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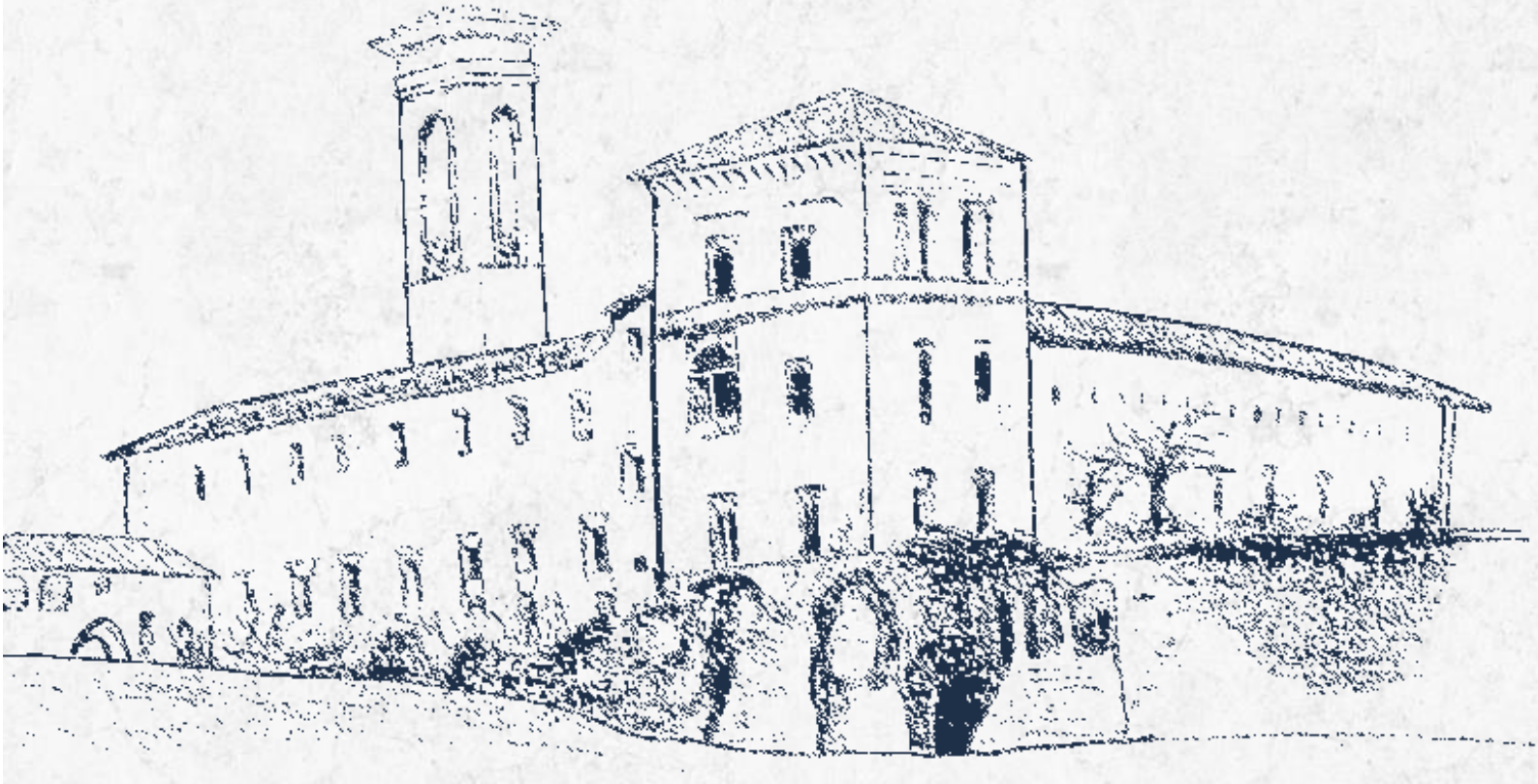

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International Labor Organization Prescriptions and Enforceability of Collective Agreement in Nigeria: Is there now Light at the End of the Tunnel?

David Tarh-Akong Eyongndi, Nzeribe Ejimnkeonye Abangwu, Clement C. Chigbo, Itunu Kolade-Faseyi, Emmanuel Nnaemeka Nwambam, and Olasupo Bada [*]

Abstract. This article adopts doctrinal method in interrogating the potentials of the ILO Conventions and Recommendations, revolutionizing the law on the bindingness and therefore enforceability of Collective Agreement (CA) in Nigeria by explicating the National Industrial Court of Nigeria (NICN) stance towards application of International Labour Organisation (ILO) convention/recommendations and International Best Practices (IBP) and International Labour Standards (ILS) in adjudication aimed at addressing the question of whether there is now light at the end of the tunnel regarding enforceability of CA in Nigeria. It examines the law and practice of enforceability of CA in South Africa (SA), Kenya, Ghana, and Zambia, drawing lessons for Nigeria. It finds that the NICN have approved/applied ILO conventions/recommendations and IBP and ILS in adjudication thereby

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opening new vistas in labor and employment adjudication in Nigeria including the enforceability of CA antithetical to the common law prescription. It also found that Kenya, South Africa, Ghana, and Zambia have incorporated the ILO position on enforceability of CA into their domestic laws and explicates lessons for Nigeria therefrom. It recommends that Nigeria should incorporate the ILO prescription into its domestic laws and gives statutory fortification to the NICN's stance on enforceability of CA. Furthermore, if the NICN stance—which is a welcomed development—is appealed, it is recommended that the Court of Appeal should uphold it, thereby aligning Nigeria's position as laid down by the NICN with global best practice.

Keywords: *Collective Agreement, Collective Bargaining, Ghana, National Industrial Court of Nigeria, International Labor Organization, Trade Disputes, South Africa, Zambia.*

1. Introduction: Aim and Research Objectives

In labor and employment relations, employees seek enhanced terms and conditions of employment while employers aim at maximizing profit.[1] These divergent interests often clash, leading to trade disputes.[2] Thus, whenever there is a trade dispute between an employer and employees, efforts are often made towards settlement either by the parties themselves or with the intervention of a neutral third party.[3] One of the non-litigation means of settling trade disputes in Nigeria is by collective bargaining (herein simply referred to as CB),[4] which is a process through which an employer and their employees meet together either with or without the assistance of a neutral third party when a trade dispute has occurred to extensively negotiate in good faith the matters involved aimed at resolving the dispute, which ends by reaching a collective agreement.[5]

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[1] K. W. Wedderburn, *Labour Law: From Here to Autonomy? in Industrial law Journal*, 1987, vol. 16, 1-29; D.T. Eyongndi, "Towards Repositioning the Industrial Arbitration Panel (IAP) for the Effective Settlement of Trade Disputes in Nigeria" *University of Ibadan Law Journal* 2019, Vol. 9, 114-129.

[2] G.G. Otuturu, "The Enforceability of Collective Agreements in Nigeria A New Approach" (2006) 4(2) *Nigerian Bar Association Journal*, 65.

[3] S Webb and B Webb, *Industrial Democracy* (London: Longmans Green and CO., 1926) 97.

[4] FC Nwoko, 'Rethinking the Enforceability of Collective Agreements in Nigeria A Collective' (2000) 4(4) *Modern Practice Journal of Finance and Investment,* 353-354.

[5] *Nigeria Arab Bank v. Shuaibu* [1991] 4 NWLR (Pt. 186) 450.

It should be noted that while involvement of a neutral third party to facilitate communication between the disputants during collective bargaining in Nigeria has become common, it is not a universal practice; the standard and ideal practice is for bargains to take place only between the disputants without the involvement of a neutral third party. This is an ingenious Nigerian innovation with the presence of the neutral party is hoped to prevent deadlock between the bargainers in the course of bargaining since the neutral third party is expected to facilitate communications and compromise especially when temper rises and resolution is threatened. In any event, whether with or without the involvement of a neutral third party (as it has become the case in Nigeria), the process is the same and the aim is usually to reach a resolution for the dispute. The Nigerian variant of collective bargaining, particularly in the public sector (whether federal or state government), is a situation where the desirable is not available and the available becomes desirable. This is largely due to the characteristic insincerity of the government within bargaining hence, a neutral third party needs to be present to ensure that communication towards resolution is sustained between the disputants and as well as assuage the fears of trade unions that usually bargain on behalf of their members. This becomes necessary when the fact that the employer especially the government in Nigeria (and globally) in the course of bargaining, enjoys undue advantage against the employees. Thus, for there to be a successful collective bargaining, the parties must do so with absolute transparency in good faith while the processes facilitator (as it is peculiar to Nigeria) must possess a high dose of persuasion acumen to persuade the parties to reach a compromise particularly where temper rises and reaching an agreement is threatened.[6] Good faith is needed and has become a component of collective bargaining in Nigeria due to the serious distrust demonstrated over time—particularly within the public sector regarding the process and outcome of the bargain with the government as employer and a party thereto. The peculiar situation in Nigeria is not to say that there is not a universal component for the process of collective bargaining but Nigeria has only innovated based on necessity.

At the end of the collective bargaining (CB) process, when the parties reach an agreement to settle the dispute, it is then written down and signed by the parties or their authorized representatives.[7] The agreement

[6] O.O. Ogbole, P.A. Okoro, *Critique of Ministerial Interference in Enforceability of Collective Agreements, in OAU Journal of Public Law,* 2020, vol. 1, n. 1,114.

[7] *Union Bank of Nigeria v. Edet* [1993] 4 NWLR (Pt. 287) 288.

reached is known as a collective agreement (CA).[8] In Nigeria, like most common law jurisdictions, honor on the part of the parties to a CB is the only thing binding collective agreements.[9] For the agreement to become binding and therefore enforceable between parties, the law requires that the agreement must have expressly or necessary implication stated so and/or the agreement must be incorporated into the individual contract of employment of an employee.[10] Without the fulfilment of this requirement, as held by the Supreme Court of Nigeria in *Union Bank of Nigeria Ltd. v. Edet,*[11] based on the common law position applicable in Nigeria, no cause of action can arise from either party's reneging from their obligation arising from the agreement, thereby creating the unfortunate and time-wasting situation of agreement without an agreement usually to the greatest chagrin of the employee who mostly are affected by this state of the law. This is so despite the human and capital resources expended in the process of CB.[12] This disjunction, in relation to the nuances of the bindingness and enforceability of CA under Nigeria law, is explained by Obiora[13] in a comprehensive and articulated manner thus: when it comes to the enforceability of collective agreement, its enforceability in Nigeria remains problematic because the courts have taken the common law position that collective agreement is at best 'a gentleman agreement,' which is merely 'binding in honor', save where it is incorporated into the contract of service, whether expressly or by implication. The courts have taken this position because of the doctrine of privity of contract, as most collective agreements are usually between the employers on one hand and trade unions on the other. An individual employee seeking to benefit from it is not regarded as a party to it. Additionally, parties to a collective agreement are presumed not to intend that it is binding on them; hence it is unenforceable.

