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NATURAL JUSTICE IN EMPLOYMENT TERMINATION: AN APPRAISAL AND CASE FOR REFORM IN NIGERIA

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Abstract

The doctrine of natural justice, comprising the rule against bias and the right to a fair hearing, enjoys formal recognition in Nigerian law. Yet, its application to the termination of contracts of employment is marked by a selectivity that is constitutionally and normatively indefensible. It operates robustly in favour of public sector employees whose employment carry a statutory flavour, while leaving the vast majority of Nigerian workers, those who are employed in the private sector under ordinary contracts of service, without procedural protection against arbitrary dismissal. This research found that this current state of affairs, is the product of legislative omission, judicial conservatism, and institutional under-investment, rather than any principled feature of the doctrine itself. It interrogated the statutory flavour doctrine, the unresolved constitutional question of the horizontal application of section 36(1) of the Constitution of the Federal Republic of Nigeria 1999, and the stare decisis conflict generated by the National Industrial Court of Nigeria's progressive invocation of ILO Convention No. 158 against the holy grain of the Supreme Court's authority. Through a comparative lens drawing on England, South Africa, and Ghana, this study demonstrated that the challenges confronting Nigeria have been resolved in comparable jurisdictions through targeted legislative intervention and institutional reform. It concluded with a set of reform proposals: legislative, judicial, and institutional; reforms that are capable of transforming natural justice from a privilege of the few into a genuine and universal protection for all Nigerian workers.

Keywords: Employment Termination, Natural Justice, Statutory Flavour, Unfair Dismissal

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1.0 INTRODUCTION

The Nigerian labour landscape is currently undergoing a seismic shift; transitioning from a regime of strict contractual formalities to one of constitutionalised procedural fairness. At the centre of this evolution lies the doctrine of natural justice; a doctrine whose ancient equitable roots belie the contemporary urgency of the questions it raises. The critical question is not whether natural justice applies to employment termination in Nigeria; the courts have long answered that in the affirmative, at least for a subset of workers. The critical question is whether it applies universally; and on that question, the answer is an unequivocal no. This selective application is the central concern of this article.

Two theoretical traditions inform the normative case for universal application of the doctrine. The Theory of Social Justice, which was mainstreamed by labour jurist Otto Kahn-Freund and adopted locally by scholars such as Chioma Agomo[1] and OVC Okene,[2] argues that labour law must function as a countervailing force against the inherent inequality of bargaining power between employer and employee. On this account, natural justice is not a procedural courtesy extended at the employer's discretion; it is a non-derogable protection whose purpose is to prevent the arbitrary destruction of a worker's livelihood by the stronger party. The Theory of Job Security, as articulated by OVC Okene and Matthew Anushiem,[3] conceptualises employment not merely as a transactional arrangement but as a form of 'property interest' belonging to the employee; one that cannot be extinguished without due process, just as the state cannot divest a citizen of physical property without adherence to law. Together, these theories demand a framework of natural justice that transcends the current public/private divide and reaches every Nigerian worker at the moment of termination.

These theoretical demands have been partially expressed in judicial decisions spanning five decades, from the Supreme Court's landmark pronouncements in the 1980s to the National Industrial Court of Nigeria's (NICN) activist jurisprudence of the post-2010 era. Yet the law remains structurally inadequate. The statutory flavour doctrine protects those who need it least; the common law abandons those who need it most; the constitutional provision of the right to fair hearing hovers over the entire framework in a state of unresolved interpretive contest; and the NICN's progressive judgments, rest on constitutionally precarious foundations that no appellate court has yet validated. The cumulative result of these problems, is a legal system that promises procedural fairness but delivers it selectively, a promise that the theories of social justice and job security, and the constitutional order itself, cannot indefinitely sustain.

[1] Chioma K. Agomo, *Nigerian Employment and Labour Relations Law and Practice* (Concept Publication 2011).

[2] OVC Okene, *Sociological Jurisprudence and the Nigerian Legal System* (LAP Lambert Academic Publishing 2023).

