# FOSTERING REFORMS IN THE ENFORCEMENT OF COLLECTIVE AGREEMENTS IN NIGERIA*

**Abstract**

*The crux of this study hinges on fostering reforms in the enforcement of collective agreements in Nigeria. They range from a variety of issues, from the centrality of the Minister of Labour in the bargaining and agreement process to the relics of common law providing that collective agreements are not enforceable unless stringent conditions are met, down to the non-alignment of our industrial legislation and judicial predispositions with international best practices. Incidentally, this study also seeks to propose the reforms needed for the improvement of collective agreements in Nigeria. Among others, this study advocates for an Independent National Industrial Relations Commission, clarity and more legislative injections into our industrial jurisprudence, aligning us with the international best practices, etc. Consistent with the above, the method of research employed for this study is primarily doctrinal. However, the study also adopted a blend of descriptive, analytical and applied research methodologies, which would be conducted in the faculty of law library, Bingham University, Nasarawa state. By this process, the use of judicial authorities, statute, books and journals has been heavily employed to carry out this study. For the purpose of the research, these materials are classified into primary and secondary sources. Primary Sources include the 1999 Constitution of the Federal Republic of Nigeria (as amended), Statutes, Case laws and delegated legislations. Secondary sources include journals, dictionaries, books, lecture notes, and project/thesis/dissertations. This study finds that the enforcement would the recommended reforms for collective agreements in Nigeria would lead to the improvement of labour relations and economic development incidentally.*

**Keywords:** Collective Agreement, Enforceability, Challenges, Reforms.

## 1. Introduction

The backbone of any society is its economy, and a fundamental element of any economy is its labour and Industrial workforce. A collective agreement is an essential part of the labour and industrial workforce because it creates a more conducive and productive framework for the relationship between both workers and employers of labour. Over the past few years, there have been records of improvements as to the nature of our Industrial Jurisprudence, especially with respect to collective agreements in Nigeria. We find this with the 1999 third alteration that empowers the National Industrial Court with exclusive jurisdiction to interpret and apply collective agreements,[1]thereby making a paradigm shift from the common law position that collective agreements are generally not enforceable. However, despite these improvements to our collective agreements landscape, there are still areas of our Industrial Jurisprudence that we need to enforce reforms so as to foster improvements in our labour relations and economic growth by implication. Thus, the purpose of this study is to soberly pour out the state of affairs pertaining to collective agreement in Nigeria and expound on the possible reforms we need to enforce to foster economic growth and align that economic growth with the best International Labour Standards.

## 2. Definition of Terms:

It is an academic and intellectual prerequisite that before diving into the crux of jurisprudential topics like the proposed reforms for collective agreements in Nigeria, we consider the meaning, nature and provide clarification on certain terms and concepts crucial to this study. To this effect, the concepts of Labour relations, Labour Disputes, Trade Unions, Collective Bargaining and Collective Agreement would be largely discussed.

### Labour Relations

Labour relations, also known as Industrial relations pursuant to the International Labour Organization (ILO), 'Convention Concerning the Promotion of Collective Bargaining (No. 154) ',[2] is defined as encompassing all aspects of the relationship between employers and employees, including the establishment and negotiation of working conditions, mechanisms for dispute resolution, and the roles of trade unions and employer associations. Put simply, it is a term used to describe all aspects of the relationship between employer and employee, as well as their dealings with each other in the workplace or organisation. Labour relations, via the definition of the ILO,[3] also extend to labour disputes and the mechanism through which these disputes are resolved

### Labour Disputes

Labour Disputes, within the context of this study, are synonymous with trade disputes. Trade disputes are defined by the Trade Unions Act 2005,[4] to mean 'any dispute between employers and workers, or between workers and workers, which is connected with the employment or non-employment, or the terms of employment or conditions or work of any person.' Additionally, trade disputes are conflicts that arise in the workplace between management and workers arising from either management's or workers' non-compliance with or misinterpretation of the collective agreement jointly reached. It can broadly be defined as a

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[1] Constitution of the Federal Republic of Nigeria, 1999 (as amended), s 254C(1)(j)

[2] 1981, ILM 1193

[3] International Labour Organization (ILO), 'Convention Concerning the Promotion of Collective Bargaining (No. 154) '

[4] S. 54

term which refers to all expressions of dissatisfaction within the employment relationship.[5] From the foregoing, an inference can be drawn that Labour disputes can be categorised into two: the firs are disputes concerning an individual and, second relates to disputes concerning a group (the union). It is worth noting that a simple dispute involving an individual can metamorphose into a collective dispute. Individual disputes may come up when the individual feels they have been deprived of their workplace rights and entitlements. Collective disputes, on the other hand, may arise when a group of individuals feel they have been deprived of their workplace rights and entitlements.[6] We find, and this must be noted, that the collective definition of collective agreement as provided for under Nigeria's Industrial Jurisprudence is to the effect that an individual employer or employee cannot be a party to a collective agreement. This would be adumbrated later in this study and would be sufficient grounds for reforms. Seeing that in terms of Labour relations, we have Labour disputes and these disputes can occur at the group level via the instrumentality of Trade Unionism, it then begs the question, what is a Trade Union?

**Trade Unions**

To understand the import of trade unions, it is necessary to have recourse to relevant statutes. The TUA[7] defines a Trade Union as 'Any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers.' This definition has gotten statutory blessings via Section 48, Trade Dispute Act 2004.[8] Additionally, the Labour Relations Act 1996,[9] applicable in Malawi, has similarly defined a Trade union as:

> Any combination of persons, the principal purposes of which are the representation and promotion of employees' interests and the regulation of relations between employees and employers, and includes a federation of trade unions, but not an organization or association that is dominated by an employer or employers' organization.

