

The Relevance of International Labour Organisation Conventions to Promote Rights of Workers and Fair Labour and Industrial Practice in Nigeria

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Abstract

The Nigerian labour practice, just like the Nigerian legal system, is governed by laws and rules that owe their origin from many sources. This is because of the nature of the legal system, which is influenced by the customary practices of the people, the colonial link and the creation of our legislation, upon independence. Another very important source of obligation, both for Nigeria, and its workforce, is international law. This is derived as a result of Nigeria's membership to the International Labour Organisation (ILO) and the community of nations. Thus, international law standards also apply in Nigeria to affect the rights of workers and fair labour and industrial practice in Nigeria. The methodology adopted in this work is the doctrinal research method which is a legal research approach of analyzing texts and instruments on the subject matter. The purpose of this paper is to show that ILO Conventions and Standards are relevant for the promotion of rights of workers in Nigeria, and for the establishment of fair labour and industrial practices in Nigeria. The significance of this work is that it justifies, for the Nigerian legal system, the need to make these ILO Conventions and Recommendations, domestically enforceable. This paper has the potential to influence the application of ILO standards by both the executive and the judiciary, within the Nigerian legal system, with the effect that workers will enjoy better protection and rights.

Keywords: international labour organisation, conventions, standards, relevance, rights, and fair labour practice

INTRODUCTION

Several international norms have been addressed towards the better cooperation and coexistence of states and the protection of individuals. It is only in the enforcement of international law within the municipal courts of a country that the rights of individuals, as expressed in international law can be protected.

The extant fundamental law that seeks to make international law enforceable in Nigeria is section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). It provides:

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

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

(3) A bill for an Act of the National Assembly passed

pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the Federation.

This provision limits the application of international law and standards, to only treaties that have been re-enacted by the legislation. This may constitute a clog in the relevance of ILC conventions to workers in Nigeria. This paper will take a voyage on the status of ILC conventions, and its ability to affect and promote the rights of workers, and fair labour and industrial practices in Nigeria.

STATEMENT OF THE PROBLEM

Nigeria, by the provision of her Constitution, practices dualism, in her application of international treaties. This requires that every treaty must first be re-enacted into local legislation before it can be applied within the Nigerian municipal legal system. The International Labour Organisation regulates the conduct of its members through conventions and recommendations. The question therefore is; what is the status of these conventions and recommendations

when undomesticated, and of what use will it be to the workers, when they cannot benefit from them.

This paper is undertaken to answer these questions, and show the status of ILO conventions and their relevance in promoting the rights of Nigerian workers, and the application of fair labour and industrial practice in Nigeria.

REGULATION OF THE EMPLOYMENT RELATIONSHIP

The Nigerian employment law is that area of law that governs the condition of working for pay by the Nigerian worker. It covers the contract of employment which arises as a result of individual relationships between the employer and an employee, and the higher level of employment relations found when employees combine and deal with an employer as one body, or in a trade union.

Employment law deals broadly with all dealings, transactions, and activities affecting the determination and enforcement of the terms and conditions of employment. The main parties involved are typically the employer and the employee and at another level, union of workers and their employers (or collective representatives), although government also plays an important role via labour legislation, and as a major employer of labour.

Employment relationship is a legal notion widely used in countries around the world to refer to the relationship between a person called an employee (frequently referred to as a worker) and an employer, for whom the employee performs work under certain conditions in return for remuneration. It is through the employment relationship, however defined, that reciprocal rights and obligations are created between the employee and the employer. The employment relationship has been, and continues to be, the main vehicle through which workers gain access to the rights and benefits associated with employment in the areas of labour law and social security. It is the key point of reference for determining the nature and extent of employers' rights and obligations towards their workers (ILO, 2006).

The terms 'employer' and 'employee' are normally interchangeable with "master and "servant" respectively. However, master and servant are traditional common law concepts. Modern statutes tend to dispense with them, instead employee or worker is preferred. Because of the problems inherent in attaching a precise meaning to either employer or employee (worker; workman) each statute in consequence defines the term for the purpose and to serve its provisions.

Relationship between International Law and Municipal Law

The power of a nation to enter into a binding agreement on the international plane is one of the incidents of its sovereignty. This right of a state to enter into treaties was laid down in the Montevideo Convention of 1933 on the Rights and Duties of States.

The attitude of states towards the application of international law into their municipal law is derived from and reflects the position adopted by theorists regarding the basis of obligation in international law. The voluntarist theory which ascribes the basis of obligation to the consent of states leads to Dualism while the objectivist theory which situates the basis of obligation of law outside the human or state will favour monism.

