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An Examination of the Application of International Labour Standards in Nigeria

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Abstract

The International Labour Organization (ILO) serves as the determinant of an international labour code otherwise known as International Labour Standards (ILS), the ILO regulates the practice of labour and employment in its member-states through Conventions, Treaties, Recommendations, Protocols and Declarations. Nigeria is a member of the ILO and has ratified several ILO Conventions, with twenty-six being in force. The work examined the role of the ILO in the regulation and development of international labour law. Also, the work examined the application of these ILS in Nigeria. The doctrinal research methodology was adopted wherein both primary and secondary sources of law were examined and analyzed. The work found out that the ILO has developed itself into the foremost regulator of international labour law through its system of ILS, which now serves as a benchmark for member-states to gauge and align their domestic labour law and practice. Additional, it was discovered that Nigeria can now apply ILS which the country has duly ratified as provided under section 254C(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The work recommended that in view of the contemporary nature of international labour law, Nigeria should amend or enact new labour laws in tune with reality. The work further recommended that Nigeria should ensure that ratified ILS are complied with for the development of our labour law and practice.

Keywords: Conventions, Treaties, Protocols, Recommendations, International Labour Standards.

1. Introduction

The International Labour Organization (ILO) is the major and chief international labour agency. Under the ILO system, there exists a concept of globalisation of labour and employment law and practice. The ILO regulates international labour through its system of International Labour Standards (ILS). These ILS are instruments that set out basic principles and rights at work and which are drawn up by the three constituents of the ILO: governments, employers and employees. They [International Labour Standards] are either Conventions, instruments which on ratification create legal obligations or Recommendations which are not open to ratification but give guidance as to policy, legislation and practice.[1] They also include Treaties, Protocols, Recommendations and Declarations. It is stated that both instruments are adopted by the International Labour Conference (ILC) and the ILS are addressed to member States who are expected to ratify or refuse same.[2] So, the ILO uses the ILS to extract global commitment and action in labour and employment and also to regulate labour and employment.

The globalization of labour and employment law and practice by the efforts of the ILO is without doubt. From its inception in 1919, the ILO has pursued the global agenda of labour and

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[1] Els de Wind, (eds) "International Labour Standards in the Contemporary Global Economy", Global Employment Institute, May 2015, pg. 4; available at <www.ibanet.org/MediaHandler?id=363b3171-0afc-489e-812b-3de2460bce67>. Accessed 24 May, 2023.

[2] Ibid.

employment law and practice. On the globalisation of labour and employment law, Agomo, uses a synonym to globalisation, which is "internationalization" in highlighting how labour law is considered in a global sense or context. Agomo, highlights the internationalization of labour and employment law and practice to cover the paradigms of human rights and gender issues. These of course are global issues which now find traction in labour matters. Due to the globalization of labour practice, we now have enforcement of rights on issues of sexual harassment and discrimination[3]. This influence actually came from international best practices in labour law. Anugwom,[4] states that the labour and employment law and practice as championed by the ILO was a key element informing its formation. This element is the social justice or humanitarian concern over the conditions of labour. In this case, the ILO tries to achieve worldwide labour conditions devoid of hardship and privation. When this concern is married to the need to eliminate the negative cross-border externalities in countries failing to observe humane labour conditions, it becomes very necessary to continually interrogate the impact of globalization on labour conditions. Since globalization is all about narrowing and eliminating socioeconomic boundaries among nations, it seems logical to expect that global labour conditions and standards might be the norm.[5]

The effort of the ILO has now birthed labour standards which have a global appeal and coverage. Put in other words, the ILO serves as the determinant of an international labour code. With its international labour standards, the ILO regulates the practice of labour and employment in its member-states. These labour standards are now used as benchmarks by the ILO to gauge domestic or municipal labour law. For the purpose of this work, the ILO labour standards to be discussed are: Conventions, Treaties, Protocols, Recommendations and Declarations. The work therefore seeks to examine the ILO as the foremost international labour agency, its role in the development of ILS and influence on member-states. Also, the work will consider the application of ILS in Nigeria viz-a-viz the constitutional provisions regarding same and also the role of the National Industrial Court of Nigeria (NICN) as the specialized labour court.

2. International Labour Standards

As stated earlier, what constitute ILO's International Labour Standards (ILS) are its various Conventions, Treaties, Protocols, Recommendations and Declarations. The writer may also refer to them as ILO Instruments. While some authors view these ILS or Instruments as one and the same. For instance, for Erugo, the terms Treaty, Convention, Charter and Protocol, are used interchangeably. As his authority, he cites Article 2(1)(a) of the Vienna Convention on the Law of Treaties 1969, which defines a "Treaty' as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."[6] This notwithstanding, it is better to separate these international instruments with relation to labour and employment in order for proper understanding and appreciation.