[3] MI Anushiem and L Ogbogu, 'A Critical Examination of the Termination of Employment Contracts and Job Security under the extant Nigerian Employment and Labour Regimes' *Chukwuemeka Odumegwu Ojukwu University Journal of Commercial and Property Law (COOU-JCPL) Vol. 5, No 2.*

2.0 NATURAL JUSTICE AND ITS CONSTITUTIONAL FOOTHOLD IN NIGERIAN LAW

2.1 The Two Limbs of the Doctrine

Natural justice is a foundational pillar of administrative and constitutional law, which is historically traceable to Roman jurisprudence (*jus naturale)* and later refined through the English courts' equitable tradition. It consists of two complementary limbs: *audi alteram partem* (the right to a fair hearing) and *nemo judex in causa sua* (the rule against bias). The former requires that before any adverse decision is taken against a person, that person must be given adequate notice of the case against him and a genuine opportunity to respond. The latter disqualifies any adjudicator who has a personal, financial, or otherwise disqualifying interest in the matter under determination. These principles were received into Nigerian law as part of the English common law inheritance, and their application in the employment context has been progressively elaborated through a significant body of judicial decisions.

In *Garba v University of Maiduguri*[4] the Supreme Court applied the *audi alteram partem* rule with force in the employment context, holding that a disciplinary body exercising quasi-judicial powers must afford the affected party a genuine hearing, one that is not merely formal but substantively fair. The court further held that this rule is not satisfied by the mere formality of an invitation to be heard; it demands the substance of a hearing, one in which the affected party's response is genuinely considered before the decision is reached. Also, the apex court in *LPDC v Fawehinmi*[5] reiterated that fair hearing is the bedrock of all adjudicatory processes and is not a technicality to be dispensed with at convenience. These decisions collectively establish that natural justice in the employment context is not satisfied by the mere appearance of a hearing; it demands the substance of one.

The *nemo judex* limb demands that no person adjudicate upon a matter in which he has a personal, financial, or otherwise disqualifying interest. The rule operates not only to disqualify an adjudicator who is actually biased but also, by operation of the reasonable apprehension test, one in whose case a fair-minded, informed observer would conclude that there is a real possibility of bias. In the Nigerian employment law, this limb carries particular practical salience in the context of disciplinary proceedings where the same management authority may simultaneously investigate, prosecute, and adjudicate an employee's alleged misconduct, a structural arrangement that may produce predetermined outcomes. In *University of Calabar v Essien*,[6] the Court of Appeal held that the disciplinary committee whose members had predetermined the outcome of proceedings (as evidenced by contemporaneous internal correspondence), had violated the rule against bias, and the court rendered its decision void notwithstanding that the employee had technically been invited to address it. The decision is instructive and clear: it confirms that mere compliance with the form of a hearing, without the substance i.e. not having a categorically fair hearing, cannot satisfy the natural justice requirement.

[4] [1986] 1 NWLR (Pt 18) 550 (SC).

[5] [1985] 2 NWLR (Pt 7) 300 (SC).

[6] [1999] 4 NWLR (Pt 600) 538 (CA).

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2.2 Constitutionalisation of Natural Justice

Natural justice received its most consequential expression in Nigerian law through constitutionalisation. Section 36(1) of the Constitution[7] provides that in the determination of a person's civil rights and obligations, including any question or determination by or against any government or authority, that person is entitled to a fair hearing within a reasonable time by a court or other tribunal established by law. This constitutional entrenchment of fair hearing elevated the natural justice obligation from an equitable principle to a constitutional imperative, and its application to employment termination was confirmed in *Bamgboye v University of Ilorin*,[8] where the Supreme Court emphasised that disciplinary bodies exercising quasi-judicial powers must comply with constitutional requirements of fair hearing. Furthermore, the Constitution (Third Alteration) Act 2010 introduced section 254C, vesting in the NICN the exclusive jurisdiction over labour and employment matters and directing the Court to apply international best practices in labour standards in determining matters before it.[9] This provision constitutionalised the normative framework within which employment termination must be assessed, opening the door for the application of ILO standards[10] as reference points for procedural fairness obligations. These constitutional developments have significantly expanded the normative foundation upon which the natural justice obligation in employment termination rests. The challenge, as this article now demonstrates, is that the law's practice has not kept pace with its promise.