The implication of this is that *prima facie*, whether from common law or under statute (as Nigeria operates a dual system of bindingness and enforceability of CA), a CA is not binding as neither party has a legal obligation to perform or forbear the CA made to settle a dispute. This

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[8] E.A. Oji and O.D. Amucheazi, *Employment and Labour Law in Nigeria* (Lagos: Mbeyi & Associates (Nig.) Ltd, 2015) 222.

[9] *Ibid.* at 222.

[10] *Texaco v. Kehinde* [2002] FWLR (Pt. 94) 143.

[11] (1993) 4 NWLR (Pt 287) 288 at 291.

[12] M. Zechariah, *New Frontiers on Legal Enforceability of Collective Agreements in Nigeria, in Current Jos Law Journal,* 2013, vol. 6, n. 1, 294.

[13] S.F. Obiora "Dialectics on the Principle of Enforcement of Collective Agreements in Nigeria: A Reappraisal" *E-Journal of International and Comparative Labour Studies,* 2022, Vol. 11, n. 3, 75.

aside, an unbinding CA can become binding and enforceable by the act of one of the parties or by a neutral third party (who in this case, is different from the one who facilitated communication between the party that resulted into the making of the CA). Thus, it is safe to argue that, when parties engage in CB that culminates into a CA, the agreement reached is neither binding nor enforceable between them unless and until certain post-agreement acts are taken by the parties or a statutorily authorised neutral third party. It is only then they are rendered binding and therefore enforceable; Obiora has rightly stated this, saying:

> Ordinarily, under the Nigerian labor law, there is no presumption of intention as to the binding force of a collective agreement between the parties. The nearest it has gone in attaching legal enforceability to a collective agreement is the provision of section 3(1) of the Trade Disputes Act which stipulates expressly that parties in a collective agreement are expected to deposit with the minister of labor and productivity at least three copies of the agreement within 30 days of its execution, and when such deposit is made the minister may by order make the agreement or part thereof binding on the parties to whom it relates.[14]

This subsequent act or steps are discussed in the later part of this work in detail.[15] The NICN by virtue of Section 254C (1) b, and j (i), (v), of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 (herein simply referred to as CFRN, 1999 (Third Alteration) Act, 2010), has exclusive original civil jurisdiction over the Trade Disputes Act that regulate trade disputes and collective agreements. By adjudicating over a dispute, the combine provisions of Sections 254C (1) (f) (h) and (2) of the CFRN, 1999 (Third Alteration) Act, 2010 and 7(6) of the National Industrial Court Act, 2006 (herein simply referred to as NIC Act, 2006) empowers the NICN with requisite jurisdiction over and power to apply international labour standards and international best practices in labour and employment to cases submitted to it. Moreover, the NICN by section 245C(2) of the Third Alteration Act, 2010 is empowered to deal with any matter connected with or pertaining to the application of international conventions, treaty, or protocol which Nigeria ratified relating to labor, employment, workplace, industrial relations or matter connected therewith, and the interpretation or application international labor

[14] S.F. Obiora (note 12) 80.

[15] I. Okwara, C. Aniekwe, I. Oraegbunam, *The Status of Collective Agreement in Nigerian Labour and Industrial Law: An Appraisal, International Review of Law and Jurisprudence,* 2021, vol. 3, n. 2, 39.

standards (ILS). These provisions exist despite the seemingly protective and inhibitory provision of section 12 of the Constitution, which is has been obviated by section 254C (1) of the Third Alteration Act, 2010).[16] Nigeria is a member of International Labour Organization (ILO) and a signatory to the Freedom of Association and Protection of the Right to Organize Convention (No. 87) of 1948 and the Right to Organize and Collective Bargaining Convention (No. 98) of 1949,[17] both which were ratified on 17th October, 1960.[18] These conventions are a fortification and amplification of section 40 of the CFRN, 1999 and section 9(6) of the Labor Act, 2004[19] which guarantee the right to freedom of association and formation of trade unions in particular.

The Collective Agreements Recommendation No. 91 of 1951, made pursuant to Convention No. 98, contain an international best practice on the bindingness and enforceability of CA. The said international best practice is that a CA, once signed by the parties or their legal representatives, becomes binding and therefore enforceable between the parties and persons on whose behalf the agreement was reached without the need for incorporation or any other post-agreement step being taken.[20] This IBP approved by the NICN, has the potentials of revolutionizing the jurisprudence on bindingness and enforceability of CA in Nigeria. This paper examines whether this prescription opens a new vista to the enforcement of CA in Nigeria. This paper also examines the stance of the NICN towards the adoption and implementation of this ILO international best practice on the bindingness and enforceability of CA aimed at determining whether there is now light at the end of the tunnel regarding the legal status and enforceability of CA under Nigeria's labor jurisprudence. Through comparative analysis, this paper gleans lessons from other jurisdictions; aimed at advancing a call for the review of Nigerian law, particularly the position in some selected African jurisdictions like Ghana, South Africa, Zambia, and Kenya—which like Nigeria, have a common law heritage with other strong socio-economic and cultural affinities to Nigeria.

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[16] See Section 254C (1) Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010.

[17] A. J. Pouyat, *The ILO's freedom of association standards and machinery: a summing up, International Labour Review* 1982 vol.121 n.3, 288-292.

[18] See https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103259 as accessed 30 April, 2025.

[19] Labour Act Cap. L1 Laws of the Federation of Nigeria, 2004.

[20] N. Valticos, *International labour standards and human rights: Approaching the year 2000, in International Labour Review,* 1998, vol. 137, n. 2, 135.

This article is divided into six parts. Part one contains the introduction. Part two is an exegesis on the law and practice, with a consideration of the nuances of collective bargaining in Nigeria. Part three delves into the enforceability of CA in Nigeria under common law and statute in Nigeria. Part four looks at the influence of ILO prescription and the evolving jurisprudence by the NICN contingent on the ILO prescriptions for the enforceability of CA and its impact on trade disputes settlement in Nigeria. Part five examines the law and practice on the legal status and enforceability of CA in selected jurisdictions like Ghana, Kenya, Zambia, and South Africa to draw lessons for Nigeria and its' system. Part six contains the conclusion and recommendations. This paper adopts doctrinal and comparative methods, relying on primary and secondary date such as the CFRN, 1999, Nigeria's Labor Act 2004, the Trade Disputes Act, 2004, ILO Conventions 87 and 98 and recommendation 91, standard labor law textbooks, articles in learned journals, internet sources, newspapers publication, etc. The data were subjected to rigorous content and jurisprudential analysis whereof, findings were made, conclusion drawn, and recommendations advanced.

2. Explicating the Law and Practice on Nuances of Collective Bargaining in Nigeria

This section of the paper, which espouses the concept of CB, does so by highlighting its meaning and process as well as discussing other nuances. This is done as a precursor to the interrogation of the nuances of CA which is the desired result of CB: it is the expected outcome for engaging in a successful CB. For clarity and considering the fact that the term trade dispute would and has already been used in this article, we consider it apt to elucidate more on it to give context to its usage in this work. Trade dispute, as used in this work, as defined under section 48(1) of the Trade Disputes Act, 2004 is a dispute between an employer and workers or between workers and workers, which relates to the employment or non-employment or terms of employment and/or physical conditions of work of any person. It extends to disputes between employers and employees, including disputes between their respective organizations and federations which are concerned with the employment or non-employment of any said person, the terms of employment, the physical condition of work of any person, and the conclusion or variation of any collective agreement. With this definition in mind, the Court of Appeal in *Apena v. NUPPP*[21]

[21] [2003] 8 NWLR (Pt. 822)426.

have deduced the nature of the parties and subject matter of a dispute for it to qualify as trade dispute. Thus, the parties in a trade dispute are the workers and their employer, workers themselves (such as within form of an intra-union dispute qua worker), workers organization (trade union or workers association), and employers' association, their federation of workers, or employer trade unions. Moreover, such a dispute to qualify as trade dispute, must have industrial coloration, meaning that it must pertain to or connected to the employment or non-employment of a person(s). A trade dispute could also relate to, pertain to, arise from, or relate to the terms and conditions of employment or physical conditions of work.[22] It should be noted that the requirement of physical condition of work is elastic and germane to the employee. These mandatory and mutually inclusive elements which must be present to be regarded as a trade dispute within labor and employment relations can be found on the presence of a single strand.[23] To explain, the presence of a single party and subject (e.g. between an employer and their employees relating to the physical condition of work only) will qualify a dispute as a trade dispute within the context of this work. The implication of the foregoing is that, any dispute that lacks the complete presence of the aforementioned parties and at least one of the subjects, does not qualify as a trade dispute within the context of this paper which is the case under the Trade Disputes Act.[24] For instance, a dispute between two trade unions of workers about the payment of electricity bill for a building being used by them as their registered office does not qualify as a trade dispute despite the fact that it is between the appropriate party but the subject matter is outside the statutorily recognised matters. Also, a strike called by a workers' trade union (federation) for political reasons (e.g. the outcome of a trade union election) does not qualify as a trade dispute and the protection afforded to workers or employers when embarking on a trade dispute is unavailable under such circumstances.[25]

To recap, we have underscored the fact that whenever there is a trade dispute, it need not lead to the irreconcilable breakdown of an employer-employee relationship which does no good to either of the parties and the economy. Thus, disputants usually explore CB either by themselves or under the moderation of a neutral third party (as it has become the practice in Nigeria) to amicably resolve their differences. CB in Nigeria is

[22] M. Zechariah, *New Frontiers on Legal Enforceability of Collective Agreements in Nigeria, in Current Jos Law Journal,* 2013, vol. 6, n. 1, 292-294.
[23] *Abdul-Raheem v. Olufeagba* [2006] 17 NWLR (Pt. 1008) 280.
[24] *Ekong v. Oside* [2005] 9 NWLR (Pt. 929) 102.
[25] *Adams Oshiomhole v. Federal Government of Nigeria* [2004] 8 NWLR (Pt. 860) 105.

supported by both domestic and international legal frameworks. Section 40 of the Constitution of the Federal Republic of Nigeria, 1999 recognizes the right of assembly and the right to form or join trade unions which is a vehicle for collective bargaining by employers/employees alike. Thus, one can safely assert that the right to form or join a trade union of one's choice either as an employee or employer and participate in CB is constitutional in Nigeria. Section 9(6) of the Labor Act, 2004 guarantees the right to unionization and renders void and unenforceable any agreement requiring an employee to abstain from forming or joining a trade union in expression of the right of freedom of association. This right (i.e. freedom of association) anchors collective bargaining. Section 24(1) of the Trade Unions Act, 2004 empowers registered unions to engage in collective bargaining while section 3 mandates parties to undertaken a collective bargaining which results to a CA to deposit three copies of the collective agreement with the Minister of Labour, Employment and Productivity who has the discretionary power to sanction the agreement either in part or whole as binding and enforceable between the parties. Sections 3, 4, and 5 of the Trade Disputes Act recognize the right of employers and employees through their unions to engage in collective bargaining and allows the Minister to apprehend a trade dispute and take necessary steps for its settlement to prevent it from escalation with attendant acrimonious outcome. Article 10(1) and (2) of the African Charter (Ratification and Enforcement) Act, 2004 recognizes and protects the right to freedom of association which is a fortification and an amplification of the right to CB in Nigeria. The ILO Conventions 87 and 98 recognize and promote CB by their recognition of the right to freedom of association. Thus, Articles 2 and 4 respectively recognize the rights of employees without any discrimination to form/join trade unions of their choice with the goal of protecting and advancing their interests through various means, including CB. According to the Governing Body of the ILO, collective bargaining is a 'fundamental aspect of the principles of freedom of association"[26] This is an attestation to the fact that collective bargaining expands the scope of the right of freedom of association since it is usually the trade union (i.e. a congregation of employees) that engages an employer in bargaining on behalf of its members.