From the avalanche of statutory definitions above, it is crystal clear that a trade union is a group of people coming together with the sole purpose of representing, promoting the interests, as well as regulating the working conditions and environment of its members. If that is the case, it then means that by implication, a trade union negotiates on behalf of its members, bringing into perspective the agency theory. Therefore, incidentally refutes the privity of contract argument proposed by the common law. More adumbration on the discussion of privity of contract in the context of collective agreement would be addressed in this study. Some of the popular trade unions in Nigeria are: Academic Staff Union of Universities (ASUU); Non-Academic Staff Union of Educational and Associated Institutions (NASU); Association of Senior Staff of Banks, Insurance and Financial Institutions. (ASSBIFI); Nigeria Union of Teachers (NUT); Nigeria Union of Journalists (NUJ); Judiciary Staff Union of Nigeria (JUSUN); Hotel and Personal Services Employers' Association; National Union of Road Transport Workers (NURTW); Nigerian Bar Association (NBA); Nigeria Football Association (NFA); National Union of Petroleum and Natural Gas Workers; Nigerian Medical Association (NMA); National Association of Nigeria Nurses and Midwives; Nigeran Society of Engineers (NSE); Pharmaceutical Society of Nigeria (PSN); Hotel and Personal Services Employers' Association etc. We find that participation and contribution of trade unions in their various sectors revolve around some form of bargaining for the interest of their members. The question becomes, what is collective bargaining?

**Collective Bargaining**

An attempt to discuss a Collective Agreement without appreciating the concept of Collective Bargaining is like building a house on quicksand, as collective bargaining is the foundation of a collective agreement. According to Sidney and Beatrice, collective bargaining is the process whereby the terms and conditions of employment are agreed upon through the representatives of the employer(s) and the employees.[10] Collective bargaining is defined as 'collective dialogue, or collective negotiation between the employers' representatives and workers' representatives with a view to reaching a collective agreement on the issue under negotiation. '[11] In our legal jurisprudence, the Labour Act[12], in an attempt to define collective bargaining, provides that: 'Collective bargaining is a process of arriving or an attempt to arrive at a collective agreement.' Internationally, the ILO[13] provides a more robust definition of collective bargaining, it:

> …extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for: (a) determining working conditions and terms of employment; and/or International labour standards: (b) regulating relations between employers and workers; and/or (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.

We find two things from these definitions. Firstly, there is a strong correlation between collective bargaining and ensuring that there is an effective workplace framework for both workers and employers. This is because it is through collective bargaining that labour disputes are resolved, as well as collective agreements reached and incidentally, an economy grows.

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[5] Collective Bargaining and Conflict Resolution: The Federal Government of Nigeria and the Nigeria Labour Congress Impasse, by E. C. C. Nwadiaro

[6] Industrial Relations in Developing Countries: The Case of Nigeria. by Akintunde Ubeku

[7] Trade Unions Act 2005, s54.

[8] Cap T8 LFN

[9] No. 16 of 1996, Cap. 54:01, S2.

[10] Sidney and Beatrice Webb, 'Industrial Democracy 'Longmans, Green and Co, London 1897

[11] Chioma Kanu Agomo, Nigerian Employment and Labour Relations Law and Practice (Concept Publication Limited 2011), 292.

[12] Labour Act, Cap.L1, LFN 2010, s91

[13] Article 2 of the Collective Bargaining Convention, 1981 (No. 154).

Secondly, we find that the amount of legal substratum supporting collective bargaining and agreement in Nigeria is lacking. From a perusal of our Industrial Law, specifically: the Trade Dispute Act, the Labour Act, the Trade Union Act and the National Industrial Court Act, only the Labour Act made an attempt to provide a definition of what collective bargaining is, and with the greatest respect to our legislative draftsmen, not even a decent attempt was made to the effect. Apart from the lacuna in the meaning of collective bargaining, we see a wide gap in our Industrial legislation in respect to addressing the procedural and practical aspects of collective bargaining and agreement. We bring this up because, in order to ensure the improvement of the collective agreement, we first have to ensure that a proper foundation for it is established. From the foregoing, we see that the foundation which should provide for statutory obligations for parties to meet at reasonable times, for parties to confer in good faith on issues such as wages, working hours and other terms and conditions of employment, statutory provisions on what is attainable at the different phases of the bargaining and agreement process is unfortunately lacking in our Industrial Jurisprudence. We believe the first step in reform is to align our Industrial laws with more clarity in terms of what is attainable in respect to collective bargaining and agreement, to speak to their practical and procedural needs. The whole purpose of collective bargaining is to arrive at a collective agreement. It then means the next most rational question is what is a collective agreement?

**Collective Agreement**

To begin with, the International Labour Organisation (ILO)[14] defines collective agreements as:

> all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more representative workers' organizations, or, in the absence of such organizations, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulations, on the other.

Additionally, Section 48 of the Trade Dispute Act[15] defines a collective agreement in a similar manner as:

> …any agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between- an employer, a group of employers or organizations representing workers, or duly appointed representative of any body of workers, on the one hand; and one or more trade unions or organizations representing workers, or the duly appointed representative of any body of workers on the other hand.

However, the Labour Act[16] and the National Industrial Court Act[17] provide a slightly different definition. They both provide verbatim that a collective agreement is:

> …an agreement in writing regarding working conditions and terms of employment concluded between- an organization of workers or an organization representing workers (or association of such organizations) of the one part; and an organization of employers or an organization representing employers (or an association of such organizations) of the other part.

From the foregoing four statutory definitions, we find three things: Firstly, there is a slight incongruence between the definition provided by the ILO and those provided by the LA and NICA. We find that the ILO provides a more robust definition to accompany individual employers as parties to a collective agreement. On the other hand, we find that the definition of the LA and NICA only provides for employers and workers' organisations. We believe this provides another room for reform. To the effect of aligning the provisions of our Industrial laws with the parties to a collective agreement to reflect and align with the International Labour Standards.

