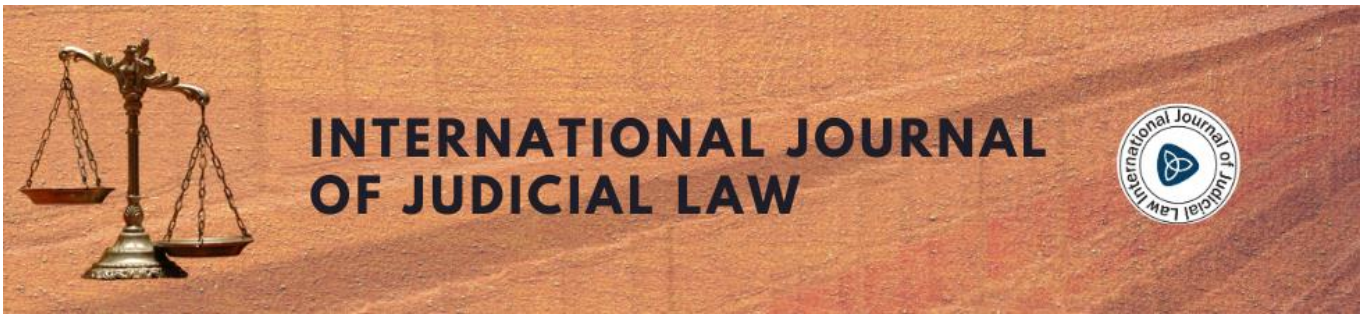




## The Status of the National Industrial Court Under the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) act: An Appraisal of a Decade of Constitutional Transformation

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### Abstract

For over three decades, the National Industrial Court of Nigeria (“the NIC” or “the Court”) occupied an anomalous position within the Nigerian judicial hierarchy. Although vested with specialised jurisdiction over labour, employment and industrial relations disputes since 1976, it was, until 2010, conspicuously absent from the list of superior courts of record enumerated in section 6(5) of the 1999 Constitution of the Federal Republic of Nigeria. This omission generated sustained doctrinal confusion, culminating in the Supreme Court's decision in *National Union of Electricity Employees v Bureau of Public Enterprises*, which held that the National Assembly lacked competence to clothe the Court with a superior status that the Constitution itself withheld. This article examines the constitutional and jurisprudential response to that decision (the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010) and interrogates the extent to which it has settled, or merely relocated, the controversies surrounding the Court's status. Drawing on the text of the Third Alteration Act, decisions of the Court of Appeal and the Supreme Court rendered in its aftermath, and the accumulated scholarly commentary of the past decade, the article argues that while the amendment achieved the Court's long-awaited constitutional entrenchment as a superior court of record with exclusive jurisdiction, it simultaneously created fresh interpretive difficulties – particularly concerning the scope of appellate review, the finality of criminal decisions, and the potential for jurisdictional overlap with other specialised statutes. The article concludes that the Third Alteration Act, though a watershed, remains a work in progress that calls for further legislative refinement.

**Keywords:** National Industrial Court, Third Alteration Act, superior court of record, exclusive jurisdiction, Nigerian Constitution, labour law

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### 1. Introduction

The adjudication of labour and employment disputes occupies a distinct place in any modern legal system, owing to the peculiar social and economic interests at stake and the need for specialised, expeditious dispute resolution.<sup>[1]</sup> In Nigeria, this recognition led to the establishment of the National Industrial Court as far back as 1976, as a specialised tribunal for the resolution of trade disputes.<sup>[2]</sup> Notwithstanding the evident utility of a specialist labour court, the constitutional pedigree of the National Industrial

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<sup>1</sup> See generally B B Kanyip, 'Labour Adjudication in Nigeria: The Present and the Future' (Keynote Address, NECA National Labour Adjudication Forum, Lagos, 1 February 2023).

<sup>2</sup> Trade Disputes Decree No 7 of 1976 (later Trade Disputes Act, Cap T8 LFN 2004), s 19.

Court remained, for most of its existence, a matter of considerable dispute. Successive constitutions (1979 and 1999 alike) omitted the Court from the closed list of superior courts of record, thereby exposing its decisions, and indeed its very existence as a court properly so called, to persistent legal challenge.