Dualists' doctrines postulate that municipal law and international law constitute two distinct and separate categories of legal systems. Thus, the validity of municipal law is not conditioned by international law, such that within a state, the rules of international law cannot be applied as such, but only after being transformed or received into that legal system.

The monists on the other hand maintain that international law and municipal law must be regarded as manifestations of a single conception of law. The main reasons for this assertion is that both laws are addressed to the conduct of the same subjects; individuals and some of the fundamental notions of international law cannot be comprehended without the assumption of a superior legal order from which the various systems of municipal law are, in a sense, derived by way of delegation.

International practice does not endorse any of the competing theories of monism or dualism unreservedly. As regards the question of primacy of international law, international jurisprudence leans in favour of monism with primacy of international law. It is, in the words of Hersch Lauterpacht (1970), "a critical and realistic monism, fully alive to the realities of international life." He gives his reasons for this cautious view:

Just as international law is at present an imperfect law in a stage of transition to true law; so its monistic structure is not absolute and thorough going. It is a monism qualified by dualistic exceptions and contradictions. This statement may appear paradoxical seeing that in pure juridical logic there is no transition between monism and dualism. But the very imperfection of international law implies that, if we are to give a true picture of its present position, we

cannot treat it as a logical system. It is therefore necessary to admit that, so far as positive law is concerned, monism, while providing a working instrument of scientific knowledge for international law as a whole and while providing an adequate and the only possible basis for its development to true law, often breaks down and yields to reality of a dualistic nature

This view, accords with contemporary reality. Monism will ensure the survival of international law since the logic of dualism would not only be a subversion, but also a negation, of international law.

It is on this basis that, before an international court or tribunal, a state cannot plead the provisions of its own law or deficiencies in that law in answer to a claim against it for an alleged breach of its obligation under international law. Thus in the *Alabama Claims Arbitration* the United States successfully claimed damages from Great Britain for breach of its obligations as a neutral during the American Civil War. It was held that the absence of British legislation necessary to prevent the construction or departure of the vessel could not be brought forward as a defense, and Britain was accordingly liable to pay damages for the depredations caused by the warships in question.

The principle of primacy of international law over municipal law was reaffirmed by the ICJ in its Advisory opinion in the *United Nations Headquarters Agreement case*. This principle of primacy of international law over municipal law before international tribunals applies to all aspects of a state's municipal law, to its constitutional provisions, its ordinary legislation and to the decisions of its courts.

However, conflict between a state's municipal law and its international obligations does not affect the effectiveness of that law within the territory of that state. Thus a municipal act contrary to international law cannot be invalidated nor its domestic application affected by international law. The internationally unlawful (but municipally lawful) act may be denied recognition by other states and thus denied of external effect. In fact, such an act merely engages the international responsibility of the delinquent state.

J.A.S Grenville(1974) has identified three inducements for keeping treaty obligations; firstly, a treaty contains a balance of advantages and if a country violates the provisions of a treaty such a country must reasonably expect to lose the advantages provided by that treaty. For instance, 'when one country expels a foreign diplomat, a

reciprocal expulsion often follows.' Similarly, a gross violation of the provisions of a treaty may lead to its termination. Secondly, a treaty may contain a deterrent element. For example, the breach of the provisions of a treaty may lead to warfare. Hence, before taking action, 'political leaders have to decide whether the violation of a treaty is worth the risk of the possible counter measures taken by the aggrieved state or states.' Thirdly, a nation usually considers its international credibility before acting in breach of a treaty to which it is a party. Failure to fulfill the provisions of a treaty may 'weaken the defaulting country's international position as other states calculate whether treaties still in force with it will be honoured' and whether new agreements can still be concluded with such a defaulting nation. According to G.A.S Grenville, treaties are landmarks which guide nations in their relations with each other. They express intentions, promises and normally appear to contain reciprocal advantages. Treaties represent attempts to reduce the measure of uncertainty inherent in the conduct of international affairs.

International Labour Standards

The idea of global labour relations is a 20th century creation. The founding of the International Labour Organisation in 1919 can be said to be the beginning of the internationalization of labour standards. The ILO deals with labour issues, particularly international labour standard and descent work for all by way of Conventions and Recommendations.

