Nnamdi Azikiwe University Journal of Human Rights Law (UNIZIK-JHRL) 2024 vol. 1 No. 1

THE APPRISIAL OF RELEVANT INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS ON OCCUPATIONAL SAFETY AND HEALTH IN NIGERIA

Matthew Izuchukwu Anushiem, PhD[*]
Esimone Stanislaus Onyedika[**]
Okafor Chisolum Nkolika[***]

Abstract
Section 17 (3)(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that the health, safety, and welfare of all persons in employment are safeguarded and not endangered or abused. Workplace safety is a paramount concern, particularly in hazardous industries. Hazardous industries, such as mining, construction, and manufacturing, pose significant risks to workers' health and safety. The International Labour Organization (ILO) has developed several Conventions, Protocols, and Recommendations to guide Member States in ensuring workplace safety in these industries, and all places of work. This seminar paper examines the application of the ILO Convention on Occupational Safety and Health in Nigeria, as international best practices in labour and industrial relations. The National Industrial Court has been saddled with the jurisdiction to handle all labour-related matters including those relating to international best practices as stated in section 254C of the Constitution of the Federal Republic of Nigeria (Third Alteration), 2010. However, section 12 Constitution, 1999 (as amended) stipulates that until any international treaty is ratified and domesticated, such treaty does not have the force of law in Nigeria. Consequently, these two provisions have birthed many debates, creating two schools of thought concerning the application of undomesticated international treaties and best practices. This work aims to examine the key provisions of the Conventions relating to occupational safety and health and their application in Nigeria. Its objective is to reconcile the thought in line with international best practices. The doctrinal methodology was used, and the researcher also made use of primary and secondary sources including Internet sources in this study. The work findings highlight the need for the application of international best practices as a way to promote the non-justiciable provisions in Chapter II of our Constitution.
Keywords: Labour Law, International Convention, Occupational Safety and Health, Nigeria

1.0 Introduction:

The International Labour Organization (ILO), in recognition of the significance of occupational safety and healthy working environments for workers worldwide, has developed several Conventions, international standards, Recommendations, and guidelines to promote safe and healthy working environments. One such convention is the ILO Convention No. 155, titled "Occupational Safety and Health Convention," which was adopted in 1981. Occupational Safety and Health (OSH) is a crucial aspect of ensuring the well-being and protection of workers across the globe. This paper aims to analyze the application of the ILO Convention on Occupational Safety in Nigeria. As a Member State of the ILO, Nigeria has made significant strides in aligning its national policies and legislation with the provisions of this Convention. By examining the Convention's key provisions, we can evaluate its application in the country.

2.0 An Overview of the ILO Conventions on Occupational Safety.

International Conventions, Protocols, and Recommendations are international legal instruments that are proposed by global and regional organizations that form part of the supra-legal frameworks

[*] **Dr. Matthew Izuchukwu Anushiem, LL.B. (Hons), B.L, LL.M, PhD**, is a senior Lecturer in Department of Human Rights Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Tel: 08032641757, Email: mi.anushiem@unizik.edu.ng.
[**] **S.O. Esimone, LL.B, BL.**, is a Post-graduate student of Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State Nigeria. Tel: 08134924244, Email: stanislausesimone@gmail.com.
[***] **Chisolum Nkolika Okafor LL.B. (Hons.), B.L**., is a Deputy Chief Registrar of Anambra State Judiciary Awka, Anambra State Nigeria Tel: 08037150914, Email: chysomokafor1@gmail.com

for Member States to adopt. The international legal instruments do not have the power of force except when a member country ratifies such legal instrument, and it can be reviewed after ten years on a notice appropriately given by the ratifying Member State. The International Labour Organization (ILO) was established in 1919.[1] The ILO is a significant body that regulates the minimum labor standards around the world. As of 14 March 2020, the ILO consisted of 187 Member States.[2] According to O'Connor,[3] between 1919 and 2012, 189 Conventions, five Protocols, and 202 Recommendations were adopted; many of these instruments relate to occupational safety and health of workers. According to the ILO, 399 instruments of the organization have been adopted by Member States: 189 Conventions, 6 Protocols, and 204 Recommendations.[4]

This study presents summaries of some ILO Conventions relating to occupational safety and health.[5] The applicable Conventions include the ILO Guarding of Machine Convention,1963; ILO Workmen's Compensation (Accidents) Convention, 1925; ILO Occupational Safety and Health Convention, 1981; ILO Promotional Framework for Occupational Safety and Health Convention, 2006; ILO Recommendation on Protection of Workers' Health, 1953; and ILO Asbestos Recommendation, 1986.