[3] See section 254C (1)(d) and (g) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

[4] E Anugwom, 'Globalisation and Labour Utilisation in Nigeria: Evidence from the Construction Industry', [2007] (32)(2) *Africa Development*, 113-138

[5] Ibid, 120

[6] S Erugo , *Introduction To Nigerian Labour Law* (Princeton & Associates Publishing Co. Ltd, 2019). 418.

i. Conventions

A Convention is defined as a form of agreement between groups, especially under international law.[7] The emphasis in this definition, is that a Convention governs relationships between groups in international law. Conventions are also instruments that create international obligations for States that ratify them.[8] The International Labour Office of the ILO states that Conventions are instruments which on ratification create legal obligations.[9] Abugu opines that Conventions are legally binding instruments which create international obligations for the States which ratify them, hence they are open to ratification.[10] Along the line of Erugo, Amucheazi and Abba posit that Conventions, also known as treaties, are designed to create international obligations for the states that ratify them.[11]

From these definitions, two things are worthy of note: first, that a Convention is a legally binding agreement between States or groups in international law. This agreement creates legal obligation which require adherence by parties thereto. Second, a Convention must be ratified in order to have binding effect on the States thereto. The need for ratification is special with regard to international labour law in that, when a Convention is made by the ILO same has binding effect irrespective of the ratification or not of member States.[12] Ratification is only a formal act which is to bring the Convention in line with domestic practices.

The ILO process of making Conventions is worthy of note. The Governing Body sets the agenda for the Conference by considering any proposal by a government, an organization representing employers or workers or even an organization of international public law.[13] Any government of a Member State can object to the inclusion of one or more items on the Conference agenda but the Conference can go ahead with any item if two-thirds of the delegates present so agree.[14] Draft instruments are in principle subject to the double-discussion procedure by the Conference before they are adopted. The double-discussion procedure starts with a report in which the International Labour Office provides detailed information on national legislation and practice and any other useful information. A questionnaire is drawn up by the Office to which the governments are invited to respond, including reasons for their replies, after they have consulted with their most representatives employers' and workers' associations. These documents must reach the Office at least 18 months before the opening of the Conference session and the governments have in principle seven months in which to react. The Office uses the replies to draw up a further report indicating the main segments requiring consideration and submits it to the Conference, where the matter is usually considered by one of the technical committees. This is discussed at the full sitting

[7] E Oji and A Offornze, *Employment and Labour Law in Nigeria* (Mbeyi & Associates (Nig.) Ltd., 2015) 433.
[8] S Lee, 'International Labour Law' in R Blanpain, (eds.) *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* (Wolters Kluwer, 2010) 143.
[9] International Labour Office, Handbook of Procedures relating to International Labour Conventions and Recommendations, 2019, pg. 3.
[10] J Abugu , *A Treatise on the Application of ILO Conventions in Nigeria* (University of Lagos Press: 2009) 6.
[11] A Offornze and A Paul, *The National Industrial Court of Nigeria, Law, Practice and Procedure* (Top Design: 2013) 288.
[12] A, Edlyne. "Linking Social Protection to Labour Standards: Policy Issues in Nigeria" in Adewumi, F. (eds.) *Furthering Social Protection in Nigeria: Issues and Perspectives* (Michael Imuodu National Institute for Labour Studies (MINILS), 2011) 108.
[13] Servais Jean-Michel, *International Labour Law* (3rd revised edn, Kluwer Law International, 2011) 68.
[14] Ibid.

of the Conference (known as the first discussion). On the basis of the first discussion by the Conference, essentially from the replies received from the questionnaires, the Office prepares one or more draft conventions or recommendations and communicates them to the governments, which must state within three months, after consulting the most representative organizations of employers and workers, whether they have amendments or suggestions to make. A final draft report is then made by the Office and transmits it to the governments not less than three months before the opening of the session of the Conference.[15] The second discussion sees a technical committee examining the report and submits same to the Conference. A drafting committee then prepares the final text of the convention or recommendation for adoption by the Conference by two-thirds majority of the delegates present. If the convention obtains only a simple majority on the final vote, the Conference immediately decides whether or not to refer it to the drafting committee for drafting as a recommendation. The draft can also be the object of a special convention between Member States wishing to adopt it.[16] Two copies of the convention or recommendation are signed exclusively by the President of the Conference and the Director-General of the ILO. After this signing, one copy is sent to the ILO's archives and the other is forwarded to the United Nations Secretary-General. The ILO Director-General sends a certified copy to each of the Member States.[17] However, we note that despite the participatory process of Convention making and the post-Convention making step of ratification, the application of such Conventions is usually difficult to come by.