Matters came to a head in 2010 when the Supreme Court, in *National Union of Electricity Employees v Bureau of Public Enterprises*<sup>[3]</sup>, held that the National Assembly could not, by ordinary legislation, confer superior court status on the National Industrial Court where the Constitution had not so designated it. The decision, though doctrinally unimpeachable, threatened to unravel decades of labour jurisprudence and cast doubt on the enforceability of the Court's judgments. The legislative response was swift and unusually decisive: the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 ("the Third Alteration Act"), assented to on 4 March 2011,<sup>[4]</sup> inserted a new Part into Chapter VII of the Constitution, formally entrenching the National Industrial Court as a superior court of record with exclusive jurisdiction over an expansive range of labour and employment matters.

This article undertakes a doctrinal appraisal of the status conferred on the National Industrial Court by the Third Alteration Act, now over a decade in force. Part 2 traces the historical evolution of the Court prior to 2010. Part 3 examines the pre-amendment jurisprudential uncertainty that necessitated constitutional intervention. Part 4 analyses the substantive

amendments introduced by the Third Alteration Act. Part 5 considers the turbulent post-amendment case law on the appealability of the Court's decisions. Part 6 identifies residual controversies that continue to attend the Court's status, and Part 7 offers concluding reflections and recommendations for further reform.

## 2. Historical Evolution of the National Industrial Court Prior to 2010

The National Industrial Court traces its origin to the Trade Disputes Decree No 7 of 1976, enacted under the military administration to provide a specialised forum, ancillary to the Industrial Arbitration Panel, for the resolution of trade disputes that could not be settled through mediation, conciliation or arbitration.<sup>[5]</sup> As originally conceived, the Court functioned essentially as a referral or appellate body within a multi-tiered administrative dispute-resolution scheme, rather than as a court of first instance with the plenary powers associated with the regular courts.

A significant, though ultimately contested, elevation occurred in 1992 when Decree No 47 purported to designate the Court a superior court of record and to oust the jurisdiction of the regular courts over trade disputes.<sup>[6]</sup> This ouster provoked immediate resistance from the High Courts and the Court of Appeal, several of which held (correctly, as

later vindicated by the Supreme Court) that a mere Act of the National Assembly could not detract from the plenary and unlimited civil jurisdiction conferred on the State High Courts directly by the Constitution.<sup>[7]</sup> The resulting divergence of judicial opinion; some decisions treating the Court as possessed of superior status, others regarding it as, at best, an inferior court not bound by the constitutional list in section 6(5) set the stage for two decades of doctrinal instability.

A further legislative attempt at consolidation came with the National Industrial Court Act 2006, which repealed Part II of the Trade Disputes Act, converted the Court from a purely referral body into one exercising original jurisdiction over an expanded range of labour matters, and once more declared it a superior court of record.<sup>[8]</sup> Yet, because the 2006 Act was itself an ordinary statute and not a constitutional instrument, it could not, as a matter of constitutional hierarchy, achieve what its predecessor had failed to achieve: the entrenchment of the Court's status beyond legislative or judicial second-guessing.

## 3. The Pre-2010 Constitutional Conundrum

The doctrinal difficulty may be simply stated. Section 6(5) of the 1999 Constitution enumerates, exhaustively, the courts recognised as superior courts of record for the purposes of the Constitution; the National Industrial Court did not feature on that list.<sup>[9]</sup> At the same time, sections 236 and 272 of the unamended Constitution conferred unlimited original civil jurisdiction on the Federal High Court and the State High Courts respectively, over "all civil proceedings" without qualification. The consequence, as several divisions of the Court of Appeal recognised, was that any statute purporting to divest the High Courts of jurisdiction over labour matters and vest same exclusively in a non-superior court was, to that extent, unconstitutional.

This tension was decisively confirmed in *National Union of Electricity Employees v Bureau of Public Enterprises*<sup>[10]</sup>, where the Supreme Court, in the course of resolving a dispute over the propriety of an industrial action, held that because the National Industrial Court was not listed among the superior courts of record in section 6(5) of the Constitution, the National Assembly lacked the competence to confer upon it powers exceeding those of an inferior court, however emphatically the National Industrial Court Act 2006 purported to do so. The practical effect of the decision, had it been left unaddressed, would have been to reopen the jurisdictional basis of a very substantial body of accumulated labour jurisprudence and to expose the enforceability of the Court's awards and judgments to sustained legal challenge.