2.1 ILO Guarding of Machines Convention (Convention No. 119), 1963[6]

The Convention seeks to ban the sale, hire, and transfer of all power-driven machinery, whether new or second-hand without appropriate protective guards. The Convention consists of 6 parts with 25 articles.

Article 2 (4) of the Convention provides that:
"All flywheels, gearing, cone and cylinder friction drives, cams, pulley, belts, chains, pinions, worn gears, crank arms and slide blocks, and, to the extent prescribed by the competent authority, shafting (including the journal ends) and other transmission machinery also liable to present danger to any person coming into contact with them when they are in motion, shall be so designed or protected as to prevent such danger, control also shall be designed or protected as to prevent danger."

Article 3 (1)(a)(b) states that the Convention applies to:

a. Road and rail vehicles during locomotion only concerning the safety of the operator or operators;
b. Mobile agricultural machinery only concerning the safety of workers employed in connection with such machinery.

[1] Machida, S. 2009. System for Collection and Analysis of Occupational Accidents. In Joronen, M. (ed.): African Newsletter on Occupational Health and Safety 19,1: 27-35.

[2] ILOC187. 2006. C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).Available at:https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C187 (Accessed16 October 2023).

[3] O'Connor, F.S. 2014. The ILO'S Activities on Occupational and Work-Related Diseases. International Labour Organization. Available at: http://www.ilo.org/global/topics/safety-and-health-at-work/lanfen/index.html (Accessed 16 October 2023)

[4] International Labour Organization. 2020. Application of International Labour Standards 2020. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/ relconf/documents/meeting document/wcms _736204.pdf (Accessed 16 October 2023)

[5] NOSH, 2016. National Occupational Safety and Health Information Centre Report on Nigeria. 2016. Available at:https://www.ilo.org/legacy/english/protection/safework/cis/about/mtg2006/pnga_mlpid.pdf (Accessed 16 October 2023)

[6] ILOC119. 1963. Guarding of Machinery Convention, 1963 (No. 119). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0:::55:P5_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C119,/Document (Accessed 16 October 2023)

The responsibilities of ensuring that only types of machinery with appropriate guards are sold, leased, and transferred are on the manufacturers or vendors. According to Article 4 of the Convention. Article 10 (1) and (2) make it mandatory for employers to instruct their workers in their employment on the proper handling of the machines and to ensure that the machine guards are installed. According to the ILO online bulletin, as of 14 October 2023, 52 States have ratified the Convention since 1963.

2.2 Occupational Safety and Health Convention (Convention No. 155), 1981[7]

According to ILO (2020), the Occupational Safety and Health Convention, No. 155 was adopted by the Governing Body of the ILO on 22 June 1981.[8] The Convention came into force on 11 August 1983. It consists of 5 parts with 30 articles. The Convention aims to formulate national policies on OSH for Member States with the view to prevent industrial accidents and minimize hazardous conditions as reasonably as possible. According to the ILO online bulletin, 66 Member States, 15 of which are from Africa, including Nigeria, have ratified the Convention since it came into force. A total of 121 member states are yet to ratify the Convention. Part 1 of the Convention[9] covers the scope and definitions of pertinent terms. Part 2 specifies the general character of OSH policies for Member States. Part 3 centers on the implementation of the policies at the national level. Part 4 provides for the application of the policies at the enterprise level. For instance, it specifies employers' roles, in the OSH system at the enterprise level, to ensure a safe working environment without any financial contribution from the workers. Part 5 covers the general provisions of the Convention.

Although Part 2 of the Convention provides for every economic sector, including the public sector, ratifying Members may apply to the Director of the ILO for the exclusion of specific sectors such as maritime shipping or fishing under Article 1. Article 4 makes it mandatory for ratifying Members to implement coherent OSH national policies, which are geared towards the prevention of workplace accidents.

Furthermore, Article 8 makes it compulsory for ratifying Members to ensure that the provisions of the Convention come into force once adopted and that ratifying Members should institute an adequate system of inspection. Article 12 provides that such an inspection system should ensure the safeguarding of equipment and types of machinery at the enterprise and minimize hazardous conditions. Article 19 of the Convention[10] specifies the roles of workers in the OSH system at the enterprise level. For instance, workers are required to provide forthwith, to their immediate supervisors, any situation in which they have reasonable justification to believe that presents an imminent and serious danger to their life or health until the employer takes remedial action.