Conventions may be revised, withdrawn or abrogated. The process for revision is similar to those used in the double-discussion for the adoption of a Convention.[18] When a Convention has been revised, the Conference adopts an entirely new convention that contains both new or amended provisions and others from the original convention. The earlier convention continues to be binding on the States that ratified it, but the final clauses of each convention specify the effect of any revision.[19] The procedures for withdrawal and abrogation are the same as those of adoption of the Convention, if the constitutional amendments to that end are ratified.[20] The latter accords with the *acte contraire*[21] principle.[22]

With regard to ratification, Article 19 of the ILO Constitution imposes an obligation on a Member State to take such action as may be necessary to make effective the provisions of the convention. Such necessary actions vary from Convention to Convention but may be legal, involve training, or information. For ILO fundamental standards, it may require simply that a State refrains from acting in a certain way, impose some form of positive action to promote freedom of association and the right to collective bargaining, the elimination of forced labour and the abolition of child labour, the equality of opportunity and treatment.[23] The ILO Governing Body has identified eight (8) Conventions as fundamental, which cover subjects that are considered paramount in the world of

[15] Article 39, paras. 7 and 8 of the ILC Standing Orders.
[16] See Article 21 of the ILO Constitution and Article 40 of the ILC Standing Orders.
[17] Servais Jean-Michel, (n13) pp.69-70.
[18] Article 44 of the ILO Standing Orders.
[19] Servais Jean-Michel, (n13) 70.
[20] Ibid.
[21] That is an act contrary to, an action in violation or an act that would defeat the spirit and purpose of the adoption of the Convention.
[22] See Article 45b of the ILC Standing Orders.
[23] Servais Jean-Michel, (n 13) 76.

work: principles and rights at work. The range from freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation. These principles are also covered on the ILO's Declaration on Fundamental Principles and Rights at Work 1998.[24] The fundamental conventions are:

i. Freedom of Association and Protection of the Right to Organise Convention, (No. 87) of 1948.

ii. Right to Organise and Collective Bargaining Convention, (No. 98) of 1949.

iii. Forced Labour Convention, (No. 29) of 1930.

iv. Abolition of Forced Labour Convention, (No. 105) of 1957.

v. Minimum Age Convention, (No. 138) of 1973.

vi. Worst Forms of Child Labour Convention, (No. 182) of 1999.

vii. Equal Remuneration Convention, (No. 100) of 1951.

viii. Discrimination (Employment and Occupation) Convention, (No. 111) of 1958.

Added to the above are four (4) Conventions which the Governing Body has designated as "priority conventions." Since 2008, these four Conventions are referred to as the Governance Conventions as they are identified by the ILO Declaration on Social Justice for a Fair Globalisation.[25] These four Conventions are:

i. Labour Inspection Convention, (No. 81) of 1947.

ii. Employment Policy Convention (No. 122) of 1964.

iii. Labour Inspection (Agriculture) Convention, (No. 129) of 1969.

iv. Tripartite Consultation (International Labour Standards) Convention, (No. 144) of 1976.

It is clear and evident that Conventions are a major source of international labour standards. They are more elaborate, comprehensive and impose obligations on Member States. Being a product of the process of tripartism, member-states are supposed to apply them without hitches or reservations. Unfortunately, despite the laudable intentions of these Conventions, member-states have different degree of compliance.

ii. Treaties

It has been stated that a Treaty is an international agreement, especially between States, which is under international law.[26] A judicial definition buttresses this point and was held in the case of *Fawehinmi v Abacha*[27], as follows:

[24] Oji and Offornze, (n7) 434.
[25] Ibid, p.435.
[26] Oji and A Offornze, (n 7).
[27] (2000) 4 SC (Part II) 1 or (2000) 6 NWLR (Part 660) 228, pp.314-315, paras. B-D, per Achike, JSC (as he then was).