[26] ILO, *Freedom of Association: Compilation of decisions of the Committee on Freedom of Association*, (Sixth Edition) 2018 para. 1313.

Regarding the origin of the term "collective bargaining," Oji and Amucheazi[27] have rightly opined that the British academic Beatrice Webb reputedly coined the term in the late 19th century, using it in 1891 in a cooperative movement to characterize an alternative process to individual bargaining between an employer and individual employees. Individual employee bargaining is characterized by its lack of effectiveness in terms of the employer acceding to an employee demands due to the lack of requisite collective force/pressure which is present in collective bargaining. Philosophically speaking, CB can be likened to a bundle of broom which is extremely difficult to break if not impossible compared to a strand of broom which can be effortlessly broken by anyone no matter how weak. It is representative of the aphorism that "together we stand and divided we fall" as there is strength in unity (i.e. employees coming together to form an irrepressible and indomitable union).

According to Ebong and Ndum,[28] CB is the process of negotiation on a whole range of issues within the regulation of the terms and conditions of employment between workers and employers or government aimed at reaching a CA. For Agomo,[29] CB is collective dialogue or collective negotiation between the employers' representatives and workers' representatives to reach a collective agreement on the issue. Okene[30] opined that CB involves a process of consultation and negotiation of terms and conditions of employment between employers and workers, usually through their representatives. It involves a situation where the workers union or representatives meet with the employer or representatives of the employer in a cooperative and respectful atmosphere to deliberate and reach an agreement on the demands of workers concerning certain improvements in the terms and conditions of employment. Mir and Kamal[31] comment on the meaning and utility of CB, noting that CB is an effective means of promoting industrial relations. It is that form of bargaining where the employer or his representative, and the employees or their representative bargain in good faith and arrive at

[27] 212

[28] E.A. Ebong, and V.E. Ndum, "Collective Bargaining and the Nigerian Industrial Relations System-Conceptual Underpinnings" *IRE Journals,* 2020, Vol. 3, n. 11, 132-139 at 132.

[29] C.K. Kanu Agomo, *Nigerian Employment and Labour Relations Law and Practice* (Concept Publication Limited 2011), 292.

[30] O.V.C. Okene, "Collective Bargaining, Strikes and the Quest for Industrial Peace in Nigeria" http://www.nigerianlawguru.com/articles/labour law/15/09/2012 Accessed 1 May, 2025.

[31] A.A. Mir and N.A. Kamal, *Employment Law in Malaysia* (Kuala Lumpur: International Law Book Series, 2005) 111.

an agreement relating to conditions and terms of employment in resolution of an impasse.

CB is a secondary aspect of industrial labor relations because its emergence explicates the unequal power equilibrium between individual employees and employers, wherein the scales tip against employees. This situation questions the reality of the doctrine of voluntariness and equality in labour and employment relations especially in Nigeria where the power pendulum, owing to several factors (including but not limited to high rate of unemployment and underemployment, increased and acceptance of non-standard forms of employment, inadequate and obsolete regulatory framework, docile institutional regulators, etc.) is permanently tilted against employees. In fact, employment relations in Nigeria is organised along the reality of the employee(s) "either takes it or leave" and not bargain culminating into mutual agreement as it ought to be. Although, each employee has a separate and independent contract of employment with the employer, which means that they ought to interact directly and independently with the employer on any matter pertaining to welfare or condition of employment as stated by the individual employment contract.[32] The inequality of bargaining power between an individual employee and their employer makes it impracticable for individual engagement, thereby necessitating collective action through several employees conglomerating into a union or association to engage their employer as there is power in unity enabling them to a great extent, counter the overwhelming power of capital. This conglomeration could be likened to the bundle of broom principle. Breaking a stick of broom is easy and a stick is incapable of sweeping the floor. If several sticks are tied into a bunch, however, breaking them becomes extremely difficult (if not impossible). In the same vein, sweeping with many brooms is faster and gets the floor clean easily. Thus, CB functions within the bundle of broom principle. The bargaining in CB exemplifies that each side (i.e. employees and the employer) can apply pressure to a certain degree during negotiation.[33] Hence, it is within the framework of CB that employees' trade unions are most relevant and prominent owing to the need (amongst other factors) to assert pressure for desired outcome.[34]

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[32] O. Ogunniyi, *Nigerian Labour and Employment Law in Perspective* (Lagos: Folio Publishers, 1991) 276.

[33] O.A. Adewole, and O.G. Adebola, "Collective bargaining as a strategy for industrial Conflict Management in Nigeria" *Journal for Research in National Development,* 2010, Vol. 8, n. 1, 326-339.

[34] 212.

It must be stated that CB is different than consultation. The former differs from the latter because the element of negotiation and the outcome thereof is a product of compromise between the parties, while consultation is merely an opinion poll by an employer to enable decision making on issue(s)-less negotiation.[35] When CB leads to CA, it modifies—rather than replaces—the individual contract of employment because it is not the essence of the employer-employee relationship. From the definition of CB above, certain facts are apparent. One of these is that collective bargaining promotes industrial relations by aiding industrial harmony where it is creatively deployed and explored with outmost sincerity by the parties.[36] Regarding involved parties, CB takes place between employees, their representatives, or a trade union on one hand and an employer or an employer association on the other.[37] Collective bargaining requires that parties deal with each other with open and fair mind and sincerely commit to overcome any obstacle between them with the goal being a stabilized and harmonious employer-employee relationship. It brings matters within the joint regulation of management (employer) and labor (trade union/employees' representatives), which otherwise falls within the prerogative powers of management/capital. Moreover, if CB does not ultimately create equality of bargaining power between an employer and employees, it diminishes the managerial powers of the employer in terms of unilaterally determining terms and conditions of employment and welfare issues.[38] CB in a way gives the employees a sense of belonging elevating them to stakeholders in the enterprise which in turn, enhances their commitment and impacts the overall growth and fortune of the concerned enterprise hence, it should be encouraged and creatively explored with transparency for optimal benefit.

Successful CB has some prerequisites. Pluralism and freedom of association is important. Acceptance of pressure from groups with diverse interests in a political system with which the government/employers can utilize to create dialogue and make compromise via concession is important. An employer (private/public) must accept employee's

[35] E.E. Uvieghara, *Labour Law in Nigeria* (Lagos and Oxford: Malthouse Press Ltd, 2001) 388.

[36] C.I. Igbokwe, "Collective Bargaining as a catalyst to Industrial Harmony in Nigeria's Public Service. South East Public Service in perspective" *Journal of Policy and Development Studies,* 2024, Vol. 15, n. 2. 283-301.

[37] S.O. Koyonda, "Enforcement of Collective Agreements in Nigeria: Need for Legislative Intervention"
Nigerian Law and Practice Journal, 1999, vol. 3, n. 2, 37.

[38] V. Chukwuma, *B.P.E. v Dangote Cement Plc: The Enforceability of Unincorporated Collective Agreement in Nigeria, in University of Lagos Law Review,* 2021, vol. 4, n. 2, 257.

bargaining necessity through their union/association that furthers their interests. Furthermore, the employer must recognize trade unions as a bargaining agent. Aligned to this ideology, section 40 of the CFRN, 1999 as well as section 2(1) of the Trade Unions Act, 2004 affirm these prerequisites by recognizing the right of pluralism and freedom of association. Moreover, observance of agreements reached at the end of bargaining is a careful subject for the credibility of CB. When involved parties fail to be honorable because only their agreement is their bond, CB is less effective and less recommended. Unfortunately, the government of Nigeria as an employer, has often taken undue advantage of CB as a diversionary and dilatory tactics against employee demands instead of exploring resolution. A successful CB requires the support of labor administration authorities, to make available the necessary climate for bargaining, to restrict support for a party in breach of agreements reached from CB, to provide remedial process for settlement of disputes that might arise from the bargaining process, and as far as practicable, secure the observance of any agreement reached.[39] Good faith is an indispensable prerequisite for effective and efficient bargaining. It implies that parties would come to the bargaining table transparent and committed to the success of the process by being willing to make necessary and reasonable compromises aimed at settling the dispute.[40] Involved parties must transparently discuss and settle both procedural and substantive issues raised from CB. There is also need for proper internal communication, which requires the management and union to keep their managers and members respectively well-informed about the process. A lack of proper communication and information can lead to misunderstanding, ultimately disrupting bargaining and leads to industrial dispute.[41]

3. Enforceability of Collective Agreement at Common Law and Statutes in Nigeria

Upon the occurrence of an industrial dispute, employees—via their representatives or union—often engage with employers through CB. Whenever CB is deployed, the natural expectation is that, after

[39] S. Ajayi, "Collective Bargaining as a tool for Industrial Harmony and improved Productivity in Nigeria Banking Sector,*Academia*, 2020, Vol. 5, n. 2, 1-7.

[40] T. Fashoyin, *Industrial Relations in Nigeria* (Ibadan: Longman Nigeria Limited, 1992), 103.

[41] RM. Olulu, S. Alor and F. Udeorah, 'The Principle of Collective Bargaining in Nigeria and the International Labour Organization (ILO) Standards' *International Journal of Research and Innovation in Social Science,* 2018, Vol. 11, n. 4, 29.

negotiation, a compromise will be reached via settlement of the dispute. Thus, CA is the product of a successful CB, containing the position reached by the bargainers in settlement of the dispute. This part of the paper examines the enforceability of CA under common law and statute as it is applicable in Nigeria.

Before further analysis, the meaning of CA and its nuances deserves an ample articulation. The Trade Disputes Act, 2004[42] defined a CA as any agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between an employer, a group of employers, one or more trade unions, organizations representing workers, or the duly appointed representative of any body of workers.[43] By this definition, the parties involved in a CA is the trade union (on behalf of the employees) and the employer's trade union(s). The International Labor Organization (ILO) via Article 2 of the Convention Concerning the Promotion of Collective Bargaining[44] defined CA as agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers, or one or more employers' organizations on the one hand. On the other, one or more representative workers' organizations, or, in the absence of such organizations, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulations shall be involved.