Secondly, it appears that an essential element we find across all statutory definitions of collective agreement is that they are 'agreements in writing 'signed and executed by the parties concerned. The implication is that minutes of a minute cannot constitute a collective agreement, contrary to the holding of the court in *PENGASSAN v Mobil Nig Unlimited.*[18] Thirdly, the representative capacity of parties to a collective agreement. We believe these parties are acting on behalf of their members. We believe this to be true because of the statutory definitions which provide for 'an organisation of workers or an organisation representing workers 'on one hand and 'an organisation of employers or an organisation representing employers 'on the other hand. Additionally, we find from the definition that trade unions are also parties to collective agreements and from the statutory definition of trade unions, their sole aim is to represent and protect the interests of their members in respect to their workplace environment. Alverstine LCJ has defined an agent as 'any person who happens to act on behalf of another '.[19] Our position is simple: if an agent is any person who happens to act on behalf of another, and these organisations and trade unions, during negotiations and bargaining, are representing and acting on behalf of their members, then these organisations and trade unions are agents of their members. The implication is that this implies an agency relationship between the organisations or trade unions that reach these collective agreements and their respective individual members who are employers and employees. The reason this discussion is so important in this study is to draw our attention to another area of reform, which is for our Industrial

[14] Part II.2 (1) of the Collective Agreements Recommendation, 1951 (No. 91).
[15] Trade Dispute Act, CAP T8, LFN 2010, s48.
[16] Cap L1, LFN 2004, Section 91.
[17] Cap N 155 LFN 2004, Section 54.
[18] [2013] 32 NLLR (Pt 92) 243 NIC
[19] Queen v. Kane (1901) 1 Q.B 472

laws to expressly and unequivocally stipulate the effect of collective agreement, which is: collective agreements entered into between bargaining agents (trade unions and organisations representing workers or employers) are binding on their individual and respective members. We believe this reform is very instrumental for this study because it will put to rest the ghost of common law, insinuating the unenforceability of collective agreements on the grounds of privity of contract. More on this reform later in the study. On another breath, other fundamental features of a collective agreement include:

a) The collective agreement must be the outcome of collective bargaining.
b) All necessary parties must be duly and ably represented in the collective bargaining that gave rise to the collective agreement. Where any party, that is, employee or employer, is not present or duly represented, such agreement is not acceptable.
c) A collective agreement is usually geared towards the settlement of issues relating to working conditions and terms/contracts of employment.

Examples of negotiable issues settled by collective bargaining/agreement include: salaries and wages increase, working hours, pension, maternity leave, workers' training, sick leave, annual leave, promotion, allowances, overtime payment, transfer, redundancy, death benefits, occupational health, insurance, car/house loans, equal treatment, suspension and discipline. The list is inexhaustible and flexible according to the ability of trade unions to influence and persuade employers.

**3. Challenges for Collective Agreement in Nigeria**

For the purpose of this study, the challenges of Collective agreements under the Nigerian Industrial Jurisprudence would be adumbrated via the purview of the Common Law, the Trade Dispute Act,[20] the National Industrial Court Act,[21] and the Constitution of the Federal Republic of Nigeria (Third Alteration).

**Challenges of Collective Agreement under Common Law**

Under the purview of Common Law, this study would provide an organogram of the common law position, as well as the recent court holdings aligning with the common law position. This study would also point out the challenges emanating from them, and despite subsequent industrial legislation, still hinder the improvement of collective agreements and highlight possible reforms to that effect. Nigeria is a common law country, and in the past, the courts have consistently followed the common law principle that collective agreements are binding only in honour and also not enforceable/non-justiciable due to the doctrine of privity of contract. Under the common law, collective agreements are considered non-justiciable, even though they are the outcome of painstaking deliberations between employers of labour and their employees. They are considered a gentleman's agreement, which is binding only in honour. That is to say, collective agreements have their root in mutual trust and moral obligation rather than enforceability through legal mechanisms. Additionally, there is no inherent intention to create legal relations, and no contract is legally enforceable unless there is inherent in it an intention to create legal relations. This common law position has its roots in the decided case of *Ford Motor Co. Ltd. v Amalgamated Union of Engineering and Foundry Workers*[22], where Ford Motors and trade unions reached collective agreements concerning employment conditions, signed by their representatives. When a union strike took place concerning the conditions, the company brought an action for an injunction pursuant to the agreements, attesting the collective agreements to be legally binding. The unions argued that no legally enforceable contract resulted from the collective agreements. The question arose as to whether the parties intended the collective agreements between the company and the unions to form a legally binding contract.

The court, reinforcing the common law principle, held, when agreements are reached in a commercial context, the presumption is that the parties intended for the agreement to be legally binding, unless an express provision declares otherwise. However, even though they are concluded in a commercial environment, in the case of collective agreements, where there is no express provision, it is necessary to examine the context and surrounding circumstances in order to ascertain the intention of the parties to be legally bound. The relevant circumstances include the wording of the agreements, their nature, the background in which they were reached, the knowledge and opinions of parties' representatives, and other facts that show the parties' intentions that the agreements are binding in law. On the facts, the agreements did not contain express provisions concerning their binding effect, and the Court held that the commercial context of the agreements is outweighed by their wording and nature, as well as the parties' voiced opinions. Examining a range of factors, the Court concluded that the collective agreements primarily constituted the parties' optimistic aspirations and did not contemplate legal enforceability. Thus, the Parties did not have the intention to make the collective agreements binding at law.