> *The term treaty has been variously identified. Suffice it to say that a treaty is a compact, an agreement or a contract—bilateral or multilateral—between sovereign states whereby they establish or seek to establish a relationship between themselves governed by international law. A treaty, therefore, in a broad sense, is similar to an agreement under the civil law. The difference between an ordinary civil contract and a treaty is that while the former is an arrangement between individuals and derives its bindingness from municipal or domestic law of a state, a treaty on the other hand derives its binding force and effect from international law.*

Erugo and Amucheazi and Abba, view Conventions as equivalent to Treaties given that under the Vienna Convention on the Law of Treaties, 1969, it provides in Article 2 thereof, that such agreements are designed to create international obligations for the states that ratify them and they are international agreements by whatever name called: charter, concordant, convention, covenant, declaration or protocol. Therefore, such agreements concluded between States in written form and governed by international law, whether such agreement is embodied in a single instrument or in two or more related one is a treaty.[28] Fundamentally, ILO Conventions differ from other international standards because the Conference that adopts them has a tripartite structure, and they are designed to be more effective than normal diplomatic treaties.[29]

While it may appear that a Treaty is between States, and so could be bilateral or multilateral in nature, an ILO Convention has a wider application among Member States who ratify same. The unique setting of the ILO, especially it's tripartism and the processes in which Conventions are adopted, gives it a wider ambit than a Treaty which is bilateral in nature (except for those that are multi-lateral). The rights and duties of such bilateral Treaties are within those two contracting States whereas in ILO Conventions, Member States are bound. Additionally, ILO Conventions, require regular reporting on compliance by Member States unlike other forms of Treaties.

iii. Protocols

In the same Article 2 of the Vienna Convention on the Law of Treaties, 1969, a Protocol is equated with a Treaty. It seems that a Protocol is an addendum to a Convention or a Treaty with regard to international labour law or international labour standards. It is submitted that the International Labour Conference, also adopts protocols to existing conventions.[30] A Protocol is necessary when the aim is to amend but a few provisions and obviates the need to adopt an entirely new convention. It does not close the original convention to the ratification, but in every other respect, it has the same effects as a revising convention.[31]

Erugo also provides another aspect of a Protocol when he cites the Protocol of 2014 (P029) to the Forced Labour Convention, 1930.[32] The said Protocol to the Convention came into force on 09 November, 2016, some 86 years after the original Convention. From the Preamble of the said Protocol, the historical background of the Convention was highlighted and then the subsequent

[28] Offornze and Paul, (n 11) 289; Erugo, (n 6) 418.
[29] Lee (n 8).
[30] Servais Jean-Michel. (n 13) 70.
[31] Ibid, pp.70-71.
[32] Convention No. 29.

Articles of the Protocol clearly and succinctly provide for the purpose of the Protocol, which is a contemporary code against Forced Labour. Therefore, Erugo concludes, and rightly say that:

> *The Protocol has reasonably taken care of recent developments filling the gap left by the older regime of international labour standards in addressing current issues. The special recognition of the modern dimension in human trafficking, and the obligations to criminalize the atrocities as well as provision of access to justice and compensation to victims of forced and compulsory labour are commendable leaps in the fight.*[33]

The writer is able to deduce from the above and with particular reference to International labour law that a Protocol may be considered as a follow-up or back-up instrument to an existing labour Convention. It serves the purposes of revising the existing Convention or to bring the said existing Convention into currency with recent developments. The existing Conventions abide side by side the Protocol and are thus construed and applied by the ILO and its member-states.

iv. Recommendations

A recommendation is a unique and peculiar instrument to the ILO. Unlike a Convention which is binding on Member States, a recommendation aims at providing guidance for policy, legislation, and practice.[34] It does not have binding force of law like conventions and are not subject to ratification; they however are evidence of the thinking of the international labour community on the issues addressed therein.[35] They are considered merely advisory and non-binding on members, legally speaking.[36] It has been described as an instrument which contains only directions for the Member States.[37] Recommendations are not designed to create obligations but to provide guidelines for government action, hence they are not open to ratification.[38] Also, a recommendation has been held to be a source of explanation and elaboration on the full import of the standards laid down in Conventions.[39] Finally, it is stated that recommendations are merely declaratory principles by the ILO substantiating on the provisions of ILO Conventions, and are not designed to create international obligations for member states of the ILO, but merely to provide guidelines for government action. They are used to supplement the provisions of a convention that lays down the basic rules, while the recommendation contains the more detailed provisions for the application of the convention and guides governments on how to implement it.[40] Recommendations are also considered most appropriate when a subject is not yet ripe for the adoption of a convention. Thus, the adoption of a recommendation may pave the way for the adoption of a convention on the same subject matter several years later.[41]

Two things are clear from this discussion on recommendations: First, they are directory or advisory and non-binding. They do not create obligations on Member States like Conventions. At best, they

[33] Erugo (n 6) 462.
[34] Lee (n 8).
[35] Oji and Offornze, (n 7) 436.
[36] Anisha, Op. Cit. 108.
[37] E Marin, 'The Employment Relationship: The Issue at the International Level': *Boundaries and Frontiers of Labour Law* (Hart Publishing, 2006) 351.
[38] Abugu (n 10) 6.
[39] Erugo (n6) 419, especially footnote 5.
[40] Offornze and Paul, (n 11) 289.
[41] Ibid.