It resulted in a tripartite organization, representing governments, employers and workers (usually with a ratio of 2:1:1). The rationale behind the tripartite structure is creation of free and open debate among governments and social partners by bringing together representatives of governments, employers and workers in its executive bodies. Nevertheless, the unique tripartite structure of the ILO, gives an equal voice to workers, employers and governments to ensure that the views of the social partners are closely reflected in labour standards and in shaping policies and programmes.

The Constitution contains ideas tested within the International Association for Labour Legislation, founded in Basel in 1901. The driving forces for ILO's creation arose from security, humanitarian, political and economic considerations. Summarizing them, the ILO Constitution's Preamble says the High Contracting Parties were 'moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world...'

The areas of improvement listed in the Preamble remain relevant today, for example:

1. Regulation of the hours of work including the establishment of a maximum working day and week;

2. Regulation of labour supply, prevention of unemployment and provision of adequate living wage;
3. Protection of the worker against sickness, disease and injury arising out of his employment;
4. Protection of children, young persons and women;
5. Provision for old age and injury, protection of the interests of workers when employed in countries other than their own;
6. Recognition of the principle of equal remuneration for work of equal value;
7. Recognition of the principle of freedom of association;
8. Organization of vocational and technical education, and other measures.

The ILO organizes the [International Labour Conference](#) in Geneva every year in June, where conventions and recommendations are proposed and adopted. This conference is also known as the conference of labour. There, general policies, work programme and budget are adopted. Each member state has four representatives at the conference: two government delegates, an employer delegate and a worker delegate. All of them have individual voting rights, and all votes are equal, regardless of the population of the delegate's member state. The ILO constitution permits any member of the UN to become a member of the ILO. To gain membership, a nation must inform the Director-General that it accepts all the obligations of the ILO constitution.

Members of the ILO under the League of Nations automatically became members when the organization's new constitution came into effect after World War II. In addition, any original member of the United Nations and any state admitted to the U.N. thereafter may join. Other states can be admitted by a two-thirds vote of all delegates, including a two-thirds vote of government delegates, at any ILO General Conference.

Standards

According to the International Labour Organization (ILO), international labour standards are primarily tools for government which, in consultation with employers and workers, are seeking to draft and implement labour law and social policy in conformity with internationally accepted standards. Thus, international standards serve as targets for harmonizing national law and practice in a particular field.

Standards refer to the level of quality or excellence that a particular item or service should attain. It is the level of quality which is accepted and by which actual attainments are judged. Labour standards are

the rules that govern how people are treated in a working environment. Compliance with those standards does not require application of complex legal formulae to every situation. It is sufficiently complied with by ensuring that basic rules of good sense and good governance apply in the working environment (Obi, 2008).

International labour standards have grown into a comprehensive system of instruments on work and social policy backed by a supervisory system designed to address all sorts of problems in their application at the national level. Since 1919, the

ILO has maintained and developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity. In today's globalized economy, international labour standards are essential component in the international frame work for ensuring that the growth of the global economy provides benefits to all.

Labour standards cover a very wide variety of subjects, mainly basic human rights at work, respect for health and safety, and ensuring that people are paid for their labour. Labour standards also extend to labour inspection and basic labour administration. In an economic context, they are important for increasing productivity and competitiveness. They are applicable at national and international level. At national level they may be found in municipal legislation and regulations as well as judicial authorities prevailing in a particular country, whereas at the international level they are found in international legal instruments which may be a convention that is legally binding or recommendations which serve as non-binding guidelines. A convention lays down the basic rights to be implemented by member states that ratified it while recommendation supplements the convention by providing guidelines on how the convention could be applied. Recommendation may not be linked to any convention in which case it stands on its own independent of any convention.

International labour organization standards are therefore those rules set out by international labour organization in their international legal instruments to govern the treatment of persons in labour and industrial relations.

International labour organizations standard are very important as they present an international consensus on minimum labour standards. The standards of a countries way of life can only be gauged if tested by its compliance with international standards. Labour relations is not an exception to the above fact. A country's labour standards and practices are also

measured against its compliance with international labour standards. Therefore one cannot but agree with Okoronkwo Peter Obi when he stated that international labour standards have statutory effect on domestic labour standards of member states of the international labour organization

International labour organizations standards are contained in the constitution of international organizations, conventions, treaties, recommendations, instruments adopted at special conferences, United Nations instruments and regional instruments, less formal instruments, case laws and interpretations of judicial and quasi-judicial bodies. According to Obi, the legal character and legitimacy of the standards make them part of the corpus of international law as a guide or source of law to domestic labour legal system and administration. Labour standards of the International Labour Organization will be considered as the primary institution which seeks to entrench international best practices in labour relations.