2.3 Promotion of Framework for Occupational Safety and Health Convention (Convention No. 187), 2006

According to ILO (2020), the Promotion of Framework for Occupational Safety and Health Convention, No. 187[11] was adopted by the Governing Body of the ILO on 15 June 2006. It came

[7] ILOC155. 1981. Occupational Safety and Health Convention, 1981 (No. 155). Available at: ILO85 1993. Lift, Escalators and Conveyors Safety Regulation. Available at: https://www.nioh.ac.za/wp-content/uploads/2020/03/liftescallator.pdf http://www.ilo.org (Accessed 16 October 2023)

[8] *Ibid*

[9] Occupational Safety and Health Convention, 1981 (No. 155).

[10] Occupational Safety and Health Convention, 1981 (No. 155)

[11] Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C187 (Accessed 16 October 2023)

into force on 20 February 2009. The Convention consists of 6 parts with 14 articles. The primary objective of the Convention is to promote preventive OSH among Member States through provisions on the establishment of national policy, national system, and national program on OSH.

According to the ILO online bulletin, 40 Member States, 5 of which are from Africa, have ratified the Conventions since it came into force. A total of 127 Member States are yet to ratify the Convention, including Nigeria.

Parts 1 and 2 of the Convention cover basic definitions and objectives, respectively. Part 3 encompasses national policies. Part 4 provides for the national system. Part 5 makes provision for the promotion of national OSH programs by ratifying member States, while the final provisions are contained in Part 6.

Article 3(1) of the Convention makes it mandatory for ratifying Member States to develop, promote, and review national OSH policy. Article 4(1) also makes it mandatory for ratifying Member States to "establish, maintain, and develop a progressive national system for OSH, in consultation with accredited representative organizations of employers and workers."

Furthermore, Article 4(2) itemizes the composition of the national system to include laws and regulations, regulatory bodies, and structures for implementing OSH policies. Article 4(3) states the specifics of the national system to include the following seven key areas;

1. The national tripartite advisory body, or bodies addressing occupational safety and health issues.
2. Information and advisory services on occupational safety and health.
3. Occupational health services following national laws and practices.
4. Research on occupational safety and health.
5. A mechanism for the collection and analysis of data on occupational injuries and diseases, considering relevant ILO Instruments.
6. Provisions for collaboration with relevant insurance or social security schemes covering occupational injuries and disease; and
7. Support mechanisms for a progressive improvement of occupational safety and health conditions in micro-enterprises, small and medium-sized enterprises, and the informal economy.

2.4 Employment Injuries Benefit Convention (Convention No. 121), 1964.

The right to occupational safety and health is recognized as a fundamental human right by the ILO. It ensures that employees are entitled to adequate safety at their workplaces. These Conventions emphasize the need for adequate compensation, rehabilitation, and preventive measures to protect workers' rights effectively.

Accidents and injury to health arising in the course of work can be minimized, so far as is reasonably practicable. The causes of hazards inherent in the working environment have been a major concern to ILO. The standard specifies that occupational safety and health and the working environment must take cognizance of the following, as provided in Article 5;[12]

[12] Employment Injuries Benefit Convention 1964 (Convention 121)

a. design, testing, choice, substitution, installation, arrangement, use, and maintenance of the material elements of work (workplaces, working environment, tools, machinery and equipment, chemical, physical, and biological substances and agents, work processes).
b. relationships between the material elements of work and the persons who carry out or supervise the work, and adaptation of machinery, equipment, working time, organization of work, and work processes to the physical and mental capacities of the workers;
c. training, including necessary further training, qualifications, and motivations of persons involved, in one capacity or another, in the achievement of adequate levels of safety and health;

ILO provides a clear-cut definition of the respective functions and responsibilities concerning occupational safety and health and the working environment of public authorities, employers, workers, and others, taking into account both the complementary character of such responsibilities and national conditions and practice.

In addition, the Convention recommends in Article 7[13] that occupational safety and health and the working environment should be reviewed at appropriate intervals, either overall or in respect of areas, to identify major problems, evolve effective methods for dealing with them, prioritize action, and evaluate results.