explain the provisions of a convention or guide a Member State on how to implement a convention. Second, they are both made by the ILO during the ILC. In fact, when a recommendation is adopted, it is communicated to Member States, just as a Convention is communicated.[42]

v. Declarations

In the same Article 2 of the Vienna Convention on the Law of Treaties, 1969, a Declaration is also equated with a Treaty. It is usually used for reference texts issued by the Conference or Governing Body. Their contents vary considerably depending on whether they proclaim fundamental principles or general technical standards.[43] They cover social policy instruments of widely varying origins.[44]

As it pertains to the ILO, we can safely say that a Declaration is an affirmative pronouncement or statement emphasizing Conventions. The first Declaration was done in 1944, which was known as the Declaration of Philadelphia. It was adopted and incorporated into the ILO Constitution of 1946. This Declaration spells out four (4) fundamental principles: first, that labour is not a commodity. Second, that two human rights, freedom of expression and association, are of vital importance. Third, is the war on poverty and want. Fourth and lastly, the principle of tripartism. The Declaration then sets out a ten-point programme of action, which include full employment and the raising of standards of living etc.[45]

Then we had the Declaration on Fundamental Principles and Rights at Work 1998, which essentially and radically elevated the eight (8) Core Labour Conventions and demands that:

[A]ll Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions.

In effect, the said Declaration of 1998, only brought to the fore the said eight Core Labour Conventions and charged Member States, both those who have ratified all those Core Labour Conventions and those who haven't to ensure that the principles of those Conventions are achieved or met in the States. The Declaration's follow-up procedures, involve annual reports by all States that have not ratified all eight of the fundamental Conventions, and the examination of these reports by a panel of Expert Advisers and the Governing Body. Global Reports, are also provided for each of which originally focused on one of the four subjects covered, and examined its application around the world.[46] The 1998 Declaration was amended in 2022 at the 110th Session of the International Labour Conference in Geneva.[47] In 2008, the ILO adopted the Declaration on Social Justice for a Fair Globalization, which actually builds on previous Declarations: of Philadelphia 1946 and Fundamental Principles of 1998. The 2008 Declaration was a contemporary attempt to express ILO's contemporary vision in the era of globalisation.[48] The 2008 Declaration

[42] Article 19(6) of the ILO Constitution.
[43] Servais Jean-Michel, (13) 97.
[44] Ibid.
[45] Ibid at 28.
[46] Lee (n 8) 146.
[47] See <https://www.ilo.org/ilc/ILCSessions/110/reports/texts-adopted/WCMS_848632/lang--en/index.htm>. Accessed on 6th March, 2023
[48] Ibid.

institutionalizes the Decent Work Agenda of the ILO. At the 2010 International Labour Conference, the 2008 Declaration was followed up by a reorganization of the ILO's reporting on fundamental rights and on other basic subject, with a rotating system of reports now being implemented.[49]

Worthy of mention is the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, which was initially adopted by the Governing Body in 1976 but has undergone updates in 2000 and 2006.[50] The crux of the latter Declaration, is the independence of trade union movement viz-a-vis multinational corporations.

In all, Declarations are ILO's strategy of drawing attention to certain Conventions whether or not same have been ratified by Member States. It is like an attention-grabber or emphasis-maker to ILO Instruments. When Declarations are made, it affords the ILO the opportunity of monitoring the implementation of such Conventions which are highlighted or emphasized amongst Member States that have not ratified same. While for states which have ratified same, it serves as a reminder of the obligations imposed therein.

From the fore-going, it is clear that what we refer to as International Labour Standards or International Labour Law, is the network of ILO Instruments—Conventions. Treaties, Protocols, Recommendations and Declarations, which cover different aspects of the world of work and which member-states are obligated to perform in good faith. However, member-states have varying degrees of compliance with such ILS as can be seen in the current Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in February 2023.[51] For instance, as it relates to Nigeria, reports on eight (8) Conventions were received and examined. These Conventions are Conventions 026,[52] 029[53], 088,[54] 095,[55] 105,[56] 138,[57] 144[58] and 182.[59]

3. Application of International Labour Standards in Nigeria

Before the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration Act, 2010) [60] was enacted, section 12 of the 1999 Constitution provided as follows:

(1) No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.

(2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative Lost for the purpose of implementing a treaty.