In the past, Nigerian Courts have, in several cases, declined to enforce collective agreements when relied upon by an individual, and upheld the common law principle. The case of Nigeria *Arab Bank Ltd v. Shuaibu*[23] *is* instrumental to that effect, where the respondent was a branch manager of the appellant bank in Bauchi. A limited liability company, namely Cotos Nig Ltd, maintains a current account with the branch. The area manager of the bank, one Alhaji Abdulkadir, had presented a cheque of N1 million for lodgment in the account of the company to him as the area manager. No cheque was drawn by the area manager, but only an internal voucher was signed by him for the withdrawal and authorisation of payment. The area manager also told the branch manager that the head of the office of their bank was aware of his new position in the customer company. The respondent, in alleged obedience to the instructions of the area manager, paid out the money to him. Meanwhile, the head office

[20] Section 48
[21] Section 54
[22] (1969) 1 WLR 339; See also *Nigerian Arab Bank v Shuiabu* (1991) 4 NWLR (Pt 186) 450
[23] (1991) 4 NWLR (Pt 186) 450

had issued a directive before the transactions and sent same to the respondent, stopping further withdrawals from the company's account. When the head office got to know about the transaction, the branch manager/ respondent was summoned and given a written explanation. The appellant subsequently dismissed the respondent, whereupon he brought the present suit, praying for reinstatement or alternatively N700,000 as several and special damages.

At the trial, the respondent sought to rely on the collective agreement between the Nigeria Employers Association of Banks, Insurance and Allied Institutions and Associations of Employees of Banks, Insurance and financial institutions as regulating his employment. The appellant, on its own, sought to tender the respondent's written explanation to the oral query given on him, but the trial judge rejected it upon the objection of the plaintiff's counsel. No reason was given for its rejection. The trial judge found for the plaintiff and awarded him the sum of N155,000 as special damages and N18,000 as general damages. Being dissatisfied with the judgment of the bank appealed the decision. The court, allowing the appeal, held on the legal status of the collective agreement of the Association of Banks, Insurance and Allied Institutions that their collective agreement is at best a 'gentleman's agreement ', an extra-legal document devoid of sanctions. It is a product of trade unionists' pressure. In the instant case, there is no evidence that the appellant, as an employer of labour, subscribed to the collective agreement. The terms and conditions upon which the respondent accepted the employment offered by the appellant are therefore as contained in the letter of appointment. The court, in an avalanche of other decided cases aligned with this reasoning, see *Nwodika v African Continental Bank*[24] , where the court, adumbrating on the enforceability of collective agreement in contracts of employment, held that it is the service agreement or the conditions of service that regulates the relationship between an employee and employer. As such, a collective agreement is not by itself binding on the individual employee and the employer unless such a collective agreement is incorporated into the contract of service or adopted as part of the contract or condition of service. Otherwise, they are not intended to give or are capable of giving an individual employee a right to litigate over an alleged breach of that interest, nor are they meant to supplant or supplement their contract of service. This is more so because an extraneous agreement not entered into by the parties to a contract of service cannot be made on the basis of an action by an employee. See also *Union Bank v Edet* (1993) 4 NWLR (pt. 287) 288*, Chukwuma v Shell Petroleum* (1993) 4 NWLR (Pt. 289) 512 at 543, *Shuaibu v Union Bank Nig. Plc* (1995) 4 NWLR (Pt. 338) 173 at 180, *Nwobosi v African Continental Bank* (1995) NWLR (Pt. 404) 658.

On another breath, another argument against the common law position with respect to the enforceability of collective agreements is the issue of privity to contract. This doctrine holds that only parties to a contract can enforce its terms or be bound by its obligations. Under a collective agreement, contracts exist between employers and trade unions on behalf of the employees. Issues arise since individual employees are not direct parties to the agreement. The implication is that the individual employee, not being privy to the agreement, is prevented at common law from enforcing it, even though it was entered for his benefit. Nevertheless, the courts, under the common law regime, formulated conditions that must be fulfilled to enable an individual employee to rely on the terms of a collective agreement. These conditions are generally guided and expounded by what are now widely known as the Theory of Incorporation and the Express Intention Theory Approach. These theories will brief be discussed hereunder.

***Theory of Incorporation***: This theory presupposes that the document which regulates the relationship between an employer and individual employee is the personal contract of service or service agreement, and not a collective agreement. Therefore, for a collective agreement or clause therein to be a binding document on an employer and individual employee, it must first be expressly incorporated into or adopted as part of the employee's personal contract or conditions of service, either by reference.[25] Consequently, reinforcing this principle, *Koyonda* obiters: 'Any individual employee seeking to enforce the terms of collective agreement must show that such a term arose out of his contract of employment as opposed to the collective agreement. By so doing, such employee may have incorporated some terms of the collective agreement to his contract'.[26]

***Expressed Intention Theory Approach*:**
This is also known as implied incorporation. It occurs in cases where, although no clause or terms of a collective agreement have been directly or expressly incorporated into an individual contract of employment, the courts are nevertheless minded to find and hold a collective agreement as having been incorporated and binding on the parties by existential implication. To do this, the court may have to look at one of two things: that is, either at the parties' express intention outside of the collective agreement or the conduct of the parties that tends to give effect to the intention of the parties. In the case of *Rector, KwaraPoly v Adefila*,[27] the Court of Appeal reached a decision, after considering the abundant evidence before it, that a collective agreement between the Appellants and trade unions of the Respondents increasing the retirement age of academic staff of tertiary institutions in Kwara State from 60 to 65 years had been adopted by the Appellants, and thus impliedly incorporated into the employment contracts of the Respondents, even though no such express incorporation by reference or interpolation existed. Similarly, in the case of *C.C.B v Okonkwo,*[28] the court asserted that an employer who had invoked a clause in a collective agreement to dismiss an employee had by its conduct impliedly accepted that the collective agreement governs the employee's terms and conditions of employment.