The Nigerian Court of Appeal in *Kwara State Polytechnic v. Adetilo*[45] defined CA as any agreement in writing for settlement of disputes relating to terms of employment and physical condition of work conducted between an employer, group of employers, representative of employers on the one hand and one or more trade unions or organizations representing workers, or the duly appointed representative of any body of workers, on the other hand. This definition, which is materially similar to the ones under the various Acts mentioned above, makes it clear that a CA must be in writing and must relate to a settlement of disputes dealing with terms and conditions of employment or the physical conditions of work. It is reached between an employer(s) or their group with a trade union of workers for and on behalf of the concerned workers, who are ultimately

[42] Trade Disputes Act, Cap. T8 Laws of the Federation of Nigeria, 2004.
[43] This definition is strikingly similar with the definition under the National Industrial Court Act, 2006, Labour Act, 2004.
[44] ILO Convention Concerning the Promotion of Collective Bargaining No. 154 of 1981
[45] [2007] 15 NWLR (Pt. 1056) 42 at 48-50.

the beneficiary of the settlement. For Odunaiya,[46] CA refers to any agreement that settles disputes relating to the terms of employment and physical conditions of work concluded between an employer or a group of employers and one or more trade unions or organizations representing workers. By the foregoing, the existence of an employer-employee relationship is the basis upon which a CA can be reached as a result of CB. It should be noted that a CA is of two forms: a procedural and a substantive agreement. The procedural agreement deals with the procedure for reaching the substantive agreement; that is the basic rules and procedure that enable smooth negotiation of the substantive issue that constitute substantive agreement. The substantive agreements, however, are concerned with the substantive subject matter for bargaining and pertain to the terms and conditions of employment.[47]

Within common law, CA are regarded as unenforceable and therefore, non-justiciable like every other "domestic or gentleman" agreement.[48] This is the case, despite the fact CA is the product of painstaking and thoroughly structured negotiation between the involved parties aimed at settling a trade dispute. The rationale for this paradox of agreement without agreement is that CA, unlike conventional contractual agreement, lacks the mandatory element of intention to create legal relations from the time the involved parties chose to bargain.[49] Common law considers CA to be "gentleman's agreement" which is only binding in honor and not through court action.[50] To stress the importance of the requirement of intention to create legal relations for an agreement to be binding and thus enforceable, Lord Stowell in *Dalrymble v. Dalrymble*[51] state that an agreement "must not be mere matters of pleasantry and badinage, never intended by the parties to have any serious effect whatsoever." Aside the advanced reason of lack of intention to create legal relations, lack of privity of contract in CB which results in a CA is another reason for the

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[46] V.A. Odunaiya, *Law and Practice of Industrial Relations in Nigeria*, (Lagos: Passfield Publishers, 2006)
325.

[47] E.Q. Kelsey, C. Obinuchi and S.P. Johnbull, "An Appraisal on the Status of Collective Agreement in the Nigerian Labour and Industrial law" *Nnamdi Azikiwe University Journal of Commercial and Property Law*, 2022, Vol. 9, n. 4, 118-138.

[48] V. Iwunze, "The General Unenforceability of Collective Agreements under Nigerian Labour Jurisprudence: The Paradox of Agreement without Agreement" *International Journal of Advanced Legal Studies and Governance,* 2013, Vol. 4, No. 3, 29.

[49] *UBN v Edet* [1993] 4 NWLR (Pt 287) 288; *ACB v Nbisike* [1995] 8 NWLR (Pt 416) 75.

[50] *Ford Motor Co. Ltd. v. Amalgamated Union of Engineering and Foundary Workers* (1969) 1 WLR 339.

[51] (1811) 2 Hag. Con. 5 at 105.

lack of bindingness and non-enforceability of CA under Nigerian law. The contract of employment is between the individual employee and the employer, but the CB process and the resulting agreement is usually between a trade union for and on behalf of the workers and the employer or employer's unions. An individual employee, not being a party to the agreement, is prevented from enforcing CA at common law.[52] The Nigerian court in *New Nigeria Bank v. Egun*[53] held that in the absence of privity of contract between the respondent employee and the appellant employer, the respondent could not claim under a CA between his union and the appellant. As ridiculous and vexatious as this sounds particularly when the process of CB is considered, this is the position the law has taken. In fact, this position is an anachronistic ingraining of the obnoxious and degrading common law capital superiority mentality that made employment contract to be described as "master-servant" relationship. Of course, a servant is perpetually subservient to the master in all ramification and having an agreement, is considered an affront. Unsurprisingly, workers had little or no value under the operation of common law which was imported to Nigeria vial colonialism and its strong hold, remained even after the inglorious exit of the British.

Nigeria is a common law jurisdiction, and it is expected that the common law position is applicable. Thus, the common law position on the status and enforceability of CA is recognized in Nigeria as amplified in a plethora of cases[54] especially *Union Bank of Nigeria Ltd. v Edet.*[55] On the justification of lack of privity of contract as the reason for the non-enforceability of CA, in *Osoh v Unity Bank Plc*[56] the Supreme Court of Nigeria stated *ex cathedra* thus: "it is on the principle of want of privity of contract that the courts have showed great reluctance to enforcing collective agreements between collective parties, at the instance of an employee(s) …" thereby reinforcing and approving the now anachronistic common law position which has by reasons of necessity become uncommon. In *Nigeria Arab Bank Ltd. v. Shuaibu*[57] the court invigorated the position that "collective agreement is at best a gentleman's agreement, an extra-legal document devoid of sanction being a product of trade

[52] *Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge Ltd.* (1915) A. C. 847.
[53] (2011) 7 NWLR (Pt. 711) 1; *Union Bank of Nigeria Limited v. Edet* (1993) 4 NWLR 288.
[54] *Chukwumah v. Shell Petroleum Nigeria Limited* (1993) 4 NWLR (pt. 289) 512; *Abalogu v. Shell Petroleum Nigeria Limited* (1999) 8 NWLR (pt. 613) 12; *New Nigeria Bank Plc v. Osoh* (2001) 133 NWLR (pt. 729) 232.
[55] (1993) 4 NWLR, (Pt. 287) 288.
[56] [2001] 13 NWLR (Part 729) 232.
[57] [1991] 4 NWLR (Pt. 186) 450.

union pressure."[58] One will curiously wonder why in the interest of justice and purposive progressive adjudication necessitating by local circumstances, the Nigerian court did not think it necessary to regard the bindingness and enforceability of CA as an exception to the doctrine of privity of contract. The impact of this reverse position to ensuring industrial harmony which is a dire need in Nigeria cannot be overemphasised but regrettably, the court continued in inglorious homage to colonial servitude fueled by common law and denigration of labour.

The courts in Nigeria have carved out exceptions to cushion the hardship foisted by the common law position that CA are not binding and enforceable but mere gentleman agreement binding in honour.[59] Thus, where either expressly or by necessary implication a CA has been incorporated into the terms and condition of an individual contract of employment of an employee, it becomes binding and enforceable between the employee(s) and their employer.[60] This was the position taken by the Court of Appeal per Chukwuma-Eneh, JCA (as he then was) in *The Registered Trustees of the Planned Parenthood Federation of Nigeria & Anor. v. Dr. Jimmy Shogbola*.[61] A CA is said to be expressly incorporate where the agreement clearly and unequivocally states so. It is said to have been incorporated by necessary implication when there is ample evidence to show that both parties have—since it was reached—taken steps that are consistent with the agreement despite absence of express agreement.[62] Such reliance short of an express agreement based on the doctrine of estoppel, parties are estopped from maintaining the position that such a CA is nonbinding and therefore unenforceable.[63] Knowledge of the indirect or conductual incorporation by a party as opposed to benefiting from the incorporation is all that is required for this exception to become operational.

Basically, when the custom and usages of an industry have absorbed a CA over time, it becomes binding and enforceable despite not have been expressly stated.[64] Thus if either party, especially the employer, has taken

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[58] *ACB v. Nwodike* [1996] 4 NWLR (Pt. 443) 470 at 483.

[59] E.A. Kene, "Collective Agreements and their Legal Status in Nigeria: The Current Trends" *Benue State University Law Journal,* 2021, Vol. 10, 30-49, *Nigerian Society of Engineers v Ozah* (2015) 6 NWLR (Pt. 1454) 76 at 94 B-D (CA); *Texaco (Nig.) Plc.* v *Kehinde* (2001) 6 NWLR (Pt. 708) 244; *Rector, Kwara Poly v. Adefila* (2007) 15 NWLR (Pt. 1056) 86 H- A.

[60] *Texaco Nigeria v. Kehinde* [2002] FWLR (Pt. 94) 143.

[61] (2005) I WRN 15 at 167.

[62] *Cooperative & Commerce Bank (Nig.) Ltd. v. Okonkwo* [2001] 15 NWLR (Pt. 735) 114.

[63] *Unity Bank Plc* v *Owie* (2011) 5NWLR (Pt.1240) 273.

[64] In relation to this it must be noted that despite this paradigm shift ingrained in progressive adjudication, surprisingly, the courts have not always approved of it as seen

benefit from the CA it is deemed incorporated into the employment contract between the concerned employee(s) and that employer.[65] Although a CA is reached between a registered trade union and an employer or association of employers, it becomes enforceable by the individual employee once it has been incorporated because the trade union bargained and reached the agreement for and on behalf of the members who formed it.[66] In fact, by this token and knowledge of the representative capacity of the employee through the union by the employer, ought to have persuaded the Nigerian courts long ago to abandon the anachronistic common law position which is slavish, slavery, and undignifying allegiance to imperialism, grandstanding and promotion of subservience against the employee.

Aside the above exception, it should be noted that under section 3(1) of the Trade Disputes Act, 2004, parties in a CA are obligated to deposit at least three copies of the agreement with the Minister for Labor, Employment and Productivity (MLEP) who shall then determine whether the agreement is binding and enforceable either in whole or part. Thus, in line with the foregoing, once the MLEP exercises this power by an instrument under their hand, a CA under scrutiny becomes automatically binding and enforceable between the parties to the extent specified in the instrument. As plausible as this is, one must question the propriety of the power vested in the MLEP to determine the enforceability or otherwise of a CA. This is so bearing in mind that the MLEP is an appointee of the Federal Government and where the government is a party to such an agreement, the neutrality of the Minister remains questionable if not unreasonable as argued by Eyongndi.[67] At present, the impracticality of a government functionary acting in a way and manner that does not favour the government is extremely difficult if not impossible. It is a situation of he who pays the piper, dictates the tune. In fact, the exercise of this power can endanger industrial harmony and make the potency of CB and CA in

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in a few cases such as *African Continental Bank Plc v Nbisike* (1995) 15 NWLR (Pt. 416) 725 where both parties relied on the same collective agreement and the Court of Appeal, per Edozie J.C.A. held that the contract was not enforceable. The same disturbing and disappointing outcome was reached in *African Nigeria Plc v Osisanya* (2001) 1 NWLR (Pt 642) 598 where both the employer and the employee relied on the collective agreement but the court held that the dismissal procedure contained in the collective agreement was not binding on the employee as the collective agreement was not justiciable.

[65] *Adegboyega v Barclays Bank of Nigeria* (1977) 3 CCHCJ 497 per Akibo Savage, J.

[66] *Kwara State Polytechnic v. Adetilo & Ors.* [2007] 15 NWLR (Pt. 1056) 42 at 48.-50.