The Convention places a demand on the part of the State to act, regarding the implementation of the standard for safe work within the framework of each Member State's legislation. To this effect, Article 8[14] demands a concerted effort with the representative organizations of employers and workers concerned, to take such steps as may be necessary to give effect to issues of safety and health in the organization. The enforcement of laws and regulations concerning occupational safety and health and the working environment shall be secured by an adequate and appropriate system of inspection, the enforcement system shall provide adequate penalties for violations of the laws and regulations.

Article 11 (a), (b), (c), addresses the issue of determination by professionals, where the nature and degree of hazards so require, of conditions governing the design, and procedures to be defined by the competent authorities; the determination of work processes and substances and agents. The exposure to which is to be prohibited, limited, or made subject to authorization or control by the competent authority or authorities; health hazards due to the simultaneous exposure to several substances or agents shall be taken into consideration. The Convention requires that States ensure the annual publication of information on measures taken in pursuance of the policy referred to in Article 4 of the Convention and on occupational accidents, occupational diseases, and other injuries to health that arise in the course of or in connection with work. Article 11(f) provides for the introduction or extension of systems, taking into account national conditions and possibilities, to examine chemical, physical, and biological agents concerning the risk to the health of workers. The measures towards promoting appropriate national conditions and practice, the inclusion of questions of occupational safety and health and the working environment at all levels of education and training, including higher technical, medical, and professional education, in a manner meeting the training needs of all workers is provided in Article 14. This requires the establishment of a central body.

[13] *Ibid*
[14] *Ibid*

The Convention also places a demand on the part of the employer because safe work requires the collaboration of the employers, management, and workers. There should be effective policies and programs to guide the implementation of safe health. To this end, Article 16 (1)[15] states that, so far as is reasonably practicable, employers are required to;

a. ensure that the workplaces, machinery, equipment, and processes under their control are safe and without risk to health;
b. ensure that the chemical, physical, and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken;
c. provide, where necessary, adequate protective clothing and protective equipment to prevent the risk of accidents or adverse effects on health;
d. provide, where necessary, for measures to deal with emergencies and accidents, including adequate first-aid arrangements. There shall be arrangements at the level of the undertaking under which-

i. In the course of performing their work, co-operate in the fulfillment by their employer of the obligations placed upon them;
ii. representatives of workers in the undertaking co-operate with the employer in the field of occupational safety and health.
iii. representatives of workers in an undertaking are given adequate information on measures taken by the employer to secure occupational safety and health and may consult their representative organizations about such information provided they do not disclose commercial secrets.
iv. workers and their representatives in the undertaking are given appropriate training in occupational safety and health.
v. workers or their representatives and, as the case may be, their representative organizations in an undertaking, by national law and practice, are enabled to enquire into, and are consulted by the employer on, all aspects of occupational safety and health associated with their work; for this purpose, technical advisers may, by mutual agreement, be brought in from outside the undertaking.
vi. a worker reports forthwith to his immediate supervisor any situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health; until the employer has taken remedial action. If necessary, the employer cannot require workers to return to a work situation where there is a continuing imminent and serious danger to life or health.

3.0 Application of ILO Conventions on Occupational Safety in Nigeria.

Although Nigeria has ratified some of the ILO Conventions, most of the Conventions are yet to be domesticated to have the force of laws that can be seamlessly applied in the country. Nonetheless, several domestic laws cater to the occupational safety and health of workers in Nigeria. Some of the laws include the Factories Act, of 1987, the Employees' Compensation Act, of 2010, the Occupational Safety and Health Act, of 2005, the National Policy on Occupational Safety and Health Act, of 2006, etc. In addition, the Federal Ministry of Health and the Federal Ministry of Labour and Productivity are very fundamental in the actualization of occupational safety and health of workers in Nigeria.

[15] Employment Injuries Benefit Convention 1964 (Convention No. 121)

In a nutshell, the Factories Act, of 1987 regulates the registration, inspection, prosecution, and general monitoring of factories, the health and safety of factory workers, and a wider spectrum of workers and other professionals exposed to occupational hazards. As such, every factory is required to comply with the provisions of the Act to ensure the health, safety, and welfare of their workers as stipulated in Parts II- V of the Act. Also, factories are required by the Act to promptly notify the inspector in charge of the district where the factories are located, of any accident that leads to the death or disability for more than three days, of a worker in that factory. Factories are also required to promptly report occupational diseases. Such accidents and diseases must be registered in the general register of the factories.[16] Failure to comply with the provisions of the Act attracts penalties such as imprisonment, fine, or structural renovation.[17]