The ILO has three major tasks, the first of which is the adoption of international labour standards, called Conventions and Recommendation, for implementation by member states. A second major task is that of technical cooperation to assist developing nations and standard-setting.

Conventions

A convention is a form of agreement between groups, especially under international law. An international agreement, especially between states is also called a treaty. The Convention on the Law of Treaties defines a treaty as:

“an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;”

The use of the phrase, “whatever its particular designation”, suggests that the term can be used interchangeably with words such as, “Convention”, “Charter”, “Covenant”, “Protocol”, “Pact”, and “Agreement”. But whatever the name given, all are treaties if they reflect the will of the parties to be bound by their terms under international law.

When the Conference has decided on the adoption of proposals with regard to an item on the agenda, it will rest with the Conference to determine whether these proposals should take the form: (a) of an international Convention, or (b) of a Recommendation to meet circumstances where the subject, or aspect of it, dealt with is not considered suitable or appropriate at that time for a Convention. In either case, a majority of

two-thirds of the votes cast by the delegates present shall be necessary on the final vote for the adoption of the Convention or Recommendation, as the case may be, by the Conference. Once a standard is adopted, member states are required under the ILO Constitution to submit them to their competent authority for consideration. In the case of conventions, this means consideration for ratification. If it is ratified, a convention generally comes into force for that country one year after the date of ratification. Ratifying countries commit themselves to applying the convention in national law and practice and reporting on its application at regular intervals.

The ILO's Governing Body has identified eight conventions as "fundamental", covering subjects that are considered as fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These principles are also covered in the ILO's [Declaration on Fundamental Principles and Rights at Work](#) of 1998.

The ILO's Governing Body has also designated another four conventions as "priority" instruments, thereby encouraging member states to ratify them because of their importance for the functioning of the international labour standards system. Since 2008, these conventions are now referred to as Governance conventions as they were identified by the ILO [Declaration on Social Justice for a Fair Globalization](#) as the standards that are the most significant from the viewpoint of governance.

ILO conventions are regarded as international labour standards, irrespective of ratifications. Governments are required to submit annual reports detailing their compliance with the obligations of the conventions they have ratified. Conventions that have not been ratified by member states have the same legal force as recommendations.

RECOMMENDATIONS

Where a recommendation is adopted, it will be communicated to all Members for their consideration with a view ensuring that effect is given to it by national legislation. Otherwise, Recommendations do not have the binding force of law like conventions and are not subject to ratification; they however are evidence of the thinking of the international labour community on the issues addressed therein.

Application of International Labour Standards in Nigeria

As already noted, the extant fundamental law that seeks to make international law and standards enforceable in Nigeria is section 12 of the

Constitution of the Federal Republic of Nigeria 1999 (as amended). It is this provision of the constitution that has made Nigeria a dualist country. The implication of this provision is that before international law, such as contained in ILO conventions and recommendations can become enforceable in Nigeria, it must be re-enacted. This section of the Constitution thus carves out a very important role for the legislature in relation to enforcement of treaties; to wit, its domestication.

Howbeit, the fact of non-domestication does not affect the potency of the international law and standard before an international body. In the same vein, conflict between a state's municipal law and its international obligations does not affect the effectiveness of that law within the territory of that state. Thus a Municipal Act contrary to international law cannot be invalidated nor its domestic application affected by international law. However, the internationally unlawful, but municipally lawful Act may be denied recognition by other states and thus denied external effect.

Nigeria's practice of treaty application is summed up in the following dictum of the Supreme Court; (Per Ogundare JSC) in *Abacha v. Fawehinmi* (2000)

Suffice it to say that an international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly. No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

It is therefore manifest that no matter how beneficial to the country or the citizenry, an international treaty to which Nigeria has become a signatory may be, it remains unenforceable, if it is not enacted into the law of the country. This position is again reiterated by the Supreme Court in *The Registered Trustees of National Association of Community Health Practitioners of Nigeria & 2 Ors. V. Medical and Health Workers Union of Nigeria & Ors.* (2008)

Agomo (2011) raises the issue whether with respect to ILO conventions, there are no other ways of making their provisions applicable in Nigeria other than through specific legislation under section 12. Her argument is that provisions of ILO conventions can be applied without domestication, although the best approach will be domestication. She refers to section 7(6) of the National Industrial Court Act as providing a legal ground for the contention that non domesticated conventions can be applied as examples

of international best practices. Section 7(6) NIC Act provides:

The Court shall, in exercising its jurisdiction or any of the powers conferred upon it by this Act or any other enactment or law, have due regard to good or international best practice in labour or industrial relations and what amounts to good or international best practice in labour or industrial relations shall be a question of fact.