[67] D.T. Eyongndi, "The Powers, Functions and Role of the Minister of Labour and Productivity in the Settlement of Trade Disputes in Nigeria: An Analysis" *University of Jos Journal of Law and Constitutional Practice,* 2016, Vol. 9, 75-90.

resolving trade dispute to be diminished. In fact, the rule against bias which is concerned more not about the actual occurrence of bias but the thought of it by ordinary members of the society, stands against the powers of the MLEP to determine the extent of the bindingness and enforceability of CA in Nigeria. In fact, where the MLEP exercises the power honestly and fairly, the possibility that the same might be construed by the public exist because his/her neutrality unlike an impartial umpire like the court, is not guaranteed.

4. ILO Prescription on the Legal Status of Collective Agreement and the NICN's Stance

The NICN is a specialized court that has gone through a tumultuous journey of constitutional and jurisdictional metamorphosis.[68] After its creation under section 20 of the Trade Disputes Decree No. 7 of 1976,[69] the purported exclusive jurisdiction and constitutionality of the NICN had raised serious controversies;[70] mostly due to its omission under the Constitution of the Federal Republic of Nigeria, 1979 and 1999 respectively.[71] The attempt at curing this omission by the enactment of the National Industrial Court Act, 2006 (NIC Act, 2006), proved unhelpful as the same issues persisted, as noted by Eyongndi and Onu.[72] To permanently address this quagmire, the CFRN (Third Alteration) Act,

[68] A.E. Akeredolu, and D.T. Eyongndi, "Jurisdiction of the National Industrial Court under the Nigerian Constitution Third Alteration Act and Selected Statutes: Any Usurpation?" *The Gravitas Review of Business and Property Law, University of Lagos* 2019, Vol. 10, n. 1, 1-16.

[69] By virtue of Section 274 of the 1979 Constitution (which section 315 of the 1999 Constitution is its equivalent), the Trade Disputes Decree being an existing law, metamorphosed into an Act of the National Assembly, renamed the Trade Disputes Act, 1976.

[70] *Incorporated Trustees of Independent Petroleum Association v Alhaji Ali Abdulrahman Himma & Ors* Suit No. FHC/ABJ/CS/313/2004 ruling delivered on 23 January 2004; *Western Steel Workers Ltd v Iron and Steel Workers Union of Nigeria (No. 2)* [1987] 1 NWLR (Part 49) [284] – [303]; *Kalango & Ors v Dokubo & Ors* [1987] 1 NWLR (Part 49) 248; [2004] NLLR (Part 1) 180; *National Union of Road Transport Workers v Ogbodo* [1998] 2 NWLR (Part 537) [189] - [191]. See also *New Nigeria Bank Plc & Anor v AM Osoh & 4 Ors.* [2001] 13 NWLR (Part 729) 232.

[71] J.O.A. Akintayo, and D.T. Eyongndi, 'The Supreme Court of Nigeria Decision in *Skye Bank Ltd v. Victor Inv*u: Matters Arising' *The Gravitas Review of Business and Property Law*, 2018, Vol. 9, n. 3, 110.

[72] D.T. Eyongndi, and K.O.N. Onu, "A Comparative Legal Appraisal of "Triangular Employment" Practice: Some Lessons for Nigeria" *Indonesian Journal of International and Comparative Law,* 2022, Vol. 9, 181-207.

2010 was enacted.

At present, the NICN's existence is pursuant to section 253A (1) of the CFRN (Third Alteration) Act, 2010. By virtue of section 254C (1), the NICN has and exercises exclusive original civil jurisdiction over labor, employment, and allied matters to the exclusion of any other court in Nigeria. While the NICN is a court of equal status with the State High Court, Federal High Court and High Court of the Federal Capital Territory, Abuja, it does not have coordinate jurisdiction with these sister superior courts but exclusive original civil jurisdiction. The NICN, under the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 experienced a radical and phenomenal rebirth with far reaching effects on Nigeria's labor and employment jurisprudence, containing potential to positively revolutionize labor and employment adjudication beyond the undesirable shackles of now uncommon common law. Thus, Section 254C (1) (j) of the (Third Alteration) Act, 2010 empowers the NICN to exercise exclusive jurisdiction over civil causes and matters relating to the determination of any question as to the interpretation and application of any CA. Section 254C (2) empowers the NICN to apply international conventions, treaty, or protocol which Nigeria has ratified relating to labor, employment, workplace, industrial relations, etc. Thus, in the interpretation and application of collective bargaining, the NICN by virtue of section 245C (1) (f) (h) of the (Third Alteration) Act, 2010 is empowered to apply international best practice and labor standards which is found in ILO Conventions, Recommendations and statutes/decisions of courts of jurisdictions with a more progressive and advanced labor and employment practices.

The effect of the provisions on the jurisdiction and powers of the NICN on adoption and application of international best practice and labor standards is interestingly far-reaching. By this provision, the NICN, in adjudicating over any of the species or affiliates of labor and employment matters mentioned under section 254C (1) (j) of the (Third Alteration) Act, 2010 and is constitutionally permitted to apply unratified conventions, protocols, treaties (and invariably international labor standards and best practices in these legal instruments) together with domestic laws in settling such disputes. This provision is a leeway for the NICN to internationalize and align Nigeria's substantive and adjudicatory labor and employment jurisprudence with international minimum standards.[73] For too long, Nigerian labor and employment law and

[73] B. Gernigon, A. Odero, H. Guido, *ILO Principles Concerning Collective bargaining, in International Labour Law Review,* 2000, vol. 139 n.1, 34.

practice was held down by obnoxious and redundant uncommon common law axioms which have created unquantifiable hardship from multiple areas, such as issues of damages for wrongful termination of employment[74] and termination of master-servant employment for any reason or no reason at all.[75] These common law perspectives have only cheapened labor while unjustifiably protecting capital's interest reinforcing the master-servant mien of the employers of those day and the slave position of the worker.

Thus, Nigeria is a member of the ILO and a signatory to the ILO Convention 87, Collective Agreements Recommendation No. 91 of 1951, Collective Bargaining Convention No. 154 of 1981, and the Right to Organize and Collective Bargaining Convention No. 98 of 1949.[76] The international best practice and international labor standard in relation to CB based on ILO Conventions 87 and 98 and Article 3 of the ILO–Collective Agreement Recommendation, 1951 (No.91)[77] is that, once reached, a CA is binding and enforceable between the signatories and their privies without need for any other step whatsoever to be taken.[78] Pursuant to this international minimum prescription, the position of the ILO Freedom of Association Committee[79] is that failure to enforce a CA is a breach of the right to CB and honest bargaining.[80] The logical and legal implication of the foregoing position is that, based on section 254C (1) (f) (h) (j), and (2) of the (Third Alteration) 2010, applying the ILO prescription in Article 3 of the ILO Collective Agreement Recommendation, 1951, the anachronistic common law position that CA is merely a gentleman's agreement; only bound by honor and made enforceable only when incorporated directly or indirectly into the individual contract of employment, has become redundant and

[74] *Obanye v. Union Bank of Nigeria* [2018] 17 NWLR (Pt. 1648) 375.
[75] *Chukwuma v. Shell Petroleum Development Company* [1993] 4 NWLR (Pt. 298) 512.
[76] ILO Conventions 87 and 98 was ratified by Nigeria on the 17th of October, 1960.
[77] H. Dunning, *The Origins of Convention No. 87 on freedom of association and the right to organise International, Labour Review* 1998 vol. 137 n. 2, 149-163.
[78] N. Valticos *The ILO: A retrospective and future view, in International Labour Review,* 1996, vol. 135, n. 3-4, 473.
[79] The Committee on Freedom of Association is a tripartite body set up in 1951 by the Governing Body of the ILO to deal with cases relating to freedom of association and collective bargaining. the Committee on Freedom of Association has built up a body of principles on freedom of association and collective bargaining, based on the provisions of the Constitution of the ILO and of the relevant Conventions
[80] ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association, (sixth edition) 2018 para.1340, see also paras. 1334-1336.

inoperative in Nigeria.[81] This to say the least, is breath of fresh air after an excruciatingly choking experience under the brutish reign of common law to the chagrin of Nigerian employees.

It is welcoming to note that the NICN has been proactively cognizant and has given vent to the foregoing position in some cases, as will be seen. In *Mr. Valentine Ikechukwu Chiazor v. Union Bank of Nigeria Plc.*[82] the claimant relied on the CAs between the Nigerian Employers Association of Banks, Insurance and Allied Institutions (NEABIAI), the Association of Senior Staff of Banks, and Insurance and Financial Institutions (ASSBIFI). He alleged that the defendant failed to observe the provisions of the various CAs before dismissing him. The defendant countered that the claimant cannot rely on the CAs as they do not form part of the contract with the defendant and thus, are not binding on the defendant since, according to the defendant, CAs are generally not binding and not enforceable. The defendant further argued that since the CA has not been expressly incorporated into the claimant's contract of employment and he had not shown he is a member of the trade union that reached the agreement with the defendant, he cannot take any benefit therefrom. The NICN sharply rejected the defendant's argument based on the ILO prescription anchored on Section 245C (1) (f) (h) and (2) of the CFRN (Third Alteration) Act, 2010.[83] This same reasoning and conclusion was reached by the NICN in *The Management of Compagnie General De Geophhysique (Nig) Ltd v PENGASSAN.*[84] In *Lijoka Olaniyi Dennis & 1677 Ors. v. First Franchise Ltd. & Anor,*[85] the application of a CA called the Ministerial agreement was also challenged by the Counsel as the defendant relied on the argument of its non-enforceability because it violates the privity of contract rule, which under common law renders a collective agreement nonbinding and unenforceable. The NICN, pursuant to the aforementioned provisions of the Constitution (Third Alteration) Act, 2010, held that the argument was untenable as it was dead on arrival.

The argument that CA, once reached, is binding and enforceable between the signatories and those on whose behalf it was reached has been

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[81] F. Nwoke, *Rethinking the Enforceability of Collective Agreements in Nigeria, in Modern Practice Journal of Finance and Investment Law,* 2000, vol. 4, n. 4, 353.

[82] Unreported Suit No. NICN/LA/122/2014 judgment delivered on July 12, 2016.

[83] *Samson Kehinde Akindoyin v. Union Bank of Nigeria Plc* Suit No. NICN/LA/308/2013 delivered on 15th April 2015.

[84] Unreported Suit No NICN/ABJ172/2014 the judgment of which was delivered on 17th March, 2016 p.17.