The decision generated an immediate and unusually unified public reaction. Organised labour, the organised private sector, the bench and the academy all coalesced around the view that only a constitutional amendment could definitively resolve the anomaly. It was this consensus, rather than

<sup>3</sup> (2010) 7 NWLR (Pt 1194) 538 (SC).

<sup>4</sup> Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010, endorsed by the National Assembly on 14–15 December 2010 and by thirty-three of the thirty-six State Houses of Assembly, in compliance with the procedure prescribed by s 9(2) of the 1999 Constitution; assented to by President Goodluck Ebele Jonathan on 4 March 2011.

<sup>5</sup> Decree No 7 of 1976, s 19(1).

<sup>6</sup> Trade Disputes (Amendment) Decree No 47 of 1992, s 1(3)(a), amending the Trade Disputes Act.

<sup>7</sup> See eg *Kalango v Dokubo* [2003] 15 NWLR (Pt 842) 94 (CA); *Attorney-General, Oyo State v National Labour Congress, Oyo State* Chapter [2003] 8 NWLR (Pt 821) 1 (CA); *Bureau of Public Enterprise v National Union of Electricity Employees* [2003] 3 NWLR (Pt 837) 382 (CA).

<sup>8</sup> National Industrial Court Act 2006, ss 1(3) and 7.

<sup>9</sup> Constitution of the Federal Republic of Nigeria 1999, s 6(5)(a)–(i) (as it stood prior to 2010).

<sup>10</sup> (n 3)

ordinary legislative initiative, that propelled the Third Alteration Bill through the National Assembly with what commentators have described as unprecedented speed and near-unanimous support, receiving the endorsement of thirty-three of the thirty-six States within a matter of weeks.

#### 4. The Constitution (Third Alteration) Act 2010: The Legislative Response

The Third Alteration Act is a relatively short but structurally significant instrument. Its Explanatory Memorandum states, with characteristic economy, that its object is to alter the Constitution “for the establishment of the National Industrial Court under the Constitution.”<sup>[11]</sup> Sixteen sections achieve this object through a combination of insertions into existing constitutional provisions and the creation of an entirely new sub-heading, “CC The National Industrial Court of Nigeria,” comprising six new sections, 254A to 254F, inserted into Chapter VII, Part I of the Constitution.

##### 4.1. Entrenchment as a Superior Court of Record

The single most consequential amendment is the insertion of a new paragraph (cc) into section 6(5) of the Constitution, which lists the National Industrial Court among the superior courts of record to which the judicial powers of the Federation under section 6 extend.<sup>[12]</sup> This single insertion achieved what neither the 1992 Decree nor the 2006 Act, each an instrument of ordinary legislative competence, could achieve: it removed the constitutional basis of the *NUEE* decision at a stroke, by placing the Court's superior status beyond the reach of subsequent legislative repeal or judicial reappraisal, short of a further constitutional amendment.

##### 4.2. Establishment, Composition and Appointment (Sections 254A–254B)

Section 254A establishes the National Industrial Court of Nigeria, consisting of a President and such number of Judges as may be prescribed by an Act of the National Assembly.<sup>[13]</sup> Section 254B mirrors, with minor adaptation, the appointment procedure applicable to the President of the Court of Appeal and Chief Judge of the Federal High Court: the President of the Court is appointed by the President of the Federation on the recommendation of the National Judicial Council, subject to confirmation by the Senate, while ordinary Judges are appointed by the President on the recommendation of the Council alone.<sup>[14]</sup> Eligibility for appointment requires not less than ten years' standing as a legal practitioner together with “considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria”

a specialised eligibility criterion without direct parallel in the qualification requirements for the other superior courts, and one that underscores the deliberately specialist character of the Court.

##### 4.3. Exclusive Jurisdiction (Section 254C)

Section 254C is, by any measure, the centrepiece of the reform. It opens with an unusually emphatic non-obstante clause, providing that, “*notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution,*” the Court shall have and exercise jurisdiction “to the exclusion of any other court” in civil causes and matters falling within thirteen enumerated heads.<sup>[15]</sup> These heads range from the conventional (labour, employment, trade unions and conditions of service)<sup>[16]</sup> to matters that sit less comfortably within a specialist labour jurisdiction, including disputes arising from discrimination or sexual harassment at the workplace,<sup>[17]</sup> matters connected with child labour, child abuse and human trafficking,<sup>[18]</sup> and disputes concerning the payment or non-payment of salaries, pensions and other entitlements of “any employee, worker, political or public office holder, judicial officer or any civil or public servant.”<sup>[19]</sup> Subsection (2) additionally confers jurisdiction over the application of ratified international labour conventions, treaties and protocols, a provision of particular interest given Nigeria's ordinarily dualist approach to the domestication of treaties under section 12 of the Constitution.