[24] [1996] 4 NWLR 470
[25] *ACB Plc* v *Nwodika* (1996) 4 NWLR (Pt.443) 487-488; *U.B.N Plc* v *Soares* (2012)11 NWLR (Pt. 1312) 550 at 568; *Abalogu* v *SPDC (Nig.) Ltd*. (1999) 8 NWLR (Pt.613) 12 at 20; Daodu UBA Plc 2004 9 NWLR Pt. 878 276 at 293
[26] S.O. Koyonda, (no.3), 43
[27] (2007) 15 NWLR (Pt. 1056)
[28] (2001) 15 MWLR (Pt. 735) 114

The above common law position and its influence in our Industrial Jurisprudence was a cog in the wheels of collective agreements in Nigeria because via this principle of non-justiciable it appears that neither the trade unions who entered into the agreement nor the beneficiary-employee for whom the benefits of the terms and conditions in the agreement should accrue, have the right to litigate over an alleged breach of their terms, as may be conceived by them to have affected their interest. The implication and why it was such a big challenge for collective agreements is that all those labour disputes, disputes revolving around issues like: salaries and wages increase, working hours, pension, maternity leave, workers training, sick leave, annual leave, promotion, allowances, overtime payment, transfer, redundancy, death benefits, occupational health, insurance, car/house loans, equal treatment, suspension and discipline, which the collective agreement attempted to resolve would still be occurring during labour relations as the courts saw them as non-enforceable, unless fitting into the stringent circumstances stipulated by the common law. However, subsequent statutory interventions were made in reaction to these challenges, but despite these statutory interventions, which will be discussed below, we still find the ghosts of common law influencing our Industrial Jurisprudence.

**Challenges of Collective Agreement under the Trade Dispute Act**

Under the purview of the TDA,[29] this study would appreciate certain crucial provisions pertaining to the collective agreement and the one-sided machinery employed by the TDA to resolve labour disputes, thus the need for reforms.

To begin with, Section 3 of the TDA provides that:

> (1) Where there exists any collective agreement for the settlement of a trade dispute, at least three copies of the said agreement shall be deposited by the parties thereto with the Minister...
> (2) Subject to the provisions of this Act, the Minister may, upon receipt of Copies of a collective agreement deposited in accordance with subsection (1) of this section, make an order, the terms of which may, in respect of the agreement, specify that the provisions of the agreement or any part thereof, as may be stated in the order, shall be binding on the employers and workers to whom they relate.
> (3) If any person fails to comply with the terms of the said order, he shall be guilty of an offence and be liable on conviction to a fine of N100 or to imprisonment for a term of six months.

A few things to note from the foregoing provisions: Firstly, it appears that the type of collective agreements that are enforceable via the TDA are those relating to trade dispute resolution. Incidentally, it then means that collective agreements reached via Joint Consultative Committees[30] are not enforceable, thereby restricting in scope the types of collective agreements that can be enforceable. Secondly, the statutory endorsement by the Minister of Labour in respect to the collective agreement appears to be in conflict with the ILO Convention, which Nigeria ratified in October 1960. It provides that subjecting the validity of collective agreements to the consent and approval of the authorities is contrary to the established principles of collective bargaining.[31] Seeing that the National Industrial Court of Nigeria has a sacrosanct duty to apply the best International Labour Practices when interpreting and applying collective agreements, it appears this provision of the TDA and the ILO convention would put Industrial Judges in a genuine conundrum, thus a need for reform.

Thirdly, from a perusal of the entire TDA, it appears the Minister of Labour has veto powers over collective bargaining and agreements in our Industrial Jurisprudence. We find that there is a centrality of the Minister of Labour, a government agent, in all the dispute settlement mechanisms and processes. The Minister is to initiate the processes, confirm all awards, and determine what follows next upon failure to resolve the dispute at any stage until the matter reaches the National Industrial Court.[32] There is this belief that he is a neutral and impartial umpire for the resolution of trade disputes in Nigeria. We believe this statutory empowerment of the Minister of Labour is very problematic because the government is also an employer that can be involved in a labour dispute. If via the provisions of the law the minister of labour has wide reaching powers concerning collective bargaining and agreement and the government can also be a party to labour disputes because he an employer of labour, it then means that any exercise of power by the minister of labour be it in the setting up of ad hoc committee, or ratifying collective agreement would always be in favour of the government. Thus, there is a need for reforms. More on the specifics of the needed reforms later in the study.

**Challenges of Collective Agreement under the National Industrial Court Act**

The National Industrial Court Act establishes the National Industrial Court as a superior Court of record and confers jurisdiction on the court with respect to labour and industrial relations matters. The Act reestablishes the National Industrial Court to give it pre-eminence in the resolution of labour disputes.

Via Section 7 (1) (c) (i) of the Act,[33] it provides:

> (1) The court shall have and exercise exclusive jurisdiction in civil causes and matters ....
> (a) relating to the determination of any question as to the interpretation of -
> (i) any collective agreement....

[29] Trade Disputes Act, Cap T8, LFN, 2004,

[30] JCCs are defined broadly, and could include a variety of practical mechanisms for consultation. JCCs are the products of unilateral management initiative or of union/management agreement. It involves a two-way flow of information between employers and employees. - Mick Marchington, 'Surveying the Practice of Joint Consultation in Australia' (1992) 34 Journal of Industrial Relations 530, 533.