[85] Unreported Suit No. NICN/LA/526/2013 judgment delivered on 6th February 2019 (2019) 2 NICLR 27.

graphically captured by the NICN in *Enyinnaya Amugo v Sky Bank Plc*[86] Kanyip, J (as he then was). Considering the profoundness of the dictum, we take the opportunity to reproduce *verbatim ad literatim* the pronouncement of the Court thus:

> I take the liberty to reiterate (repeat) the stance this court took in *Valentine*. In both cases (*Valentine and Osoh*), the cause of action arose long before the Third Alteration to the 1999 Constitution was promulgated. The state of the law under which these cases were decided is certainly different from that under which the instance case is to be decided. The law as to the applicability of collective agreements when these cases were filed is certainly not the same with the law in that regard today under the Third Alteration to the 1999 Constitution. Today, under section 254C (1) (j) (i), this court has jurisdiction in terms of the interpretation and application of any collective agreement. It is needless that a court has jurisdiction to interpret and apply a collective agreement if the intendment of the law maker is not that the collective agreement is to be binding as such. It should be noted that under section 7(1(c)(i) of the NIC Act 2006, the jurisdiction of this court was only in terms of interpretation of collective agreement; the issue of application was not included therein. So when the Third Alteration to the 1999 Constitution added application of collective agreement to the fray, this must mean that the law maker deliberately intended collective agreements to be enforceable and binding. I so hold.

In agreement with the above position, in *Ikechukwu Odigidawu v. Tecon Oil Services Nigeria Ltd*[87] the Lagos Division of the NICN presided by Oji J reaffirmed the position that from 2010 when the Constitution (Third Alteration) Act, 2010 came into force, the position that CA is only enforceable where it has been incorporated into the individual contract of employment of the employee on whose behalf the union reached the agreement is no longer tenable. The position that CA is only binding in honor being a gentleman's agreement originates from common law and the assuaging position that a CA only becomes binding when incorporated into the individual contract of employment of the employee is judicial amelioration of the common law hardship. This exception, was a judicial leeway to the rigidity and harshness of common law unexplainable, irreconcilable, pedestrian position and the unquantifiable hardship it imposed on vulnerable yet, crushed workers who had to groan

[86] Unreported Suit No NICN/LA/258/2016 the judgment of which was delivered on 13th March, 2018.

[87] Unreported Suit No: NICN/LA/29/2017 Judgment delivered 25th March 2021.

and endure nonetheless. Thus, the pristine position of the law is that, equity as a system of law, emerged with the sole aim of cushioning or ameliorating the hardship of common law and it is from this perspective that section 254C(1) (f) (h) and (2) of the is viewed.[88] Interestingly, section 7(1(c) (i) of the NIC Act 2006, Sections 245C (1) (f) (h) and (2) of the Constitution (Third Alteration) Act, 2010 are not just equitable ameliorants of the unjustifiable rigid and harsh common law position but statutory and constitutional ameliorants standing over and above equity to do justice at all cost.[89] In fact, these sections of the NIC Act, 2006 and the Constitution (Third Alteration) Act, 2010 are a statutory amplification of the maxim that fiat justicia ruat caelum and this time around, it is the common law that is gladly falling. To this end, it is a matter of end of discussion to the common law position which has been a source of protracted industrial unrest in Nigeria. This is easy to agree with especially within the tertiary education sector through the quagmire of Academic Staff Union of Universities (ASUU) strike which has become an almost annual ritual until recent times ending at issuance of strike notice or warning strike by ASUU. The reason is because the Federal Government of Nigeria has consistently refused to implement the CA reached with ASUU in 2009 despite several review for easier implementation and ASUU could not approach the court to enforce the same despite the fact that the review had be done after the Constitution (Third Alteration) Act, 2010 had come into force.

Based on the findings in the preceding section, it is safe to assert that there is a new dawn in the bindingness and enforceability of CA in Nigeria ushered in by the NICN through ILO prescription encapsulated in section 254C (1) (f) (h) (j), and (2) of the (Third Alteration) 2010. It is hoped that the labor laws (e.g. Labor Act, Trade Disputes Act, and Trade Unions Act), would be amended to incorporate the aforementioned position to give it express and unambiguous statutory fortification beyond the pronouncement of the court.

Notwithstanding the laudability of the NICN stance, there is the legitimate apprehension that being a court of first instance, unless and until its position is affirmed by the Court of Appeal whose determination on civil appeals from the decision of the NICN is final, it is not yet *uhuru*. At present, there is no decision of the Court of Appeal on the NICN pronouncement on the provisions of section 7(1(c) (i) of the NIC Act

[88] *Aghata N. Onuorah v. Access Bank Plc*. (2015) 55 NLLR (Part 186) 17.

[89] *Samson Kehinde Akindoyin v. Union Bank of Nigeria Plc* Suit No. NICN/LA/308/2013 delivered on 15th April 2015.

2006, and sections 245C (1) (f) (h) and (2) of the Constitution (Third Alteration) Act, 2010. One is hopeful that, judging from some decisions of the Court of Appeal on novel and pace setting decisions of the NICN, such as *Sahara Energy Resources Limited v. Mrs Olawunmi Oyebola,*[90] this NICN's laudable position highlighted above will not be set aside on appeal. In this case (i.e. the *Oyebola'S Case*) the NICN had awarded two year salary as damages for wrongful termination of the employment of the employee contrary to common law prescription applicable to the parties.[91] The appellant appealed against the award, contending that the law is that in cases of wrongful termination of employment, the amount of damages to be awarded is the monetary equivalent of the period of notice required for the termination of the employment as provided for under common law. The Court of Appeal, while recognizing this common law position, held that in appropriate cases where there is wrongful termination of employment, the amount of damages to be and would be awarded will be more than what was agreed by the parties hence the award of two year salary as damages was upheld as fair and justified under the circumstances as the termination impugned the character of the respondent. This position, which aligned with and upheld the decision of the NICN, introduced a paradigm shift in the jurisprudence of measurement of amount of damages for wrongful termination of employment in Nigeria as argued by Abangwu, Oyibodoro, Eyongndi, Shaba and Opara[92] Thus, bearing this in mind, we are confident that the Court of Appeal will graciously trod this path regarding the enforceability of CA espoused by the NICN.

The position taken by the NICN in the cases above in relation to section 7(1(c) (i) of the NIC Act 2006, sections 245C (1) (f) (h) and (2) of the Constitution (Third Alteration) Act, 2010, like it did earlier in *Aloysius v Diamond Bank Plc*[93] in the words of Eyongndi and Imosemi,[94] is a welcome development. This has aligned the law and practice of enforceability of

[90] (2020) LPELR-51806(CA).

[91] *Isheno v Julius Berger Nig. Plc* [2012] 2 NLLR (41) 127, Oforishe *v N.G. Co. Ltd* [2018] 2 NWLR (Pt. 1602) 35; *Olaniyan & Ors. v. UNILAG* [1985] 2 NWLR (Pt. 9) 599.

[92] N.E. Abangwu, U.G. Oyibodoro, D.T. Eyongndi, S. Shaba, and F.N. Opara, "Measurement of Quantum of Damages for Wrongful Termination of Employment in Nigeria: Gleaning Lessons from Ghana and Malaysia" *Lentera Hukum Journal* 2025, vol. 12, n. 1**,** 62-93.

[93] [2015] 58 N.L.L.R. (Pt. 199) 92.

[94] D.T. Eyongndi, and A. Imosemi, "Aloysius v. Diamond Bank Plc: Opening a New Vista on Security of Employment through the Application of International Labour Organisation Conventions" *African Journal of International and Comparative Law,* 2023, Vol. 31, n.1 356-376.

CA in Nigeria with international best practices. Despite the untenable reasons advanced under the common law for the non-bindingness and invariability, along with the non-enforceability of CA, one cannot stop but wonder why the parties would agree to bargain if the product would not bind them automatically once reached. The paradox of agreement without an agreement is not only bizarre, but rather unfortunate considering its negative implications and impacts on employment and labor relations particularly entrenchment of industrial harmony.

Extrapolating from the above analysis, one thing is clear: the NICN through proactive adjudication has given judicial approval to sections 7(1(c) (i) of the NIC Act 2006, and sections 245C (1) (f) (h) and (2) of the Constitution (Third Alteration) Act, 2010. By this act, the law and practice on bindingness and enforceability of CA in Nigeria is aligned with international standard. No doubt, the ILO is the universal labor organization that sets minimum global best practices and standards in labor and employment relations. Any ILO member State whose law and practice falls short on any matter which the ILO has prescribed a minimum benchmark is regarded as operating beneath ideal and failing acceptable parameters relating to its minimum core obligation expected of all responsible members.

In Nigeria, many industrial actions especially within the public sector are traceable to the non-implementation of CA reached with workers through their union(s) by the government. Regrettably, the non-implementation is usually hinged on the anachronistic and infantile untenable reason that CA are not automatically enforceable unless under limited conditions which the government will never accede to. Rather, successive Nigerian government (both federal and at the State level) would rather enter into endless renegotiation of CA rather than ensure its implementation. Regarding organized labor issues and the usual mandatory fourteen days strike notice, the government feigns ignorance and a few days to the expiration of such notice, instead apply to the NICN for an *ex parte* injunction thus restraining workers from proceeding with a strike. It is rather alarming that the NICN has been inclined to and has been granting such sought orders against labor which effectively and carelessly scuttles such planned industrial actions. Given the penchant of Nigerian government at renegotiating and general reluctance at implementing agreements entered with organized labor, one wonders why the NICN cannot or has failed to direct the government to put labor on notice for parties to argue the merit or otherwise of granting such order sought by the government. While workers in Nigeria continue to grapple with the government's insincerity towards collective bargaining and the resultant

CA when its enforceability takes center stage, it would seem that this unhealthy situation would soon become a thing of the past given the development ushered in by the NICN regarding the status and enforceability of CA in Nigeria pursuant to the Constitution (Third Alteration) Act 2010. If anyone is going to the bargaining table in the future, they will do so knowing that any agreement reached thereafter is binding and enforceable. In fact, the attitude with which parties will now approach the bargaining table will change.

Worthy of note is the fact that over the years, labor and employment relations in Nigeria has faced several challenges, with employees being the most affected. Ajayi and Eyongndi[95] have opined that several employees have had their employment terminated on account of HIV/AIDS positive status by their employers despite the prohibition of such termination. Aside the pains that accompanies job loss, the affected employees are exposed to stigmatization and its concomitant deprivation. Thus, decisions of the NICN such as the ones examined above which have counterbalanced the obsolete and uncommon common law prescription on the nature and enforceability of CA in Nigeria are welcome and gratifying. One can only anticipate that such ambitious and protectionist stances taken by the NICN will be given appellate approval by the Court of Appeal in the event of an appeal. The benefit of upholding the position of the NICN by the Court of Appeal in the event of an appeal includes but not limited to infusing trust in collective bargaining. If CA is enforceable, waste of resources (human, material and financial) can be prevented that are expended in the process of collective bargaining, thus standardizing and aligning Nigeria with international standards on the practice of collective bargaining and the resultant collective agreement. Also, the NICN's position if upheld by the Court of Appeal is capable of promoting industrial harmony through the enforcement of CA.