##### 4.4. Powers, Constitution of the Court and Rule-Making (Sections 254D–254F)

Section 254D confers on the Court “all the powers of a High Court” for the purpose of exercising its jurisdiction, while permitting the National Assembly to confer additional powers by ordinary legislation.<sup>[20]</sup> Section 254E addresses the constitution of the Court for the exercise of its jurisdiction (a single Judge or a panel of not more than three, at the discretion of the President of the Court) and, notably, empowers the Court to call in the aid of specially qualified assessors.<sup>[21]</sup> Finally, section 254F vests in the President of the Court a rule-making power for practice and procedure, and applies the ordinary criminal procedure statutes (the Criminal Code, the Penal Code and the Evidence Act) to the exercise of the Court's criminal jurisdiction.<sup>[22]</sup> Consequential amendments were also made to sections 84, 240, 243, 287, 289, 292, 294, 295, 316 and 318 of the Constitution, and to the Third and Seventh Schedules, principally to integrate the President and Judges of the new Court into the constitutional machinery governing judicial remuneration, appellate jurisdiction, tenure, retirement, the National Judicial Council's disciplinary competence, and the judicial oath.

##### 5. Appeals from the National Industrial Court: A Second Round of Jurisprudential Struggle

If the Third Alteration Act settled the question of the Court's constitutional status, it did so, ironically, at the cost of opening a fresh controversy over the scope of appellate review from its decisions, a controversy that would occupy

<sup>11</sup> Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010, Explanatory Memorandum.

<sup>12</sup> Third Alteration Act 2010, s 2, inserting Constitution 1999, s 6(5)(cc).

<sup>13</sup> Constitution 1999 (as altered), s 254A.

<sup>14</sup> *ibid* s 254B(1)–(2).

<sup>15</sup> *ibid* s 254C(1)(a)–(m).

<sup>16</sup> *ibid* s 254C(1)(a).

<sup>17</sup> *ibid* s 254C(1)(g).

<sup>18</sup> *ibid* s 254C(1)(i).

<sup>19</sup> *ibid* s 254C(1)(k).

<sup>20</sup> *ibid* s 254D.

<sup>21</sup> *ibid* s 254E(1)–(4).

<sup>22</sup> *ibid* s 254F(1)–(2).

the Court of Appeal and, ultimately, the Supreme Court for the better part of the following decade. The difficulty arose from the interaction of section 243, as amended, with the newly inserted section 254C(5) and (6).<sup>[23]</sup> Section 243(2) preserves a right of appeal as of right on questions of fundamental rights under Chapter IV of the Constitution; section 243(3) provides that an appeal shall lie from the Court's decisions to the Court of Appeal only "as may be prescribed by an Act of the National Assembly," subject to the leave of the Court of Appeal where such an Act so prescribes; and section 254C(6) preserves an appeal as of right in respect of the Court's criminal decisions.

Because the National Assembly never enacted the contemplated statute prescribing a general right of appeal, two divergent lines of authority emerged. The Lagos Division of the Court of Appeal, in *Coca-Cola Nigeria Ltd v Akinsanya*<sup>[24]</sup>, held that, absent such an enabling Act, no general right of appeal existed in respect of the Court's civil decisions outside the fundamental rights exception, effectively rendering most of the Court's civil judgments final. The Ekiti Division, by contrast, in a series of decisions including *Local Government Service Commission, Ekiti State v Jegede*<sup>[25]</sup>, took the view that a general right of appeal, exercisable with leave,

subsisted independently of any implementing Act, by virtue of a purposive reading of sections 240 and 243(1) together with the residual appellate jurisdiction conferred on the Court of Appeal.

