop".

Relevant national law includes the Trafficking in persons (Prohibition) Enforcement and Administration Act (TIPPEA) 2015. It is aimed at fighting Human trafficking. The law sets up an administrative mechanism known as National Agency for the Prohibition of Trafficking in Persons (NAPTIP) to administer and enforce the law. NAPTIP officials are duly trained and are responsible for identifying victims of trafficking, all suspected victims should be taken to a NAPTIP office. NAPTIP makes available medical and counseling services in its shelters.

Finally, Nigerian Labour Law and the jurisdiction of the National Industrial Court is robust and dynamic, nothing is impossible. The possibilities abound for judgments that are groundbreaking and shocking to the general cultures in the Land, especially in the light of recent worldwide campaign for the protection of LGBT (Lesbians, Gays, Bisexual, and Transgender) rights. Despite the state of Nigerian criminal law, which as aforesaid makes it a crime to practice homosexuality or lesbianism, it would be not surprising if the National Industrial Court, in a bid to toe the line of international best practice, decides matters in favour of LGBT Claimant's whose employment have been terminated due to discrimination as a result of their sexual orientation. Only time will tell.

The GOS Newsletter has been prepared for clients and professional colleagues as a general guide to the subject matter. It is not meant to substitute specialist legal advice about your specific circumstances.

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Please let us know if you would like to discuss any issue in more detail;

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