5. The Practice in some Selected Jurisdictions

The labor and employment relations practice of CB and the resultant CA is not limited to Nigeria. It is practiced in several jurisdictions including South Africa, Kenya, Ghana, and Zambia which are all countries in Africa with a common law background like Nigeria and are all developing nations with a conservative socio-political landscape. While Nigeria is the

[95] M.O. Ajayi, and DT Eyongndi, "Termination of Employment based on Employee's HIV Status: The Response of the National Industrial Court of Nigeria" 20(1) *Age of Human Rights Law Journal* (2023) Vol. 20, n. 1 205-224.

most populated black nation in Africa and the world with the fastest growing economy in West Africa Sub-region, South Africa would rank as the most developed and economically buoyant nation within the Southern Africa sub-region, with Kenya being the fastest developing economy in the East Africa-sub-region. Zambia on the other hand, is a developing nation; thus, these variables couple with their common law common denominator, makes making comparison between these jurisdictions justified. Even though, like Nigeria, common law prescription on the legal status and enforceability of CA was applicable in these jurisdictions, through proactive legislative action there has been a radical positive departure from the stiffen, rigid and harsh common law position on the legal status (bindingness). Enforceability of CA has grown in Ghana, South Africa, Kenya and Zambia. This section of the paper examines the law and practice of CA in these jurisdictions aimed at drawing lessons for Nigeria.

In Kenya, Section 57(1) and (2) of the Labor Relations Act, 2007 (LRA, 2007) empower registered trade unions to engage in CB to create a CA with an employer or group of employers.[96] The employer is duty bound to disclose vital information that will enable trade unions bargaining on behalf of its members to bargain in good faith. The information disclosed by the employer shall be treated with utmost confidentiality and shall not be disclosed to unauthorized persons. In fact, section 58(1) of the LRA, 2007 allows employees and employer groups/unions to conclude CA adopting any of the Alternative Dispute Resolution (ADR) mechanisms to be used in the resolution of any dispute that may subsequently occur. By virtue of section 59(1) thereof, a CA binds the parties to the agreement that all union employees employed by the employer, group of employers, or members of the employers' organization are included in an agreement's involved parties. It is also binding for employers who are or are becoming members of an employers' organization who is a party in the agreement, to the extent that the agreement relates to their employees. In fact, even persons who entered into CB on behalf of a trade union, but who subsequently left the trade union or their employment, are bound by a CA reached thereafter. The foregoing has been upheld by the Employment and Labor Relations Court in *Kenya Plantation & Agriculture Workers Union v. Coffee Research Foundation.*[97]

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[96] *A&B David, "Strength in Numbers: The way forward in Collective Bargaining Agreements" https://abdavid.com/strength-in-numbers-the-way-forward-in-collective-bargaining-agreements/ accessed 19 June, 2025.*

[97] (2014) eKLR.

In comparison to Nigeria, the scope of bindingness of a CA under Kenyan law is wider and plausible because in Nigeria only the signatories and persons on whose behalf the agreement was reached are countenanced either to enforce it or it be enforced against them. In Ghana, however, the scope goes beyond the immediate parties to the bargain and to those involved persons by affiliation or association.

By virtue of section 59(5), LRA, 2007, a CA becomes enforceable and shall be implemented once it is registered by the Court and will become effective from the date agreed upon by the parties as was held by the Industrial Court in *Kenafric Industries Limited v. Bakery Confectionary Food Manufacturing and Allied Workers Union*.[98] It must be noted that paucity of funds by an employer do not justify postponement of the obligation to implement a CA as was held in *Kenya Union of Commercial Food and Allied Workers v Kenya National Library Service.*[99] By section 60(1) of the LRA, 2007, the parties are obligated to submit a CA for registration to the Industrial Court within fourteen days of its conclusion. It should be noted that, by the clear phraseology of section 59(5) of the LRA 2007, enforceability and implementation of a CA are systematically different, and the rights inure at different times. At the time a CA is concluded, its bindingness and enforceability status attaches automatically as was held in *Ndege v. Steel Makers Ltd.*[100] The implementation of it only becomes legally possible upon registration. This position of the law and practice on enforceability of CA in Kenya is laudable.[101]

In Ghana, Part XII of the Ghana Labor Act No. 651, 2003 (GLA, 2003) deals with CA. Section 96 thereof, empowers a trade union on behalf of employees to engage in CB and conclude a CA with an employer or employer association. Negotiation during CB must be carried out in good faith and guided by total and comprehensive disclosure by both parties as provided for by section 97(1) of the GLA, 2003. All information disclosed during the negotiation shall be treated with utmost confidentiality by the party receiving the information except if it was made public. Parties in the negotiation shall not make false or fraudulent misrepresentations as to those matter to the negotiations. Section 105(1) thereof specifies the legal effect of a CA. Hence, a concluded CA shall apply to all workers of the class specified in the CB certificate issued by the Labor Officer.

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98 [2014] eKLR.

99 (2016) eKLR.

100 [2014] eKLR.

101 B.M. Musilli, "Challenges in Implementing and Enforcing Collective Bargaining Agreement" (Nairobi: The Kenyan Institute of Public Policy Research and Analysis, 2018) 17-20.

The provision of a CA relating to terms and condition of employment and personal obligations imposed on a worker/employer shall form—in part—the terms and conditions of employment between the parties.[102] Once reached, a CA becomes binding for the involved parties at the first instant for at least one year and the Chief Labor Officer has the power to extend the duration of the agreement. Thus, the common law position that a CA is only binding in honor is inapplicable in Ghana.[103]

In South Africa (SA), employees are permitted to engage their employer or association of employers in CB through their trade unions. Section 23 of the South African Labor Relations Act, 1995[104] (SA LRA, 1995) makes a CA binding between the signatories once reached, including their privies and workers who are not members of the trade union that reached the agreement, but it pertains to or/are captured therein. Section 199 of the SA LRA, 1995 states that an employment contract entered before or after a CA may not allow an employer to pay his workers remuneration less than what is stipulated in the CA. It further provides that any contract that purports to waive any collective agreement is invalid. The validity and enforceability of a CA is at once concluded. This affords employee ample protection and insulates collective bargaining from employer's shenanigans as seen in Nigeria.

In Zambia, section 71(3) (c) of the Zambian Industrial and Labor Relations Act, 1993[105] states that once a CA has been accepted by the Minister, it becomes binding between the employer and employee or between the parties. Thus, once a CA is concluded, there is no need for incorporation into the individual contract of employment of an employee for it to become binding and enforceable. All that is statutorily required is the approval of the Minister which is just an administrative act. The fact that the bindingness and invariably enforceability of a CA is contingent on the approval of the Minister even if styled as a mere administrative action, is not without legitimate concerns. In the event that the government is a party to a CA which favors the employee one cannot dismiss the apprehension of the reluctance of the Minister to fail or delay to act. Where there is a failure or delay on his part, what remedy is available to an aggrieved union? Also, why would a Union be subjected whether real or

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[102] Section 105(2) Ghana Labour Act, 651, 2003.

[103] A.H. Kwarteng, J. Bawa, K. Kwaku and T. Koduah "Improving Labour Laws in Ghana: An Analysis of Collective Bargaining Agreements" *Journal of Labour and Society,* 2024, Vol. 27, n. 1, 1-24.

[104] Labour Relations Act, No. 66 of 1995.

[105] Zambian Industrial and Labour Relations Act No. 27 of 1993, Cap 269 of the Laws of Zambia.

imaginary to think of the possibility of administrative frustration occasioned by the refusal of the Minister or have to expend material and financial resources post-agreement to effectuate an agreement? Is the Zambian courts inclined to award damages in favor of the union for cost incurred in getting the Minister to sanction a CA? This are genuine concerns that the position of the law in Zambia raises.

Regarding the bindingness and enforceability of a CA, there is a striking similarity on the position of the law in Ghana, Kenya, and Zambia to the effect that once reached, a CA, the signatories to it, and their privies are bound by its terms and conditions without any need for further action. Thus, a CA in these jurisdictions, unlike Nigeria, is a legally binding contract and not a mere "gentleman's agreement" only binding in honor. In South Africa, the bindingness and enforceability of a CA is automatically once reached between the parties and there is no requirement for sanctioning it by any administrative/executive action. Agreement registration with the court of labor officer/Minister of labor is required for it to become enforceable. This is a striking difference between the position of the law in South Africa on one hand and Ghana, Kenya, Zambia and Nigeria on the other where bindingness is fragmented from implementation. The position in South Africa is preferred as it ensure that the enforceability and implementation of a CA is not delayed due to post-agreement approval process either by the court, labor Officer, or Minister, and it also enhances the fidelity of the process and infuses confidence in the process of CB. Also, the law in these jurisdictions (i.e. Kenya, South Africa, Ghana and Zambia), just like in Nigeria, expressly empower employees and employers to engage in CB, meaning that the process has statutory recognition and does not occur merely as a matter of industrial practice. Of note, in the provision under South African law it states that any contract that purports to waive a CA or any part thereof is invalid and therefore unenforceable. This is to ensure that no party to a CA, especially the employer who by default and design wields more power, does not take undue advantage of the inequality of power, to circumvent a CA that favors the employees. Thus, to safeguard the integrity of a CA and the process of CB, Ghana, Kenya, Zambia and Nigeria should amend its laws to adopt the South Africa position which makes a CA automatically binding and enforceable once reached without any formality of approval by the court, labor officer, or minister. Also, the prohibition of using any contract to render either in part or full inapplicable a CA by the party thereto under South African law should be adopted by these other jurisdictions bearing in mind its utilitarian value.

It can also be observed that based on the law and practice in Kenya, Ghana, South Africa and Zambia, enforceability and implementation of a CA are systematically different and the rights inures at different times. At the time a CA is concluded, its bindingness and enforceability status attaches automatically. The implementation of it only becomes legally possible upon registration or approval by the court or labor officer based on the requirement of the law in each jurisdiction. In these jurisdictions, registration by the court or labor officer is a mere administrative act which performance can be compelled although this ought to be avoided considering the cost and needless delay that may ensue therefrom. In Nigeria, however, under section 3(1) of the Trade Disputes Act, upon adoption and submission of three copies of a CA by the parties, the Minister of Labor, Productivity, and Employment has the discretion to determine the extent to which the CA is approved and thereby made binding and enforceable between the parties. It is controversial if the Minister can be compelled to perform that duty and if it was legally possible, what about the attendant cost associated with it and delay arising from appeal? This position in Nigeria typifies the bourgeois attitude towards labor which is depicted in the now anachronistic appellation of "master-servant" used in the description of simple contract of employment. At all times, under the bourgeois system, the 'servant' is always subservient to and at the mercy of the 'master' whose wish is the servant's command.

In Zambia, based on the phraseology of 71(3) (c) of the Zambian Industrial and Labor Relations Act, 1993, a CA is only binding between the signatories, i.e. the parties on whose behalf and benefit it was reached and their privies. In Ghana, South Africa and Kenya, workers who are not members of a trade union that participated in the CB that birthed the CA but by association/affiliation are or ought to be contemplated, are bound by it. Thus, the coverage of the bindingness scope and therefore, enforceability of a CA under the law of Ghana, South Africa and Kenya is wider than Zambia hence, Zambia should review its law aimed at adopting the more preferred position in Ghana, South Africa and Kenya.