3.0 A DOCTRINE SELECTIVELY APPLIED: THE STATUTORY FLAVOUR FRAMEWORK AND ITS LIMITS

The statutory flavour doctrine was given its authoritative formulation in *Shitta-Bey v Federal Civil Service Commission*,[11] where the Supreme Court held that a civil servant whose conditions of service are regulated by statute cannot be dismissed without strict compliance with the prescribed procedure, and that a dismissal in breach of that procedure is not merely voidable but void *ab initio* as though it had never occurred. Subsequent pronouncements of the courts on this doctrine, deepened and developed its practical content and scope. In *Olatunbosun v NISER Council*,[12] Karibi-Whyte JSC stated with admirable clarity that where a statute prescribes the procedure for the discipline and dismissal of an employee, that procedure is mandatory and not directory, and strict compliance with it is a condition precedent to the validity of any disciplinary action. In *Olaniyan v University of Lagos*,[13] the Supreme Court confirmed that the doctrine extends across the full range of public sector employment, from civil servants governed by the Public Service Rules to university staff governed by institutional enabling Acts, and that the appropriate remedy for its violation is a declaration of nullity, not merely an award of damages. In *Adeniyi v Governing Council of Yaba College of Technology*,[14] the Court of Appeal extended the same protection to a technical college employee, confirming that the doctrine is not confined to employees of federal institutions but applies wherever the statutory framework specifically regulates the terms of employment. In *Bamgboye v University of Ilorin*,[15] the Supreme Court further held that even where an employer has purportedly complied with a statutory procedure, compliance that is merely formal and not substantive, cannot satisfy the constitutional requirement of fair hearing.

The logic for all of these judicial pronouncements is compelling. It posits that where a statute specifically governs the terms of an employee's engagement, it displaces the contractual freedom that the common law affords the employer and replaces it with a legally enforceable procedural framework. Thus, the employee's right to be heard is not derived from the goodwill of the employer or the generosity of the court; it is derived from the statute itself, and its breach carries the consequence of nullity. What the doctrine achieves for those it covers is, by any standard, remarkable; a dismissed civil servant or university lecturer who has been denied a hearing can walk into court and have the dismissal declared a legal nullity, with all attendant consequences flowing as though it never occurred.

The statutory flavour doctrine is at the same time, the greatest achievement and the most significant limitation of natural justice in Nigerian employment law. For its greatest achievement, it established that procedural fairness is a non-negotiable condition of valid termination for a defined class of employees. Thus, moving away from the position of the common law which is deeply hostile to judicial interference in the employment relationship. For its most significant limitation, the class to which it applies, is defined so narrowly as to exclude the vast majority of Nigerian workers.

The significant problem of the doctrine is the boundary that it draws, and how it draws it. In *Chukwumah v Shell Petroleum Development Company of Nigeria Ltd*,[16] the Supreme Court held that the mere fact that a company exists pursuant to statute does not confer a statutory flavour on the contracts of its employees. And so, the statutory flavour doctrine applies only where the relevant statute specifically regulates the terms of employment, not merely the corporate existence or commercial activities of the employing entity. The consequence of this decision is stark; employees of private companies including those in the oil and gas, banking, and telecommunications sectors, are all remitted to the common law doctrine of master and servant, which, as confirmed in *Olarenwaju v Afribank Nigeria Plc*,[17] imposes on the terminating employer no procedural obligation beyond the giving of adequate notice. Onnoghen JSC rightly observed in *Longe v First Bank of Nigeria Plc*,[18] that the protection available to ordinary workers is almost entirely dependent on the terms of the individual contract; a

[7] Constitution of the Federal Republic of Nigeria 1999 (as amended)

[8] [1999] 10 NWLR (Pt 622) 290 (SC).

[9] CFRN 1999 (as amended) ss 254C(1)(f) and 254C(2).

[10] Treaties and Conventions of International Labour Organisation on matters relating to labour and employment in signatory countries.