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[49] Lee (n 8)
[50] Ibid.
[51] See <https://www.ilo.org/global/about-the-ilo-newsroom/news/WCMS_868021/lang-en/index.htm>. Accessed on 11 August, 2023.
[52] Minimum Wage-Fixing Machinery Convention, 1928, ratified by Nigeria in 1961.
[53] Forced Labour Convention, 1930, ratified by Nigeria in 1960.
[54] Employment Service Convention, 1948, ratified by Nigeria in 1960.
[55] Protection of Wages Convention, 1949, ratified by Nigeria in 1960.
[56] Abolition of Forced Labour Convention, 1957, ratified by Nigeria in 1960.
[57] Minimum Age Convention, 1973, ratified by Nigeria in 2002.
[58] Tripartite Consultation (International Labour Standards) Convention, 1976, ratified by Nigeria in 1994.
[59] Worst Forms of Child Labour Convention, 1999, ratified by Nigeria in 2002.
[60] Hereinafter called 'the 1999 Constitution'.

(3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the Federation.

The latter section created a dispensation of domestication of international instruments like Conventions and Treaties before they could be applied in Nigeria. However, with the enactment of the Third Alteration Act, 2010, a new section 254C(2) has been added to the 1999 Constitution. The said latter section of the amended Constitution provides as follows:

> *Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any other 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.*

In comparing the two provisions of the Constitution above, it is observed that section 254C(2) of the Constitution has rendered impotent and inoperative as far as international labour treaties are concerned, the provisions of Section 12(1) of the 1999 Constitution which provides that a treaty provision may only be enforced in Nigeria upon being domesticated pursuant to an Act of the National Assembly. The implication of this is that, ILO labour standards can now be safely applied in Nigeria via the National Industrial Court of Nigeria (NICN). The NICN can now invoke and enforce international labour treaties to which Nigeria is a signatory, even when same is yet to be domesticated by the National Assembly.[61]

In this new regime, labour law treaties, conventions and protocols, which have been ratified by Nigeria, can now be applied in the country in the resolution of labour disputes. As would be seen in the course of this work, the NICN has applied without hesitation ILO instruments in the determination of labour disputes in Nigeria. This was made possible by the provisions of the grundnorm of the land, which now supersedes any other law in force. This constitutes a watershed in the history of the labour law and practice in Nigeria. Added to the provisions of the Third Alteration Act, is the fact that the NICN has been elevated to a superior Court of record recognized by the Constitution and conferred the Court with exclusive jurisdiction over all labour and employment related matters.[62] In the same vein, the learned authors, Amucheazi and Abba, stated that with the coming into force of the Constitution of Federal Republic of Nigeria (Third Alteration) Act 2010, a radical restructuring of Nigeria's dualist legal order was effected in relation to labour conventions.[63] It has been noted that the Third Alteration Act, 2010 is indeed a comprehensive piece of legislation which has not only repositioned the National Industrial Court but has, in effect, established an industrial court system for the country.[64]

When we consider section 254C(1)(a)-(m) of the 1999 Constitution, the subject matter jurisdiction of the NICN, is provided for. Though section 254C(2) of the 1999 Constitution provides for the application of ratified ILO treaties and conventions in Nigeria, it is section 254C(1) that makes provision for some aspects of International Labour Standards to be applicable in Nigeria. There are some references of the application of International Labour Standards in the said section

[61] Atilola Bimbo, Op. Cit. 6.
[62] A Bimbo, *Recent Developments in Nigerian Labour and Employment Law* (Lagos: Hybrid Consult, 2017) 4.
[63] Offornze and Paul, (293.
[64] Agomo Chioma, Op. Cit. 345.

254C(1) of the Constitution. Thus, section 254C(1)(f) of the Constitution provides that the NICN shall have jurisdiction over causes and matters hinged on or relating to unfair labour practice or international best practices in labour, employment and industrial relations. Also, section 254C(1)(g) provides for causes or matters bordering on discrimination and sexual harassment at workplace. The Constitution permits the NICN to adjudicate over matters relating to the application or interpretation of international labour standards in section 254C(1)(h). We also have provisions relating to child labour, child abuse, human trafficking and matters related thereto in section 254C(1)(i).