In order to apply the provision of an ILO convention as an example of international best practices, the particular convention must be pleaded (*Oyo State Government v. Alhaji Bashir Apap & Ano* 2007)

The Third Alteration Act to the Constitution of the Federal Republic of Nigeria 2010 has introduced another dimension of argument for the application of undomesticated treaties. It provides in section 254C (2) that:

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

This provision, it has been argued, has removed the restraining effect of section 12 of the Constitution and the Supreme Court judgments requiring domestication before international treaties are applied in relation to labour matters.

This position of applying ILO conventions whether domesticated or not as evidence of best practices and now in line with the third alteration of the constitution is supported by the opinion of Judges of the National Industrial Court. (Adejumo 2010 and Kanyib 2009)

Judging from the wordings of section 254C(2) and the use of the word "deal with", it may be argued that to deal with a convention may not necessarily mean its application when it has not become enforceable.

It will be up to the Supreme court, when the opportunity presents itself, to interpret the implication of section 254C(2) of the Third Alteration Act to the constitution. It is expected that the basic rules of statutory interpretation will guide the court, and of course, the fact that whatever approach is adopted, any interpretation must bear in mind Nigeria's duty to comply with its international obligations.

Again, The Nigerian State, although pragmatic and selective in its approach, is basically interested in strengthening the rules of international law. This is shown by the provision included in her constitution as her foreign policy objective. The constitution provides that the foreign policy objectives shall include(CFRN S.19):

- (c) Promotion of international co-operation for the consolidation of universal peace and mutual respect among all nations and elimination of discrimination in all its manifestations;
- (d) Respect for international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication; and
- (e) Promotion of a just world economic order.

However, her effort has always been directed toward co-coordinating and making changes in the mainstream of the rules of international law, while seeking her own solutions to national, regional and continental problems; hence her dualist approach to the application of international law, within the state. Judicial attitude must also adhere to these objectives, by giving effect to Nigeria's international obligation.

CONCLUSION

From the discussions, we see that the importance of ILO conventions cannot be overemphasized. They form the basis of standardization of labour practice for countries. Subjecting oneself to international standards removes from a state, the liberty to treat its workforce as it pleases. In this, the workers become the ultimate beneficiary of the best practices.

A few challenges are still envisaged. For instance, there still exist statutes containing provisions that conflict with the provisions of ILO standards. The courts enforcing ILO standards that are not domesticated will have to engage in judicial activism to enforce these international standards, and in line with the arguments favouring enforcing Nigeria's international obligations. If the ILO standard is a later commitment, then it poses less challenge to the system.

There is still so much un-enlightenment amongst the populace of their rights and the remedies available to them by virtue of some ILO treaties. This might lead to workers inadvertently sleeping on their rights.

Lack of political will to enforce economic, social and cultural rights as enshrined in ILO conventions is also a challenge.

Other challenges may include:

- Lack of International exposure to scholars in international law, leading to a arrow appreciation of contemporary international law. Study of international law and international labour relations in our institutions are not encouraged.
- Lack of proper documentation of applicable international laws – those signed and ratified and those domesticated.
- Lack of consistency in political ideology of the state.
- The greater Nigerian elite are not even aware of Nigeria's international obligations. This is due to non-publication of ratified treaties. It is necessary that a country must give suitable publicity to the treaties it concludes in order that the public may be aware of the undertakings and engagements its government makes.

Many of the standards set in ILO conventions are part of the body of human rights, thus making the standards contained matters of human rights concern. With the internationalization of human rights, there could be no argument requesting for regionalization and the divisibility of these rights. Nigeria, as a signatory to several of the ILO conventions, is obliged to comply with the standards contained therein.

Some of the norms which are of human rights concern, have also become part of customary international law, which would require compliance, even in the absence of treaty obligation.

The best thing yet to have happened to Nigerian workers is the Third Alteration of the Constitution, which exempts ILO conventions from the requirement for domestication before it can be enforceable in Nigeria. The preponderant of argument is that all ILO conventions can be enforced in Nigeria. This alteration gives life and spirit to ILO conventions in Nigeria, and makes them most relevant for the promotion of the rights of workers, and the incorporation of fair labour and industrial practices in Nigeria.

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