The conflict was authoritatively resolved by a five-Justice panel of the Supreme Court in the consolidated appeals in *Skye Bank Plc v Iwu*<sup>[26]</sup> and *Coca-Cola Nigeria Ltd v Akinsanya*<sup>[27]</sup>. By a majority of four to one, the Court held, on a holistic reading of sections 240 and 243(1)–(4), that every decision of the National Industrial Court is appealable to the Court of Appeal: as of right in respect of fundamental rights questions and criminal matters, and with the leave of the Court of Appeal in respect of all other civil matters.<sup>[28]</sup> The Court reasoned that no provision of the Constitution expressly divested the Court of Appeal of its ordinary appellate jurisdiction over civil decisions of the trial court, and that the absence of an implementing Act under section 243(3) could not be read as extinguishing a right that the framers of the Third Alteration Act plainly intended to preserve.

This resolution, while doctrinally welcome for the certainty it restored, has not been received without reservation. The dissenting opinion of Aka'ahs JSC, and a body of academic commentary since, have questioned whether reading a leave-based right of appeal into the Constitution in the continued absence of an enabling Act is consistent with the plain

language of section 243(3), which conditions the very existence of the right on legislative prescription. The better view, it is submitted, is that the majority's purposive approach was justified by the anomaly that a strictly literal reading would have produced, namely, the practical insulation of the great bulk of the Court's civil decisions from any appellate scrutiny whatsoever, a result difficult to reconcile with the general constitutional architecture of appellate oversight over courts of first instance.

## 6. Continuing Controversies and Unresolved Questions

### 6.1. The Finality of Criminal and Civil-Appellate Decisions

Section 254C(4) provides that, without prejudice to section 254C(5), the decision of the Court of Appeal in respect of any appeal arising from the civil jurisdiction of the National Industrial Court "shall be final," thereby excluding a further appeal to the Supreme Court.<sup>[29]</sup> This finality clause, unique among the various heads of the Court of Appeal's jurisdiction, has attracted sustained academic criticism on the ground that it creates an unexplained asymmetry: a litigant aggrieved by a decision of a State High Court on an ordinary civil matter enjoys a constitutional right of appeal to the Supreme Court, while a litigant whose employment dispute happens to fall within the exclusive jurisdiction of the National Industrial Court does not, regardless of the general importance or complexity of the legal question involved.<sup>[30]</sup> Whether this differentiated treatment survives scrutiny under the equal protection guarantee in section 42 of the Constitution remains, perhaps surprisingly, largely untested before the Supreme Court itself.

### 6.2. Overlap with Other Statutory Jurisdictions

A second and increasingly prominent difficulty concerns the interaction between the exclusive jurisdiction conferred by section 254C(1) and jurisdiction-conferring provisions in other, ostensibly unrelated, statutes. The Child's Rights Act 2003, the Labour Act, and the Cybercrimes (Prohibition, Prevention, etc) Act 2015, among others, contain provisions that appear to confer jurisdiction over matters falling within the Court's exclusive domain (including child labour and certain employment-related cybercrimes) on courts other than the National Industrial Court.<sup>[31]</sup> Because section 1(3) of the Constitution renders any law inconsistent with its provisions void to the extent of the inconsistency, a strong argument exists that these provisions are, to that extent, unconstitutional; yet the legislature has, to date, made no move to excise the offending provisions, leaving litigants and practitioners to navigate a landscape of formally irreconcilable statutory commands.

<sup>23</sup> Constitution 1999 (as altered), ss 243(2)–(4) and 254C(5)–(6).

<sup>24</sup> (2013) 18 NWLR (Pt 1386) 225 (CA).

<sup>25</sup> (2013) LPELR-21131 (CA); and, in the same vein, *Local Government Service Commission, Ekiti State v Bamisaye* (2013) LPELR-20407 (CA) and *Local Government Service Commission, Ekiti State v Olamiju* (2013)

<sup>26</sup> (2017) 16 NWLR (Pt 1590) 24 (SC).

<sup>27</sup> (2017) 17 NWLR (Pt 1593) 75 (SC).

<sup>28</sup> *Skye Bank Plc v Iwu* (n 33) 105–106 (Nweze JSC), concurred in by Peter-Odili, Muhammad, Ogunbiyi and Eko JJSC, Aka'ahs JSC dissenting.

<sup>29</sup> Constitution 1999 (as altered), s 254C(4).