At this juncture, some judicial authorities will suffice. The NICN had reason to adjudicate and pronounce on harassment in the work place in the case of *Ejieke Maduka v Microsoft Nigeria Ltd.*[65], where it had reason to review and apply the ILO's Conventions against the discrimination of women[66] and also the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[67] The NICN held *inter alia* that:

> *The Labour Law in Nigeria as at now has no specific provision for sexual harassment in the work place but the National Industrial court by virtue of Section 254C-(1)(g) of the 1999 Constitution, Third Alteration Act, 2010 has the jurisdiction to entertain civil causes and matters relating to or connected with any dispute arising from discrimination or sexual harassment in the workplace.*[68]

On the application of International labour related treaties and conventions in Nigeria, the NICN further held as follows:

> *By virtue of Section 254C-(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the National Industrial (sic) 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 relation to labour, employment, workplace, industrial relations or matters connected therewith.*
>
> *The court in the instant case, having been so empowered, makes recourse to international conventions particularly the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and ILO Discrimination (Employment and Occupation) Convention 1958 No. 111 which have been ratified by Nigeria and are in force for construing the rights of the applicant expressly guaranteed in the 1999 Constitution of freedom from discrimination and the right to dignity.*[69]

[65] (2014) 41 N.L.L.R (part 125) 67, judgment delivered on 19th December, 2013 per Hon. Justice O.A. Obaseki-Osaghae.

[66] See for instance Conventions No. 111 of 1958 against Discrimination on Employment and Occupation and the ILO adoption of the United Nations Convention on the Elimination of all Kinds of Discrimination Against Women (CEDAW). Available at www.ilo.org Accessed on 12th November, 2023.

[67] Which came into effect on 18th December, 1979; signed by Nigeria on 23rd April, 1984 and ratified by Nigeria on 13th June, 1985.

[68] Supra, See p.139, paras. E-H.

[69] See pp.140-141, paras. E-A.

In interpreting and applying the CEDAW General Recommendation 19 of 1992 and Article 1(a) of ILO Discrimination (Employment and Occupation) Convention No. 111, the NICN emphatically stated that:

> *CEDAW General Recommendation 19 of 1992 referred to above also states that the conduct of sexual harassment is discriminatory when the woman has grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting, promotion, or when it creates a hostile working environment. Article 1(a) of ILO Discrimination (Employment and Occupation) Convention No. 111 is reproduced as follows:*
>
> *1. For the purpose of this Convention the term discrimination includes—*
>
> *(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.*
>
> *The interpretation and meaning of CEDAW General Recommendation 19, ILO Convention No. 111, and the 1st and 2nd respondents' anti-harassment and anti-discrimination policy is that sexual harassment is a form of discrimination based on gender. It has the effect of cancelling equality of opportunity and treatment at the work place.*
>
> *Applying the instruments and the 1st and 2nd respondents' Anti-harassment and Anti-discrimination policy, the 3rd respondent sexually harassed the applicant because she is a woman, if not for her sex, her participation in sexual activities would not have been solicited. Thus, her fundamental right against discrimination has been violated.*[70]

In the case under review, the NICN awarded exemplary damages in favour of the Claimant for the acts of the Defendant, which the Court held amounted to discrimination at the workplace.

Permit us to consider two recent and seemingly controversial cases determined by the NICN using ILS. They are *Federal Government & Anor. v Academic Staff Union of Universities (ASUU)*[71] and *Academic Staff Union of Universities v Minister of Labour and Employment & 3 Ors.*[72]In *Federal Government & Anor. v Academic Staff Union of Universities (ASUU),*[73] the NICN had reason to examine the powers of the Federal Minister of Labour and Employment under section 17 of the Trade Disputes Act (TDA) Cap. T8, LFN 2004 and challenge the prolonged strike embarked upon by ASUU. In its referral to the Court, the Honourable Minister of Labour and Employment, alluded to section 43 of the TDA and International Labour Principles on the Rights to Strike and the decisions of the ILO Committee on Freedom of Association. In affirming the validity and legality of the Claimants' referral to the Court, the Court referenced paragraphs 456 and 457 of ILO's Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association (International Labour Office: Geneva), 2018, 6th Edition, which document acknowledged that an

[70] See pp.146-147, paras. C-D.
[71] Unreported in Suit No. NICN/ABJ/270/2022, judgment of which was delivered on 28th March, 2023.
[72] Unreported in Suit No. NICN/ABJ/336/2022, judgment of which was delivered on 25th July, 2023.
[73] (n 71).

appeal should lie to the courts against any administrative decision concerning the registration of a trade union. Therefore, the referral by the Minister to the Court in the instant dispute accords with ILO jurisprudence.