The Employees' Compensation Act, of 2010[18] makes comprehensive provisions for the payment of compensation to employees who suffer from occupational diseases or sustain injuries arising from accidents at the workplace or in the course of employment.[19] Under Part II of the Act, in the event of any injury or disabling occupational disease to an employee in a workplace, the employee, or in the case of death, the dependant of the employee is required to inform the employer or its appropriate representative, within 14 days of the occurrence of such disease or injury. The employer will report the disease or injury to the Nigeria Social Insurance Trust Fund Management Board and the nearest National Council for Occupational Safety and Health within 7 days. The Board will then pay the compensation.[20]

The National Policy on Occupational Safety and Health, 2006[21] aims to ensure the provision of occupational safety and health services to workers in all sectors of the economy. Thus, the Policy stipulated the duties of the Federal Ministry of Labour and Productivity,[22] employers, Federal Ministry of Health, workers, transporters, manufacturers, and safety and health committees.[23] Also, the media has a role to play in the advancement of the safety, health, and welfare of the nation's workforce.[24] Although there is a bill to amend the Occupational Safety and Health Act, the bill is yet to be passed into law.[25]

The National Industrial Court (NIC) was established in 1976 to handle disputes in labour and industrial relations. It was constitutionally recognized as a superior court of record in Nigeria by the Third Alteration Act of 2010. The National Industrial Court which has jurisdiction over labour and industrial relations is empowered to have due regard to good or international best practices in labour or industrial relations, as well as deal with the application of any international instrument on labour and industrial relations which Nigeria has ratified.[26] There is however a constitutional caveat that prevents an international treaty that has not yet been enacted (domesticated) by the National Assembly from having the force of law in Nigeria.[27] The status of international

[16] See generally Parts VI- VIII of the Factories Act, 1987.
[17] See generally Parts IX-X of the Factories Act, 1987.
[18] Formerly known as the Workmen's Compensation Act, 1987.
[19] The Act does not apply to any member of the Armed Forces of the Federal Republic of Nigeria other than a person employed in a civilian capacity. See section 3 of the Employees' Compensation Act, 2010.
[20] See generally, sections 4-6 of the Act.
[21] The National Policy was made pursuant to the Occupational Safety and Health Act, 2005.
[22] The Policy referred to the Federal Ministry of Labour and Productivity as the statutory authority.
[23]https://nelex.gov.ng/documents/National_Policy_On_Occupational_Safety_And_Health.pdf
[24] https://www.thecable.ng/health-and-safety-in-the-workplace-emerging-issues-from-the-report-by-thecable
[25] https://placbillstrack.org/upload/SB126.pdf
[26] Section 254C (2) Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[27] Section 12(1) Ibid

instruments which have been ratified but have not yet been enacted has remained a dilemma for legal practitioners. This paper attempts to demystify these blurry lines from a practical approach. The provisions of the Constitution under discourse are reproduced hereunder:
Section 12(1) CFRN 1999- No treaty between the Federation and another 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.

Section 254C (2) CFRN 1999- 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 about 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.

A community reading of the two provisions would disclose a probable discrepancy using the word "enacted" in Section 12(1) and the word "ratified" in Section 254C (2). This oddness is further heightened by the opening phrase of Section 254C (2) which purports to negate the operation of any contrary provision in the Constitution insofar as it regards the powers of the NIC to deal with international instruments which have been ratified. It is therefore pertinent to delve into a jurisprudential address on the operative use of the words "ratify" and "enact" and any dissimilarities that may accrue thereto.

The verb "enact" as used in Section 12(1) was not defined under the Interpretation Section of the Constitution, but the noun enactment was defined therein to mean "provision of any law or a subsidiary instrument."[28] The power to make laws for the Federation is vested in the National Assembly.[29] The Supreme Court in ***Abacha v. Fawehinmi***[30] interpreted the provisions of Section 12(1) CFRN in the following simple words:

"An international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly… Before its enactment into law by the National Assembly, an international treaty has no such force of law as to make its provisions justifiable in our Courts."[31]

Hence, this section precludes Nigerian courts from applying the provisions of international treaties and Conventions entered into by the Federation as law, until our National Assembly has passed an Act domesticating that treaty or Convention. This has led to the mantra: No Enactment, No Applicability of Treaty.[32] The rationale behind this provision is to retain the sovereign powers to make laws for the Federation in the National Assembly. This process of enacting an international treaty or instrument by the National Assembly has been given the appellation "domestication" of treaties.