Comparing the foregoing positions in Kenya, South Africa and Zambia with what is obtainable in Nigeria, it is clear that the legal status, coverage, and enforceability of CA is radically different. While in these jurisdictions, (as exemplified by South Africa,) once concluded, a CA becomes binding and enforceable with "cosmetic registration requirement" post agreement (as it is the case in Ghana, Kenya and Zambia). In Nigeria, for a very long time, enforceability was only made possible through the court as the labor legal framework, aside from recognizing the right to engage in CB, is

silent on the legal status of the agreement as well as its enforceability. At present, the Constitution (Third Alteration) Act, 2010 is a game changer which has ushered a new dawn ably executed by the NICN. Also, the coverage sphere of a concluded CA in these jurisdictions regarding parties, is wider than Nigeria as it covers persons who are not primarily participants to the negotiation, but whose interest is involved or could be positively affected unlike Nigeria that is it only the parties to the negotiation. To ensure that the effect of this innovation introduced by the NICN is seen and felt, there is need for stakeholders in the labor and employment sphere, especially trade unions to be sensitized to ensure that they are taking advantage of this development in enforcing existing CA as the non-bindingness unenforceability challenge, has been a reason for several labor unrest with their resultant inimical results.

In Nigeria, even under the Third Alteration Act, 2010, unlike in South Africa where Section 199 SA LRA, 1995 provides that any contract that purports to waive a CA is invalid, there is no such provision in Nigeria either as a matter of statute or judicial pronouncement. The only right preserve is joining or forming of a trade union of one's choice via freedom of association. Thus, while it is necessary to amend the Trade Disputes Act to include the same provision in Nigeria's law, the NICN, where the opportunity present itself, a judicial declaration should be made to this effect bearing in mind its utilitarian value. The provision of section 3(1) of the Trade Dispute Act, 2004 that requires parties to a CA to deposit at least three copies with the Minister who has the unfettered discretion to determine if it will be enforceable and to what extent (which is the same with what is obtainable under Ghana, Kenya and Zambian law) unlike South Africa, should be expunged by review of the Act to pave way for automatic bindingness and enforceability once the agreement is reached.

While the NICN has in an impressive manner relied on the provisions of section 254C1 and 2 of the Constitution (Third Alteration) Act, 2010 to rely and apply ILO conventions, Recommendations and ILBP on the bindingness and enforceability of CA, since it is a court of first instance, there is real apprehension whether the position taken will be approved or upturned by the Court of Appeal in the event of an appeal. This unsettling concern is legitimate as the Supreme Court of Nigeria in *Skye Bank Plc. v Iwu*[106] have held that sections 234(2)-(4), and 254C (6) of the Constitution (Third Alteration) Act 2010 have not divested the Court of Appeal of its appellate jurisdiction provided under sections 240, 241 and 242 of the

[106] [2017] 7 SC (Part 1) 1.

1999 Constitution, and all decisions of the NICN are appealable to the Court of Appeal (either as of right or with the leave of the court) whose decision on such appeal, is final. While we anticipate that the Court of Appeal will agree with the NICN, this anticipation is strengthened when the Court of Appeal decisions such as *Sahara Energy Resources Limited v. Mrs Olawunmi Oyebola*[107] where contrary to the prevailing position that the quantum of damages to be awarded in cases of wrongful termination of employment shall be the amount equivalent of the period of notice that ought to have been given to rightly terminate the employment. The NICN departed from this and awarded two year salary as damages instead. The NICN departed from the established position on the ground that the circumstances of the case required departure in the interest of justice. The Court of Appeal upheld the position of the NICN. It is hoped that the same will be done with the position taken by the NICN on the issue of bindingness and enforceability of CA bearing in mind its constitutionality.

6. Conclusion and Recommendations

Extrapolating from the analysis above, CB is an important tool for power equilibrium adopted by employees to negotiate enhanced terms and conditions of employment with their employer with the aim of ushering harmonious relations. At the conclusion of a successful CB, there is usually a CA that contains terms and conditions mutually reached by the bargaining party in resolution of a trade dispute. At common law, a CA is regarded as a gentleman's agreement only binding in honor due to the lack of intention to create legal relation and privity of contract. This position became applicable in Nigeria due to her British colonial ties. However, the Nigerian court over the years relaxed this rule by the exception that where a CA has been incorporated either expressly or by necessary implication into the individual contract of employment of an employee, it becomes binding and enforceable *qua* party couple with a few statutory exceptions which ameliorated the hardship created by the common law position. Despite this, the legal status and enforceability trend of CA in Nigeria remained challenging and created a paradox of agreement without an agreement, which has culminated into several labor unrest typified by the lingering ASUU strike.

In 2010, the Constitution (Third Alteration) Act, 2010 was enacted and the jurisdiction of the NICN was enhanced and fortified to have and exercise exclusive original civil jurisdiction over labor and ancillary matters

[107] (2020) LPELR-51806(CA).

including interpretation and enforcement of CA. The NICN has also been empowered to apply ratified ILO conventions and recommendations in the course of adjudication hence, ILO Conventions 87 and 98 and Collective Agreements Recommendation No. 91 of 1951, collective agreements are made automatically binding and enforceable between the signatories and their privy. This ILO position resonates with the inherent intention of collective bargaining and capable of entrenching industrial harmony which is a radical departure from what is obtainable in Nigeria. Fortunately, the NICN has given judicial approval to this ILO position by holding that collective agreement, once concluded and without more, is binding and enforceable between the parties and those on whose behalf it was reached. This position is *in tandem* with what has been done by the courts and legislature in several African countries like Ghana, South Africa, Kenya, and Zambia which also have common law ties but have since progressively moved on. While the alignment of the NICN is plausible, it is not a matter of end of discussion as the NICN is a court of first instance whose decisions are subject to review by the Court of Appeal which is the final court on civil appeals from civil decisions of the NICN. Although the Court of Appeal has not approved this novel and welcome position of the NICN engineered by the ILO prescription, it is hoped that, based on antecedents (as the Court of Appeal has upheld several innovative positions taken by the NICN in conforming Nigeria's labor and employment jurisprudence with international standard), the same will done in this instant. Based on the foregoing, it is recommended that like it is obtained in jurisdictions like Ghana, South Africa, Kenya, and Zambia the Nigerian Law Act, 2004 which is the primary labor legislation should be amended and the innovative provisions contained in the labor legislation of these jurisdictions wherein CA are made binding and enforceable once concluded should be introduced.

Also, the provisions of ILO Conventions 87 and 98 and Collective Agreements Recommendation No. 91 of 1951 which have been judicially approved by the NICN, should be given statutory recognition by incorporation into the provisions of the Labor Act.

Stakeholders within the labor and employment sphere particularly trade unions, should be sensitized on the new development ushered in by the decisions of the NICN which are to the effect that once concluded, CA is binding and enforceable between the signatories and their privies. This will enable parties (whether trade union or employer or employer organisation) who have an existing CA to approach the NICN to seek its enforcement towards engendering industrial harmony rather than resorting to endless and needless industrial actions.

It is also recommended that, to ensure that the novel position taken by the NICN with regards to the status and enforceability of CA which has aligned the position in Nigeria with international standard is maintained, the Court of Appeal—in the event that there is an appeal—should do like it commendably did in other instances, by upholding the instant NICN decision. Doing so by the Court of Appeal will spotlights Nigeria as a progressive and standardized country whose employment and labor law and practice adheres with international core standards set by the ILO.

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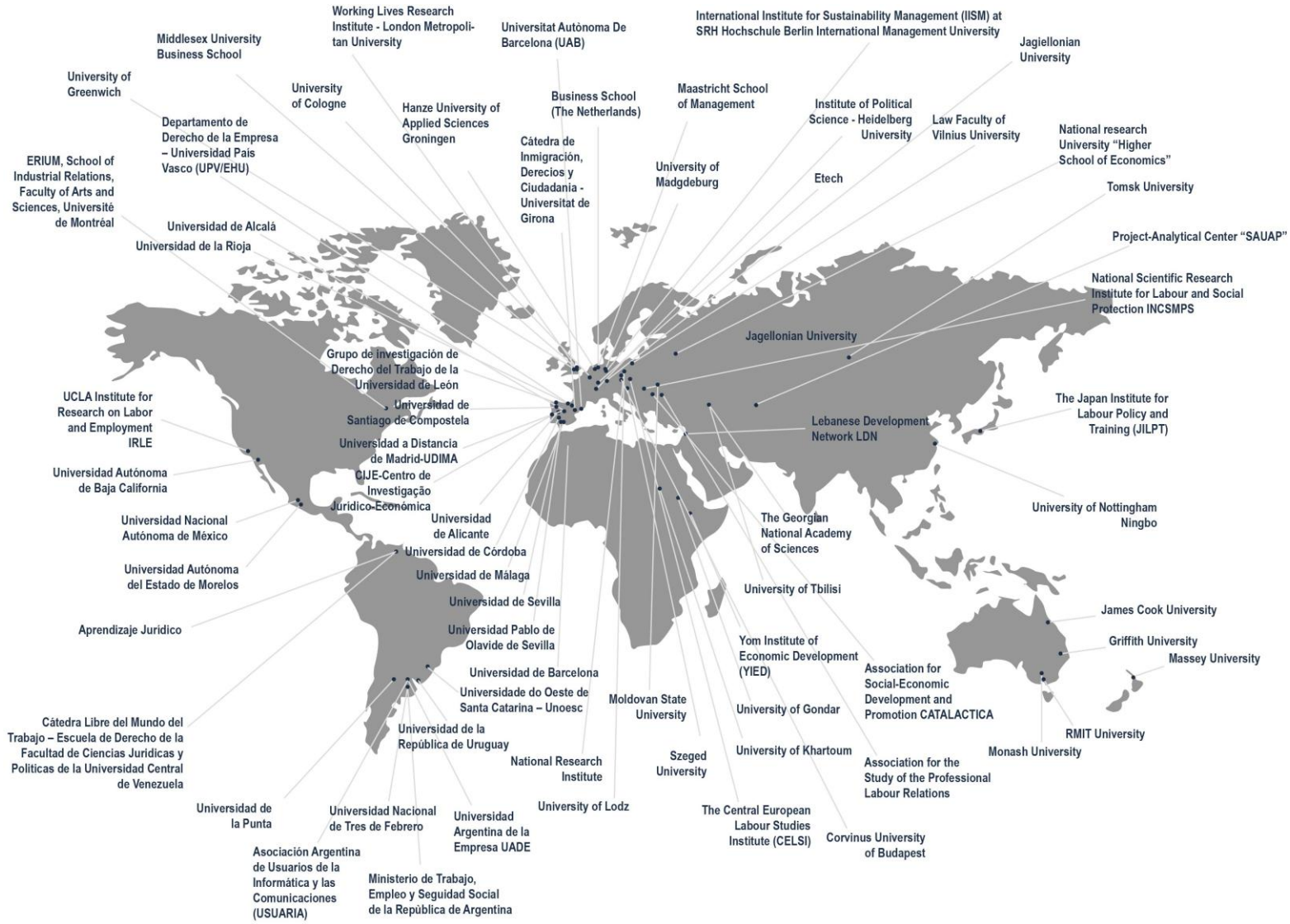

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