[31] ILO: the Digest of Decisions and Principles (FAC) fifth (revised edition) para 1012,

[32] Trade Dispute Act 2004, S. 3,5,6,8,9 and 13

[33] National Industrial Court Act, 2006

It appears the provisions of this new act, which were intended to improve collective agreements in our Industrial Jurisprudence, are not radically different from the common Law position. We find that the National Industrial Court via this section can only interpret, and not enforce collective agreement. Via this section the NIC can be likened to a toothless bull dog who has the power to interpret but cannot in its own right deem them enforceable, this is because once a particular collective agreement is interpreted, the court becomes *functus officio* as it cannot make any further order as to its applicability or enforceability. We commend the introduction of this act, which empowers the NIC; however, we recommend the amendment of this act to align with the subsequent third Constitutional alteration, to ensure conformity across our Industrial Laws. On another breath, a commendable and noteworthy innovation of this Act is empowering the National Industrial Court to administer Law and Equity, and also clarifying that where there is a conflict of Law between the rules of equity and Common Law, Common Law would prevail. See Sections 13 and 15, which provide thus:

> (13) Subject to this Act, in every civil cause or matter commenced in the court, Law and equity shall be administered by the court concurrently.
> (14) ....
> (15) Subject to the express provisions of any other enactment, and in all matters not particularly mentioned in this Act in which there was formerly or there is any conflict or variance between the rules of equity and the rules of common law with reference to the same matter, the rule of equity shall prevail in the court so far as the matters to which those rules relate are cognisable by the court.

The essence of bringing these sections up, as will be adumbrated later on in this study via the instrumentality of sound judicial reasoning, is to show that the common law principles and influences as to the unenforceability of collective agreements have been laid to rest via subsequent Industrial Legislation. But despite that, they are still threats to the enforceability of the collective agreement, which we need to enforce reforms for

**Challenges of Collective Agreement under the Constitution of the Federal Republic of Nigeria 1999 (As Amended)[34]**

In this study, aside from the common law section, we believe this is another section that is robust in attempting to improve collective agreements in our Industrial Jurisprudence. With the enactment of the Constitution (Third Alteration) Act, 2010, we find a more empowered National Industrial Court. It is fair to say this has ushered in a new forward-looking era in the enforcement of collective agreements in Nigeria, and to this effect, our legislative draftsmen must be commended; there is still room for improvement. Prior to the Presidential Assent to the third alteration of the 1999 Constitution, it was already clear that at the High Courts, collective agreements were only binding if incorporated into the condition of service of the employees, and via the NICA[35], the National Industrial Court could only interpret collective agreements. With the provisions of Section 254C (1) (j) (i)[36], we find a statutory somersault. It provides:

> (1) Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shallhave and exercise jurisdiction to the exclusion of any other court in civil causes and matters –
> (j) relating to the determination of any question as to the interpretation and application of any –
> (i) collective agreement

It appears that with the enactment of the third alteration, via S. 254C(1)(J), the National Industrial Court has been empowered with exclusive jurisdiction to interpret and apply collective agreements. However, the jurisprudential question one must ask is: does the additional jurisdiction to apply a collective agreement import the notion that the NIC has exclusive jurisdiction to enforce the collective agreement? This question was answered and backed up with sound judicial reasoning by Kanyip, J, in *Enyinnaya Amugo v SkyBank Plc*[37] , when he held:

> Today, under section 254C(1)(j)(i), this court has jurisdiction in terms of the interpretation and application of any collective agreement. It is needless that a court has jurisdiction to interpret and apply a collective agreement if the intendment of the law maker is not that the collective agreement is to be binding as such.... So when the Third Alteration to the 1999 Constitution added application of collective agreement to the fray, this must mean that the law maker deliberately intended collective agreements to be enforceable and binding. I so hold.

In that same case, he further held:

> There is no gain saying that this common law rule (collective agreements are unenforceable) is not only rigid but harsh. Legal policy teaches that the rigidity and harshness of the common law is always ameliorated by the rules or principles of equity. In this regard, section 13 of the NIC Act permits this court to administer law and equity concurrently. But where there is any conflict or variance between the rules of equity and the rules of common law, the rules of equity shall prevail. See section 15 of the NIC Act, 2006. Incidently, in the instant case, this harsh common law rule is not even being ameliorated by the principles of equity but by the 1999 Constitution itself. This is the state of the law under which the instant case is to be decided.

[34] Third Alteration Act, 2010
[35] National Industrial Court Act 2006, S 7
[36] CFRN 1999 (Third Alteration) Act
[37] (Unreported) Suit No NICN/LA/258/2016 the judgment of which was delivered on 13th March, 2018 para 25

This view was also supported in the decided case of *The Management of Compagnie Générale de Géophysique (Nig) Ltd v PENGASSAN,*[38] where it was held that:

> The argument that a collective agreement is a gentleman's agreement is true of the common law dispension which is no longer fashionable in the current disposition as section 254C of the 1999 Constitution as amended permits NIC to interpret and apply collective agreements. An agreement that can be interpreted and applied cannot thereby be just gentleman's agreement. It does and commands higher status than being a gentleman's agreement to be tossed around.

We believe it is without argument that these statutory enactments and judicial pronouncements have laid to rest the long-standing Common-Law cog in wheels of our Industrial Jurisprudence that made collective agreements unenforceable.
Another noteworthy provision of the Act is Section 254C (1) (f) (h) and (2), which provides:

> (1) Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-
> (f) relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters; (h) relating to, connected with or pertaining to the application or interpretation of international labour standards; 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.

It appears another innovation of the third alteration is that it has also empowered the NIC to apply the International best practices and International industrial treaties ratified by Nigeria, thus it has a sacrosanct duty to apply the International Labour Organisation - Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which Nigeria domesticated in October 1960. This provides that collective agreements should be binding on signatories to it and those on whose behalf it is made. Additionally, these international labour standards also provide that subjecting the validity of collective agreements to the consent and approval of the authorities, as in he case under the Trade Dispute Act, is inconsistent with the established principles of collective bargaining.[39] Incidentally, we find they have repudiated those common law principles and formulated the Actual Membership Rule.