[11] [1981] 1 NCLR 270 (SC).

[12] [1988] 3 NWLR (Pt 80) 25 (SC).

[13] [1985] 2 NWLR (Pt 9) 599 (SC).

[14] [1993] 6 NWLR (Pt 300) 426 (CA).

[15] [1999] 10 NWLR (Pt 622) 290 (SC).

[16] [1993] 4 NWLR (Pt 289) 512 (SC).

[17] [1994] 2 NWLR (Pt 325) 124 (SC).

[18] [2010] 6 NWLR (Pt 1189) 1 (SC).

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protection that, given the structural and economic inequality of bargaining power, is largely illusory in practice.

As a palliative, the implied term doctrine, recognised in *Imoloame v West African Examinations Council*,[19] offers a partial corrective. It posits that where an employer's own staff handbook or conditions of service prescribes a disciplinary procedure, that procedure is incorporated as an implied term binding on the employer. But painfully, this doctrine is only a corrective of very limited reach. It applies only where the employer has been sufficiently self-disciplined to prescribe its own procedural standards, inadvertently leaving the entire workers whose employers have prescribed none (arguably the majority), unprotected. The implied term doctrine does not close the gap between public and private sector protection; it merely softens, for some private sector workers, the sharpest edge of the statutory flavour's indifference towards them.

The harm of arbitrary dismissal is identical whether the employer is a government ministry or a private corporation: the worker loses his livelihood, his professional standing, and frequently his economic stability. To condition the availability of the most basic procedural protection to a worker, on whether he is employed in the public sector or not, is an outcome that neither the constitutional right of fair hearing nor the theories of social justice and job security can support. The statutory flavour doctrine, for all its doctrinal sophistication, has produced a two-tier system of workers' rights whose premises are as indefensible as its consequences are severe.

4.0 THE CONSTITUTION, THE NICN, AND THE UNRESOLVED QUESTIONS

4.1 The Horizontal Application Impasse

The constitutional route to closing the public/private divide, is a rocky path that the courts have not yet navigated to a settled destination. The central question is whether section 36(1) of the Constitution extends to private employment relationships. In other words, whether a private sector employee dismissed without a hearing may invoke the constitutional guarantee of fair hearing directly against his employer. This question is, by any measure, the most consequential unresolved question in Nigerian employment law. The fact that it remains formally unresolved more than two decades after the 1999 Constitution came into force, is itself a symptom of the challenge it presents. Whatever the answer may be, it would either subject every employment termination to constitutional procedural scrutiny or confirm the existing bifurcation and leave reform entirely to the legislature.

The conventional analysis approaches this question through the distinction between the vertical and horizontal application of constitutional rights. The Supreme Court's decision in *Ransome-Kuti v Attorney-General of the Federation*[20] established that fundamental rights provisions operate primarily against the state and its agencies, and do not directly regulate relations between private individuals. On a strict application of this decision, section 36(1) would not impose a hearing obligation on a private employer. However, a closer reading of this section, reveals that its operational scope is not based on the status of the decision-maker (public or private institution/employer) who must allow for the enforcement of the fair hearing right; rather, it is hinged on the subject matter of the determination, which is the determination of a person's 'civil rights and obligations'. The Privy Council's analysis in *Ghani v Jones*[21] confirms that 'civil rights' encompasses amongst others, rights arising from a contract; and as such, is not limited to determinations by public authorities. And so, if the determination of an employee's right to continued employment is the determination of a civil right, and it plainly is, then the constitutional provision of a fair hearing, is on a natural reading of its text, automatically engaged whenever that civil right is determined, regardless of whether the determining party is a public body or a private employer.

The Court of Appeal gave effect to this broader reading in *Ekpe v Governor of Cross River State*,[22] where it held that section 36(1) extends to any proceeding determining a person's civil rights, including a disciplinary proceeding conducted by a private employer. This decision has not been consistently followed. Several subsequent decisions, particularly at the High Court level, have maintained the traditional public/private distinction and declined to apply the constitutional guarantee to purely contractual employment relationships. In the unfortunate absence of a definitive Supreme Court pronouncement on this point, the constitutional question as discussed above, formally remains open in a stalemate/deadlock manner, which generates genuine legal uncertainty for both employers & employees, and asks the question "what is the way forward?"