In *Academic Staff Union of Universities v Minister of Labour and Employment & 3 Ors.*[74], the Claimant contended that the 1st and 2nd Defendants (Minister of Labour and Employment and Registrar of Trade Unions, respectively), were in violation of extant provisions of the Trade Unions Act and the 1999 Constitution for registering the Congress of Nigerian University Academics (CONUA) and the Nigerian Association of Medical and Dental Academics (NAMDA). In its decision, the Court again had recourse to ILO Instruments as follows:

> *Section 254C(1)(f) and (h), and (2) of the 1999 Constitution and section 7(6) of the National Industrial Court (NIC) Act 2006 permits this Court to, when adjudicating, apply international best practices in labour and the Treaties, Conventions, Recommendations and Protocols on labour ratified by Nigeria. The claimant did not address its mind to this point. The Supreme Court had as far back as 2000 in two concurring judgments of Achike, JSC and Uwaifo, JSC in Abacha & ors v. Fawehinmi [2000] LPELR-14(SC); [2000] 6 NWLR (Pt 660) 228 respectively held that "conventions and treaties create rights and obligations not only between Member States themselves but also between citizens and Member States and between ordinary citizens"; and that "the spirit of a convention or a treaty demands that the interpretation and application of its provisions should meet international and civilized legal concepts… concepts which are widely acceptable and at the same time of clear certainty in application". Additionally, by section 19(d) of the 1999 Constitution, the foreign policy objectives of Government include the respect for international law and treaty obligations. Accordingly, section 254C(1)(f) and (h), and (2) of the 1999 Constitution and section 7(6) of the National Industrial Court (NIC) Act 2006 merely keep faith with section 19(d) of the 1999 Constitution.*

From the above cited cases and others, it is safe to say that the NICN relies to a large extent on the ILO Instruments in its dispute resolution efforts in Nigeria. The new normal as far as labour law jurisprudence is concerned, is being shaped by ILO Instruments. This is aptly captured in the words of Hon. Justice Kanyip, thus: "*A general look, therefore, at the decisions of the NICN will show a greater reliance on literature emanating from the ILO*."[75] It is clear that the NICN, in setting the labour agenda in Nigeria, has recently, used its constitutional powers to apply ratified ILO Instruments. Thus, we now have a new labour law jurisprudence influenced by ILS.

4. Conclusion

From the outset, this work set out to examine the role of the ILO in the regulation of global labour law and practice. The work found out that the ILO has developed itself into the foremost regulator of international labour law through its system of ILS, which now serves as a benchmark for member-states to gauge and align their domestic labour law and practice. These ILS include

[74] (n 72).

[75] B Kanyip, 'The Changing Face of Nigerian Labour Law Jurisprudence and What Employers Need to Know', being a discussion paper presented at the Perchstone & Graeys Labour Law Emerging Trend Seminar on Labour Law and Emerging Trends, which held at the Penthouse, Perchstone & Graeys, No. 1, Perchstone & Graeys Close, off Remi Oloyude Street, off Lekki Epe Expressway, Lagos, 7th April, 2016, p.3.

Conventions, Treaties, Protocols, Recommendations and Declarations. Though these instruments have varying degrees of legal clout, they still guide member-states in labour their developments.

The work also sought to examine the application of ILS in Nigeria. In this regard, it was discovered that Nigeria now applies ILS, which the country has duly ratified as provided under section 254C(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the 1999 Constitution). The clog of section 12 of the 1999 Constitution has now been altered as it pertains only to labour related international instruments: Conventions, Treaties, Protocols, Recommendations and Declarations. This system of ILS is now applicable in the National Industrial Court of Nigeria (NICN), the specialized court in labour matters. Nigeria now has an emerging labour jurisprudence patterned after and influenced by ILO labour standards.

5. Recommendations

The following recommendations are apposite, arising from the work.

First, in view of the contemporary nature of international labour law, Nigeria should amend or enact new labour laws to be in tune with global reality. If Nigeria has contemporary labour laws, the reliance and dependence on ILO jurisprudence would have been reduced. It is recommended that Nigeria can as a matter of policy and legislative action, source its labour laws from the various ILO standards as well as contemporary developments in the world of work. This will align our labour law and practice to global standards.

Second, Nigeria should ensure that ratified ILS are complied with for the development of our labour law and practice. A case where ILS are ratified but not implemented or complied with leaves more to be desired. In the final analysis, these ILS are good practices which will enhance domestic practice too.

Third, an important ILO Convention that Nigeria has not ratified is Convention 158.[76] Thus, on the issues of unfair dismissal, claimants cannot call in aid of the said Convention and the NICN cannot directly apply same, having not been ratified by Nigeria as provided for in section 254C(2) of the 2999 Constitution.

Fourth and last, Nigeria should be wary in blanket application of ILO Instruments. Such Instruments should be subjected to scrutiny for local/domestic relevant and applicability before they are introduced into our jurisprudence. Like the Conventions relating to children and child labour, there are systems of apprenticeship and domestic workers permitted under our national labour laws which are meritorious and aid the holistic development of the child.

[76] Termination of Employment Convention, 1982.