Since the enactment of the Third Alteration Act in 2010, there have been different schools of thought on the approach the NIC should take when faced with international best practices. Professor

[28] Section 318 (1) CFRN 1999
[29] The National Assembly makes laws with respect to matters contained in the Exclusive legislative List and also certain matters in the Concurrent Legislative list to the extent prescribed in the Constitution. Sec. 4 (2) CFRN 1999
[30] Supra
[31] Abacha v. Fawehinmi (2000) 6 NWLR (Pt.660) 228 Per Ogundare J.S.C Pp. 30-31, Paras. C-F
[32] Atilola B. „National Industrial Court and Jurisdiction over International Labour Treaties under the Third Alteration Act." Labour Law Review, Vol. 5 N0. 4, December 2011

Agomo is of the view that technical and literal modes of interpretation will not be used to defeat the spirit and intendment of international Conventions, treaties, and Protocols that Nigeria has ratified, by insisting that each of those instruments must be domesticated under section 12 of the constitution."[33] She further submits 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, 2006, as providing a legal ground for the contention that nondomesticated Conventions can be applied as examples. 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."

Thus, with the provision in Section 254C (2) CFRN 1999 which was introduced by the Third Alteration Act, 2010, can this established principle of domestication stand the test of time as it relates to international instruments on labor law? The National Industrial Court is already leaning towards a liberal interpretation and has applied the provisions of some International Labour Organization Conventions and Protocols which have been ratified but not yet enacted by the National Assembly in several cases.[34] For instance, in the unreported case of *Inyang v. Alphabeta Consulting LLP,*[35] the NIC held that the Defendant's failure to issue a certificate of service to the Claimant, which failure resulted in loss of employment by the Claimant with a new employer, does not conform to international best practice, hence held the Defendant liable.

Also, the National Industrial Court in *Aloysius v. Diamond Bank Plc.*[36] wasted no time in applying the Employment Convention, 1982 (No. 158) and Recommendation No. 166 of the ILO in holding that an employer is required to give a "valid reason" for terminating the employment of its employee. Although the court noted that the said Convention has not been re-enacted by the National Assembly, the court relied on the provisions of the section 254C (1)(f) and (h) of the Constitution to apply the Convention's provisions as being the "international labour standard and international best practice" on the point. Justice Kola-Olalere held as follows:

"…by the provisions of section 254C(1)(f) and (h) of the 1999 Constitution as amended, this Court can now move away from the harsh and rigid Common Law posture of allowing an employer to terminate its employee is employment for bad or no reason at all…It is now contrary to international labour standards and international best practices and therefore, unfair for an employer to terminate the employment of its employee without any reason or justifiable reason that is connected with the performance of the employee's work. I further hold that the reason given by the defendant for determining the claimant's employment in the instant case, which is that his service was no longer required" is not a valid one connected with the capacity or conduct of the claimant's duties in the defendant bank. In addition, I hold that it is no longer Conventional in this twenty-first-century labour law practice and in industrial relations for an employer to terminate the employment of its employee without any reason even in private employment.…"

[33] Agomo, C. K., *Nigerian Employment and Labour Relations Law and Practice (Lagos: Concept Publications Limited,* 2011) pg 341
[34] *Aloysius v. Diamond Bank Plc* (*infra*) and *Andrew Monye v. Ecobank Nigeria Plc* (unreported Suit No. NICN/LA/06/2010).
[35] Suit No.: NICN/LA/550/2016, delivered on 4 June 2018, accessed via https://www.lexology.com/commentary/employment-immigration/nigeria/aluko-oyebode/innovative-nicn-judgments-could-rewrite-labour-law-jurisprudence#41, on 15/11/2023
[36] [2015] 58 NLLR (Pt. 199) 92.

The dictum of Justice Kola-Olalere in the case above indeed appears to offend the spirit of Section 12(1) CFRN 1999. The Supreme Court in *Abacha v. Fawehinmi*[37] took copious pains to explain the reality of the law when it held as follows:

"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 by the National Assembly." – Per Ejiwunmi J.S.C at Page 247.