<sup>30</sup> See eg O F Olubiye, 'Jurisdiction and Appellate Powers of the National Industrial Court of Nigeria under the Third Alteration Act' (2015) *Journal of Sustainable Development Law and Policy*; and, on the wider critique of finality provisions, T C Eze, 'The Effect of the Third Alteration Act to the Nigerian Constitution on the Jurisdiction of the National Industrial Court' (2013) 6 *Nnamdi Azikiwe University Journal of Public and Private Law* 1.

<sup>31</sup> See generally A O Akeredolu and J Osuntogun, 'Jurisdiction of the National Industrial Court under the Nigerian Constitution Third Alteration Act and Selected Statutes: Any Usurpation?' (2021) 10(1) *Gravitas Review of Business and Property Law*.



### 6.3. “Coordinate” or “Superior”: A Question of Judicial Hierarchy

A subtler, and more conceptual, difficulty concerns the precise place of the National Industrial Court within the hierarchy of superior courts. Section 6(5) lists the Court alongside the Federal High Court and the State High Courts without indicating any hierarchical subordination between them; the Court is accordingly best described as a court of coordinate, rather than subordinate, jurisdiction vis-à-vis the other trial superior courts, differentiated from them by the exclusivity, rather than the seniority, of its subject-matter competence.<sup>[32]</sup> This coordinate status, however, generates its own puzzles (for instance, whether a decision of the National Industrial Court can found an issue estoppel binding on the Federal High Court, or whether interlocutory orders of the Court are entitled to the same presumption of regularity as those of the older superior courts) questions that the decade since the Third Alteration Act has not yet fully answered.

### 7. Comparative Reflections

Nigeria's experience is not without comparative parallel. South Africa's Labour Court, established under the Labour Relations Act 1995, enjoys a status broadly analogous to that of a High Court division, with a Labour Appeal Court sitting above it and constitutional questions ultimately reviewable by the Constitutional Court, an architecture that avoids the finality anomaly created by section 254C(4) of the Nigerian Constitution.<sup>[33]</sup> The United Kingdom's Employment Tribunal system, by contrast, functions at first instance as a tribunal rather than a court of record, with a structured route of appeal on points of law to the Employment Appeal Tribunal and thence to the ordinary appellate courts.<sup>[34]</sup> Viewed against these models, the Nigerian solution (full superior court status coupled with a truncated and partially discretionary right of appeal) represents a distinctive, and in some respects still experimental, compromise between specialisation and the ordinary guarantees of appellate oversight.

### 8. Conclusion and Recommendations

The Constitution (Third Alteration) Act 2010 unquestionably represents a watershed in the constitutional history of the National Industrial Court. By entrenching the Court as a superior court of record and vesting it with exclusive, expansive jurisdiction over labour and employment causes, the amendment resolved, at a constitutional stroke, a controversy that ordinary legislation had twice failed to lay to rest. The subsequent intervention of the Supreme Court in *Skye Bank v Iwu* and the second *Coca-Cola v Akinsanya* appeal further stabilised the position by clarifying, if not without residual difficulty, the scope of appellate recourse against the Court's decisions.

Yet, as this article has sought to demonstrate, the settlement achieved in 2010 was partial rather than complete. The finality of civil appellate decisions under section 254C(4), the unresolved overlap between the Court's exclusive jurisdiction and competing statutory grants to other courts, and the continuing ambiguity surrounding the Court's precise hierarchical relationship with its sister superior courts, all remain live sources of uncertainty. It is recommended, first,

that the National Assembly give further consideration to a Fourth Alteration extending a right of appeal to the Supreme Court, at least by leave, in matters of general public importance arising from the Court's civil jurisdiction; secondly, that the offending provisions of the Child's Rights Act, the Labour Act and the Cybercrimes Act be harmonised with section 254C(1) to eliminate the present jurisdictional overlap; and, thirdly, that the National Industrial Court itself, in the exercise of its rule-making power under section 254F, continue to develop practice directions that give practical content to its coordinate, rather than subordinate, status within the Nigerian judicial hierarchy. Only through such continued refinement can the promise of the Third Alteration Act (a modern, authoritative and truly effective labour court) be fully realised.

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<sup>32</sup> cf National Industrial Court of Nigeria, 'Jurisdiction and Power' (NICN website) <<https://nicn.gov.ng/jurisdiction-and-power>> accessed 2 July 2026.

<sup>33</sup> Labour Relations Act 66 of 1995 (South Africa), ss 151–167.

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