4.2 The NICN, ILO Convention No. 158, and the *Stare Decisis* Problem

The National Industrial Court of Nigeria has, in the exercise of its post-2010 constitutional jurisdiction, attempted to bridge the gap that the common law and the statutory flavour doctrine have left. Relying on sections 254C(1)(f) and 254C(2) of the Constitution, which direct the Court to apply international best practices in labour standards, the NICN has invoked the unratified ILO Convention No. 158 on Termination of Employment[23] as a normative standard in employment termination cases. Article 7 of Convention No. 158 requires that a worker be given an opportunity to defend himself before his employment is terminated. In *Esso West Africa Incorporated v Esso Petroleum Development Company Workers Union*,[24] the NICN held that the summary dismissal of an employee without a hearing constitutes an unfair labour practice within its constitutional jurisdiction, regardless of the nature of the employer. In *Aloysius v Diamond Bank Plc*,[25] the Court ordered the reinstatement of a private sector banking employee whose dismissal without a hearing, occasioned a violation of his constitutional right to fair hearing and is characterised as an unfair labour practice under Article 7. These decisions represent a commendable but jurisprudentially perilous and unstable judicial development.

[19] [1993] 9 NWLR (Pt 316) 138 (SC).

[20] [1985] 2 NWLR (Pt 6) 211 (SC).

[21] [1970] 1 QB 693 (CA).

[22] [2001] 3 NWLR (Pt 701) 501 (CA).

[23] ILO Termination of Employment Convention 1982 (No. 158).

[24] [2012] 1 NWLR (Pt 1281) 295 (NICN).

[25] [2014] 58 NLLR (Pt 196) 1 (NICN).

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The said judicial instability is structural and not incidental. As a superior court of record, the NICN is bound by the decisions of the Court of Appeal and the Supreme Court. The Supreme Court established in *Abacha v Fawehinmi*[26] that an international treaty not enacted into domestic law pursuant to section 12(1) of the Constitution has no domestic legal force. Nigeria has not ratified ILO Convention No. 158, and even if it had, no domestication legislation exists. On a strict application of this principle, the NICN's reliance on Convention No. 158 lacks constitutional foundation. The academic counter-argument in favour of the NICN is that, section 254C(2), introduced by constitutional amendment, operates at the same level as section 12(1), and its express direction to apply international best practices may be read as a *lex specialis* that modifies the general rule of domestication in the labour context. It is further argued that section 254C(2)'s 'notwithstanding' clause has established an independent and even constitutional authority for the court's application of international best practices without domestication.[27] This argument is sophisticated, and the logic it follows, coherent; but it is yet to be validated by any appellate court.

The consequences of this unresolved *stare decisis* problem are: an unending loop of inconsistent judicial decisions, and a jurisdictional lottery, such that, an employee before the NICN may obtain reinstatement on natural justice grounds; the same employee under the Supreme Court's established framework would be awarded only damages limited to the notice period. A legal system that produces such divergent outcomes for the same dispute, fails the elementary requirement of legal certainty that the rule of law demands. And until the Court of Appeal or the Supreme Court authoritatively resolves the conflict, the NICN's progressive judgements, however desirable it is, will continue to generate uncertainty rather than protection.

5.0 THE REFORM IMPERATIVE: LESSONS FROM ENGLAND, SOUTH AFRICA, AND GHANA

The challenges identified in the preceding sections are not inherent features of the Nigerian legal landscape. They are the remediable consequences of choices, legislative, judicial, and institutional choices, which comparable jurisdictions have made differently. A comparative examination of England, South Africa, and Ghana is offered in this study as a demonstration that reform is achievable, that the tools are available, and that the cost of inaction is a choice Nigeria continues to make against its own workers.