This position of applying ILO Conventions whether domesticated or not as evidence of best practices in line with the Third Alteration of the Constitution is supported by the opinion of Judges of the National Industrial Court including Justice Adejumo (2010), Justice Kanyib (2018), Justice Obaseki (2018).[38] The proponents of this approach have argued that the use of "*notwithstanding*" in Section 254C (1) CFRN 1999 suggests an intention of the framers of the Constitution for that section to impede the operation of Section 12(1) thereof. The Supreme Court in the case of *N.D.I.C. v. Okem Enterprise Ltd & Anor*[39] explained that when the term 'notwithstanding' is used in a section of a statute, it is meant to exclude an impinging or impeding effect of any other provision of the statute or other subordinate legislation so that the said section may fulfill itself.[40] The effect of this interpretation on Section 254C (2) CFRN 1999 would imply that an international Convention or treaty that has been entered into by the President (acting personally or through his Ministers)[41] would be applicable by the NIC, despite the failure or neglect of the National Assembly to enact such a treaty into law (domestication). It has also been contended that the Nigerian state is actively interested in strengthening the rules of international law. This is evidenced by the provision included in her Constitution as her foreign policy objective. Section 19 CFRN 1999 provides that the foreign policy objectives shall include:

c) Promotion of international cooperation 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.

The above statement of our fundamental objective and directive principle of state policy is consistent with the liberal views subscribed to by pro-NIC scholars and jurists including Professor Agomo, Justice Kanyib & ors. It would be indeed difficult for Nigeria to fulfill her directive principles of state policy that mandate respect for international treaty obligations if she is allowed to shy away from her international obligations behind the corridor of Section 12(1) CFRN 1999.

[37] Supra
[38] The Relevance of International Labour Organisation Conventions to Promote Rights of Workers and Fair Labour and Industrial Practice in Nigeria Dr. E.A Oji, Prof. O. D. Amucheazi, and M.V.C. Ozioko Esq accessed via http://jeteraps.scholarlinkresearch .com/articles/The%20Relevance%20of%20 of% 20 International%20Labour.pdf on 24/10/2023 .
[39] Supra
[40] (2004) 10 NWLR (Pt.880)107, Per Uwaifo J.S.C (P. 53, paras. E-G).
[41] Section 5 (1) (a) CFRN 1999 vests executive powers of the federation on the president and mandates him to exercise such powers directly or through the Vice-President and Ministers of the Government or officers in the public service of the Federation.

In addition, the combined reading of Section 3(1)(a) and (2)(a) of the Treaties (Making Procedure, Etc) Act, 1993 is to the effect that treaties which govern inter-state relationship and co-operation in any area of endeavor and which have the effect of altering or modifying existing legislation or which affects the legislative powers of the National Assembly need to enact into law. Conversely, the combined reading of Section 3(1)(b) and (2)(b) of the Act is to effect that agreements which impose financial, political, and social obligations on Nigeria or which are of scientific or technological import need to be ratified. Also, the combined reading of Section 3(1)(c) and (2)(c) of the Act is to the effect that agreements that deal with a mutual exchange of cultural and educational facilities may not need to be ratified.

Consequently, one of the questions to be determined is whether the Convention on Occupational Safety and Health which Nigeria ratified in 1994, falls under such international treaties that require the National Assembly to enact them into law before they can be applied in Nigeria.

4.0 Conclusion

Nigeria, being a dualist country is entitled to ratify and domesticate international Conventions before they can be applied by the court under section 12(1) of the Constitution of the Federal Republic of Nigeria 1999. However, 254C (2) of the Constitution 1999, provides that the National Industrial Court can always have regard to ratified international treaties and Conventions in the determination of labour-related matters. This situation presents us with two divergent views. This divergence is more particularly unsettling as there is currently no Supreme Court of Nigeria's decision one way or the other on the application of these well-meaning ratified Conventions by the National Industrial Court under the jurisdiction of the Court as provided in section 254C of the Constitution of the Federal Republic of Nigeria (Third Alteration), 2010.

Although the Treaties (Making Procedure, Etc) Act, of 1993, categorized international treaties into three, every international treaty must be holistically considered to ascertain which category it falls such as to require enactment into law or just ratification.

5.0 Recommendation

The Constitution is the norm and supersedes all other existing laws. Having provided two conflicting provisions, the duty then falls on the judiciary to interpret the law. The Courts, however, must have its jurisdiction invoked to lay the matter to rest. Consequently, stakeholders can invoke the original jurisdiction of the Supreme Court for the apex court to interpret sections 12 and 245C of the Constitution.[42]

[42] A.G. Federation v. A.G. Abia State & Ors. [2001] 11 NWLR (Pt. 725) 689.