From the foregoing, it would appear that the 1999 Constitution (Third Alteration) Act is without fault and has solved all the problems surrounding collective agreements in our Industrial Jurisprudence. But that is not the case; the realisation that a decision of the NICN to enforce a collective agreement shall still be subject to review and possibly overturned by the Court of Appeal is very frightening for the enforceability of collective agreements in Nigeria, especially with its history of aligning with the Common Law principle. See Section 243 (2), which provides: 'An appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of this Constitution as it relates to matters upon which the National Industrial Court has jurisdiction'.

From an avalanche of cases, we find that even six years after the third alteration, the Court of Appeal still aligns greatly with the common law position. See the case of *SAMSON NNOSIRI & Ors V Eastern Bulkcem Co. Ltd,*[40] where there was a judicial somersault in the holding of the court in respect to the enforceability of a collective agreement. The court held that the collective agreement would not be enforceable as it was shown that it was not expressly or impliedly adopted by the parties. However, it is argued that the case was decided per incuriam as it did not factor in the International best practices, nor the ILO conventions or even the ability of the NICN to interpret and enforce same. But it still sends shivers of the ghost of the common law coming back.

Still on that note, ten years after the enactment of the third alteration, we find an avalanche of appellate cases where the court of appeal and the Supreme Court still cling to the common law principle that, before enforceability, they must be incorporated expressly or impliedly. See *Gbedu v Itie.*[41] As if that was not scary enough for the enforceability fate of collective agreements in Nigeria, one still has to factor in this the Almighty doctrine of stare decisis, we find that subsequently unless the NIC is deemed a hybrid court immune from this principle, or reforms to the effect of ensuring that the court of appeal in exercise of her appellate powers must align herself with the international best practices, treaties, conventions and protocols ratified by Nigeria in respect of all appeals from the NIC of which they are duty bound to follow, no amount of power conferred on the NIC to interpret and enforce collective agreement will hold water in our Industrial Jurisprudence.
See this scary fate as obiter by the Court of Appeal in *Gbedu v Itie:*[42]

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

[39] ILO: the Digest of Decisions and Principles (FAC) fifth (revised edition) para 1012,
[40] Unreported, Suit No. NICN/PHC/69/2013 <https://nicn.gov.ng/judgement?page=9
[41] (2020) 3 NWLR (Pt.1710) 104 at 130.
[42] (2010) 10 NWLR (Pt.1202) 228 at 282-283

> Although we share the optimism expressed elsewhere that a new approach to this conundrum should be evolved … there is a practical constraint eventuating from the impregnable doctrine of stare decisis. Thus, until the apex court vacates its present posture on the question of the legal status of collective agreements, any lower court [and including this court] would be courting the wrath of that august and distinguished final court in this land if its attempts to navigate out of its rationes decidendi on the ways in which a collective agreement may be incorporated into a contract of employment.

**Challenges for Proof of Membership**

The Actual Membership Rule posits that a party seeking to rely on a collective agreement must prove membership of a particular trade union that entered into such collective agreement on their behalf. Since collective agreements are enforceable, the courts came up with a yardstick that parties seeking to rely on them must meet, thus the actual membership rule. Cases abound where this rule has been applied and given judicial blessings. See Gbadegesin *v Wema Bank Plc*[43], see also *Onuorah v Access Bank Plc*[44], where emphasis was placed on proving membership of the union before a collective agreement can be enforceable on his/her behalf. However, we believe there is a slight incongruence for the proof of membership for junior staff and seniors. For junior staff, there is a presumption of membership, unless they apply the principle of opting out via which imports the notion of expressing in writing that one does not want to be a member of the union. This view has support in the decided case of *Nest Oil Plc v NUPENG*[45], where it was held that:

> …as far as our law is concerned, junior staff are deemed to be members of a union until they individually and in writing opt not to be… This means that if in truth the defendant is the proper union to unionize junior staff of the defendant, the question of them having to agree and express their interest before they can join the defendant's union will not arise. All that will be required of them is that if they do not want to be members, they can opt out.

On the other hand, for senior staff, there is no presumption of membership; he/she must show proof of membership by documentary evidence of their pay slip to this effect. Evidence of deduction of check-off dues from his/her salaries/wages and the remittance of the same to a trade union must be tendered to prove actual membership and entitle a collective agreement to be enforced for his/her benefit. The law regarding unionisation of senior staff was succinctly put in *Aghata Onuorah v Access Bank Plc,*[46] where it was held:

> As a senior staff, the law is (and the defendant cited a number of authorities in that regard) that the employee is not assumed to be a member of the trade union. He/she has to 'opt in' individually and in writing. The claimant in the instant case is a senior staff. She must show membership of ASSBIFI in order to benefit from Exhibit E, the collective agreement.

We believe this is another area for reform. Our Industrial Laws should stipulate a uniform means of proof when a party seeks to rely on their union's collective agreement.