5.1 England: From Common Law Indifference to Statutory Protection

English employment law shares Nigeria's common law inheritance, including its historical indifference to the procedural fairness of employment termination. The decisive rupture came through the House of Lords' decision in *Ridge v Baldwin*,[28] which established that natural justice was not confined to judicial proceedings but extended to any decision adversely affecting a person's rights, consequently opening the doctrinal space for the development of procedural fairness obligations in the employment context.

But it was legislation that transformed the landscape. The Employment Rights Act 1996 confers on qualifying employees a universal right not to be unfairly dismissed; a right that is applicable regardless of the nature of the employer. The Act further requires the Employment Tribunal to assess both the substantive reason for dismissal and the reasonableness of the employer's procedure.[29] In *Polkey v AE Dayton Services Ltd*,[30] the House of Lords established that procedural fairness is an independent condition of valid dismissal. It means that an employer cannot escape an unfair dismissal finding simply by proving the employee would have been dismissed even if a fair procedure had been observed. The ACAS Code of Practice on Disciplinary and Grievance Procedures,[31] prescribes a minimum three-step procedure: written notification of the allegation, a disciplinary hearing with the right to be accompanied, and written notification of the decision with a right of appeal. Non-compliance with these three-step procedure, empowers the Employment Tribunal to increase any compensatory award available to the employee by up to twenty-five percent. All of these measures, are put in place to ensure the furtherance of natural justice in the context of the termination of employments. The lesson for Nigeria from here is unambiguous: the public/private bifurcation is a legislative problem with a legislative solution, and England solved it over two decades ago.

5.2 South Africa: Constitutional Design as the Foundation of Universal Protection

South Africa is a comparable jurisdiction that has solved this problem at a constitutional level. Section 23(1) of their constitution guarantees everyone the right to fair labour practices,[32] a provision that is applicable as between private parties and admitting of no public/private distinction. This single constitutional provision resolves, by express design, the question of the horizontal application of section 36(1) CFRN 1999 that remains contested in Nigeria. The Labour Relations Act (LRA)[33] gives effect to the constitutional guarantee cited above: section 185 confers on every employee a universal right not to be unfairly dismissed, and section 188 requires proof of both a fair substantive reason and a fair procedure as conjunctive conditions of a valid dismissal. Apparently, this later provision of section 188, is more demanding than the Nigerian statutory flavour doctrine, which attends to procedure alone while leaving the merits of the dismissal to the employer's unreviewed judgment.

The Constitutional Court's decision in *Sidumo v Rustenburg Platinum Mines Ltd*[34] established that the applicable standard of review of a termination of employment, is whether a reasonable employer could have imposed the sanction of dismissal; a standard that simultaneously integrates procedural and substantive review within a single coherent framework. In Nigeria, there is no

[26] [2000] 6 NWLR (Pt 660) 228 (SC).

[27] MI Anushiem, 'Appraisal of the Impact of the National Industrial Court of Nigeria on Employer – Employee Relations', *ABUAD Law Journal* [2016] Vol. 1 No. 4

[28] [1964] AC 40 (HL).

[29] Employment Rights Act 1996 (UK) ss 94 and 98.

[30] [1987] UKHL 8; [1988] AC 344.

[31] This Code carries statutory authority under the Trade Union and Labour Relations (Consolidation) Act 1992 (UK) s 207A.

[32] Constitution of the Republic of South Africa 1996, s23(1)

[33] Labour Relations Act 66 of 1995 (South Africa)

[34] [2007] ZACC 22; 2008 (2) SA 24 (CC).

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constitutional equivalent of section 23(1), no equivalents of the provisions of sections 185 & 188 LRA, and no conjunctive fairness standard. The South African experience demonstrates that constitutional amendment, when it directly addresses the employment context in generally applicable terms, produces the most durable and doctrinally stable resolution of the problems this study has identified.

5.3 Ghana: The Case for Targeted Reform

Ghana's significance in this comparative analysis does not lie in constitutional sophistication but in legislative pragmatism, which is the bare minimum that Nigeria must do. Ghana demonstrates that meaningful reform does not require a comprehensive overhaul of the employment law framework, rather it requires political will and a targeted provision. Section 62 of the Ghanaian Labour Act,[35] provides that an employer may not summarily dismiss a worker for serious misconduct without first affording that worker an opportunity to be heard. The hearing requirement is mandatory, not directory. As such, a dismissal without compliance is unlawful regardless of whether the substantive ground is established; and it applies universally to all workers within the scope of the Act, without regard to whether their employment carries a statutory flavour.

Ghana has thus achieved, through a single clause in its principal employment statute, the same result that the statutory flavour doctrine produces for Nigerian public sector employees, but without the operational restrictions that confine the doctrine's reach. The minimum legislative intervention that Nigeria requires is therefore not a grand new statute but an amendment to section 11(5) of the Labour Act along the lines of section 62 of the Ghanaian Labour Act. The argument that comprehensive reform must precede any targeted intervention is, in the light of Ghana's experience, an argument for inaction dressed in the language of ambition.

6.0 CONCLUSION AND RECOMMENDATIONS

The doctrine of natural justice has the capacity to become a genuine and universal protection for Nigerian workers in the face of arbitrary dismissal. That it has not yet done so is not a failure of the doctrine itself; it is a failure of the legal system that houses it. The statutory flavour doctrine, for all its doctrinal sophistication, has entrenched a two-tier system of workers' rights whose foundational premises are indefensible and whose practical consequences are severe. The constitutional deadlock over the horizontal reach of section 36(1) has generated a state of legal indeterminacy that serves no legitimate interest. The NICN's progressive jurisprudence, though commendable, rests on constitutionally uncertain foundations and produces outcomes that walk away from the judicial principle of *stare decisis*. The reform agenda is clear; what remains is the will to execute it.

This article offers the following recommendations as a coordinated programme of reform, a set of interlocking interventions whose combined effect is the transformation of natural justice from a privilege of the statutorily protected into a right of every Nigerian worker.

Legislative Recommendations

1. Section 11(5) of the Labour Act[36] should be immediately amended to include a mandatory pre-dismissal hearing requirement, modelled after section 62 of the Ghanaian Labour Act,[37] applicable to all workers within the Act's scope regardless of the nature of their employer. This minimum intervention requires no comprehensive legislative overhaul and is achievable by a single amendatory clause.
2. The National Assembly should proceed to include in the Labour Act, a provision conferring on all employees a statutory right not to be unfairly dismissed, another, adopting the conjunctive fairness standard of the South African Labour Relations Act,[38] which requires proof of both a fair substantive reason and a fair procedure, and establishing a minimum procedural standard which all employers must observe.
3. Nigeria should ratify and domesticate ILO Convention No. 158 pursuant to section 12(1) of the Constitution, simultaneously resolving the *stare decisis* conflict between the NICN's jurisprudence and the Supreme Court's common law position, and bringing Nigeria into conformity with the international labour standards to which its ILO membership commits it.

Judicial Recommendations

4. The Supreme Court of Nigeria should, at the earliest appellate opportunity, deliver a definitive pronouncement on the horizontal application of section 36(1) of the Constitution to private employment relationships. The broader reading advanced by the Court of Appeal in *Ekpe v Governor of Cross River State*[39] that the guarantee extends to any proceeding determining a person's civil rights, is the more doctrinally sound and its authoritative endorsement would resolve the most consequential unresolved constitutional question in Nigerian employment law.
5. The NICN should, through a coherent and consistent body of decisions drawing on the principles of law and equity under section 13 of the NICN Act[40] and on the elaborated standards of ILO Recommendation No. 158, develop and apply a robust implied term of procedural fairness into every contract of employment, as an alternative and judicially stable route to the extension of natural justice obligations to private sector employees pending legislative intervention.

[35] Labour Act 651 of 2003, s62

[36] Labour Act Cap L1 LFN 2004

[37] Labour Act 651 of 2003 (Ghana) s62

[38] Labour Relations Act 66 of 1995 (South Africa)

[39] [2001] 3 NWLR (Pt 701) 501 (CA).

[40] National Industrial Court Act 2006 (NICN Act)

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