**4. Reforms Needed for the Improvement of Collective Agreement in Nigeria**

**Establishment of an Independent National Industrial Relations Commission**

The state of affairs pertaining to the current dispute resolution machinery in Nigeria is problematic because it has its centrality on the Minister of Labour. This is true because the minister, a government agent, has wide powers in respect to collective bargaining and agreements. Under sections 5, 8 and 9,[47] the Minister of Labour is empowered to appoint the conciliator and the Industrial Arbitration Panel, which will chair the resolution process. Additionally, the minister confirms all awards and determines what follows next upon failure to resolve the dispute at any stage until the matter reaches the National Industrial Court.[48] This centrality of the minister becomes very problematic when the government, which is a major employer of labour in Nigeria, becomes a party to a Labour dispute. How is the Minister of Labour, a government agent meant to be an impartial umpire when one of the parties to the collective bargaining and agreement is also the government? Thus, in this study, we draw inspiration from other Industrial Jurisdictions like Australia, which has the Fair Work Commission and recommend the establishment of an Independent National Industrial Relations Commission. This body is going to be a neutral, non-partisan body made up of Industry Experts and Leaders from diverse sectors like the civil society, academia, the judiciary and international observers. These members would not have an affiliation with political parties or hold any position in government. The responsibility of the new bodies, if established, should include provision of services relating to conciliation, arbitration in the wider context, including individual disputes and grievances with appropriate remedies in all spheres of labour relations, providing impartial advice based on research on industrial relations and employment policies to the individual employees, employers and the government in all sectors of the economy, and providing codes of practice in all matters relating to industrial relations in the various sectors. The marginal utility of the establishment of this independent body is the improvement for collective agreement and sustainable national development, as equal and fair attention would be given to the resolution of trade

[43] (2012) 28 NLLR (Pt. 80) 274
[44] (2015) 55 NLLR (Pt.186) 17
[45] [2012] 29 NLLR (Pt 82) 90
[46] (Unreported) Suit No NICN/ABJ/30/2011 the judgment of which was delivered on 15th December, 2014 p.25
[47] Trade Dispute Act 2004
[48] Trade Dispute Act 2004, S. 3,5,6,8,9 and 13

disputes, in the wider context, and to trade disputes in the public labour relations, which takes up a large demographic of the society.

**Clarity in our Industrial Legislation**

Definitions of collective agreements across all our Industrial laws should align with international best practices and include all the necessary parties. These legislative injections should also stipulate the collective bargaining and agreement Process. The status quo as provided by law is that: when a trade dispute arises, there are 2 steps: one, declaration of trade dispute and two, setting up of a board of enquiry by the Minister of Labour.[49] We believe our Industrial laws should provide more robust provisions so as to address the intricacies of each phase of the process. Legislative injections should clarify what is attainable at the (i) Preparation stage, (ii) the Negotiation stage, (iii) the Signing the Agreement stage, and (iv)the Follow-up action for implementation stage.[50] Still on the subject of clarity, our industrial laws should also stipulate clearly and uniformly what must be shown by a party seeking to rely on a Collective Agreement, which is documentary evidence of a pay slip to the union, both for senior and junior staff. The marginal utility of these statutory clarifications is that they provide a better legal substratum for the operations and improvement of collective agreements, incidentally bringing about economic development as a result.

**Legislative Enactments Expressly Providing That Collective Agreements Are Binding and Enforceable on Their Signatories and Those That Benefit Incidentally**

In view of the Canadian Industrial Law in view, Section 56 of the Canadian Labour Code[51] provides: 'Effect of Collective Agreement: a collective agreement entered into between a bargaining agent and an employer in respect of a bargaining unit is binding on the bargaining agent, every employee in the bargaining unit and the employer. 'Injecting Industrial stipulations like this into our Industrial laws will lay to rest any ghost of common law and solidify the enforceability and improvement of collective agreements, thereby creating room for economic growth.

**Constitutional Amendment to the Appellate Powers of the Court of Appeal**

Instead of massive reforms to the constitution, we simply recommend inserting immediately after the existing subsection (3) a new subsection (4)[52] which shall enjoin the Court of Appeal to apply international best practices, treaties, conventions and protocols ratified by Nigeria in respect of all appeals, whether as of right or with leave, lying from the National Industrial Court. We believe this reform is necessary so as to bring a change in our judicial attitude on collective agreements. This constitutional amendment would employ the court of appeal to become duty-bound to rely on the best international practices and not just the old common law principles and the principle of stare decisis, exercising its appellate powers on the interpretation and application of the collective agreement. This would definitely bring about improvement to the collective agreement and economic growth as a whole.

**Repeal of our Local Industrial Laws Not in Conformity with the International Best Practices**

Section 3 Trade Dispute Act which subjects collective agreement to the statutory endorsement of the minister which is contrary to the International Labour Organization - Right to Organize and Collective Bargaining Convention, 1949 (No. 98) which Nigeria domesticated on October 1960, which provides that collective agreements should be binding on signatories to it and those on whose behalf it is made,[53] should be repealed. On another breath, another marginal utility of this reform is that it removes any traces with respect to the centrality of the minister of labour over collective agreements, ensuring fairness when parties to a dispute involve government employers.

**5. Conclusion**

This study has critically examined the enforcement of reforms required to improve collective agreements and labour relations as they relate to economic growth in Nigeria. Key issues identified include the limitations of the common law position, the challenges posed by the Trade Dispute Act, the National Industrial Court Act, and constitutional constraints under the 1999 Constitution (as amended). The study highlighted the need for reforms such as establishing an Independent National Industrial Relations Commission, introducing clarity in industrial legislation, legislating the binding and enforceable nature of collective agreements, amending constitutional provisions on appellate jurisdiction, and repealing laws inconsistent with international labour standards. These reforms aim to align Nigeria's industrial jurisprudence with international best practices, thereby fostering better labour relations and driving economic development. The implementation of these recommendations will ensure fairness, efficiency, and enhanced collective agreement frameworks, contributing to the overall socio-economic growth of the nation.

[49] Trade dispute Act, S5
[50] Arun Kumar 'Sharing in the gains of growth: Negotiating Decent Work-Decent Work 'ACTRAV-ILO-Bangkok
[51] Revised Statute of Canada (R.S.C.), 1985, c. L-2
[52] CFRN 1999 (as amended) s243
[53] ILO: the Digest of Decisions and Principles (FAC) fifth (revised edition) para 1012,