"LABOUR LAW AND MILITARY SERVICE: IMPLICATION FOR THE ARMED FORCES OF NIGERIA" BEING A PAPER PRESENTED BY HON. JUSTICE OLUFUNKE Y. ANUWE AT THE NIGERIAN NAVY FIRST ANNUAL LEGAL TRAINING SEMINAR; 3RD DECEMBER 2025

INTRODUCTION

I want to sincerely thank the Nigerian Navy for this gracious invitation to speak at this landmark Legal Training Seminar. I am sincerely grateful to contribute to such a laudable initiative aimed at enhancing the capacity of naval legal officers and equipping them with the requisite knowledge, skills, and attributes for the effective discharge of their duties in line with global best standards. I commend the leadership of the Nigerian Navy for prioritizing legal development and capacity building, and I look forward to continued collaboration in this regard.

Historically, Nigerian labour laws have had limited direct application to the Armed Forces of Nigeria (AFN), given that their conditions of service are primarily governed by the specific and distinct Armed Forces Act (AFA) Cap A20 LFN 2004. The AFA establishes a separate legal and disciplinary framework which understandably, prioritizes military discipline and national security, subordinating them to standard civilian employment rights. This is because their unique role in national defence puts discipline and operational readiness ahead of the standard provisions of the Labour Act. However, recent judicial decisions indicate a shift towards the recognition of basic fundamental human rights principles, such as the right to a fair hearing and the right to leave service voluntarily; thus creating a point of intersection between constitutional law and military specifics.

This paper explores this emerging trend in the context of the supremacy of Nigeria's Constitution' over other laws, rules, and regulations. I will also discuss the implications of the 'statute of limitations' that members of the public service enjoy, as well as how and why members of the Nigerian Navy and, consequently, the Armed Forces, are referred to as public officers. Given the ethical and legal debates surrounding the "15-year Rule" and other clauses in the Harmonised Terms and Conditions of Service for Officers of the Armed Forces of Nigeria (HTACOS) 2017, I

will also look at judicial interpretations of the labour jurisprudence regarding "forced or compulsory labour" within the military service. The natural starting point is:

Primary Legal Framework

The Armed Forces Act serves as the primary legal framework for the Armed Forces of Nigeria (Army, Navy, and Air Force). It covers all aspects of military service, including enlistment, conditions of service, promotions, command, discipline, offences, and penalties.

Additionally, the recently revised Harmonised Terms of the Armed Forces of Nigeria Conditions of Service (HTACOS 2017) prescribes administrative rules which complement the Armed Forces Act and provide detailed guidelines on service conditions.
Standing atop both (AFA & HTACOS) is the 1999 Constitution which provides for the establishment and duties of the Armed Forces including the Navy.

The 1999 Constitution remains the *grundnorm*, as it provides for the establishment and duties of the Armed Forces. Section 217[1] of the CFRN 1999 provides that there shall be armed forces for the Federation which shall consist of an Army, a Navy, an Air Force and such other branches of the armed forces of the Federation as may be established by an Act of the National Assembly. In view of this provision, the Nigerian Air Force is an office or body established by the Constitution.

1. Jurisdiction and Related Issues

The jurisdiction of the NICN is rooted in the 1999 Constitution (as amended by the Third Alteration Act, 2010) and the National Industrial Court (NIC) Act 2006. The coming into effect of section 254C(1) of the 1999 Constitution and Section 7(1) of the NIC Act grants the NICN exclusive jurisdiction in civil causes and matters relating to labour, industrial relations, and conditions of service. This extends to disputes regarding the service conditions, terms of service, wrongful dismissal, and retirement of military personnel, whose employment is considered to have a statutory flavour. This unique status of the NICN has long been settled, and the exclusivity of the jurisdiction of the NICN has been affirmed in

case law authorities such as ***KEYSTONE BANK LIMITED V. MR. OLUKAYODE ABIODUN OYEWALE (2014) LPELR-23612(CA) AND UNITY BANK PLC V. ALONGE (2024) LPELR-61898(CA)***. Approaching the court is however not automatic as an aggrieved officer is obliged to exhaust all internal service channels for redress before he can do so – otherwise the action will be premature. It was held in the case of ***LT. COL. GARBA V NIGERIAN ARMY & OTHERS (SUIT NO. NICN/LA/611/2016)*** that an aggrieved military service official must first exhaust the prescribed conditions precedent before approaching the NICN. It was held in the case of ***COL. OSITADINMA UCHE NWANKWO (RTD) V. NIGERIAN ARMY & 7 OTHERS (SUIT NO. NICN/ABJ/317/2016)*** that fulfilling the requirements of section 178 of the Armed Forces Act, Cap. A20 LFN 2004 is mandatory and admits of no exception; and any failure in that regard will render the suit incompetent.

In fact, the case of ***WING COMMANDER YUSUF GARBA MSHELIA V. NIGERIAN AIR FORCE ANOTHER (2014) LPELR – 2332*** went the extra mile to hold that the duty enjoined under section 17 of the AFA is one that is not only imposed on the officer but also imposed on the Armed Forces Council itself. The Court of Appeal, in affirming this, further held that to "refuse to act in accordance with section 17 of the Armed Forces Act 2004, and to continue to keep the appellant in suspense, is an abuse of office calculated at denying the appellant the right to seek redress in a court of law…".

The obvious fact that the Armed Forces Act is the primary statute applicable to the military service raises a question as to which statute military officers are expected to obey, particularly when this primary statute conflicts with the 1999 constitution which is the grundnorm. The case of ***ELKANAH JOHN GARANG V. THE CHIEF OF AIR STAFF & ANOR, UNREPORTED SUIT NO. NICN/ABJ/117/2023***, the judgment of which was delivered on 29 February 2024 by my humble self, the court answered this question and held thus: "The law, as we know it, and as has been emphasized by the courts in several decisions, based on the explicit provisions of section 1[1] and [3] of the CFRN 1999, is that the provisions of the Constitution is superior to provisions of statutes, and where there is conflict, the provisions of the Constitution shall prevail. In ***SARAKI vs. FEDERAL REPUBLIC OF NIGERIA (2016) LPELR 40013(SC)***, the

Supreme Court reiterated the supremacy of the Constitution over other statutes in these words:

> *"Wherever and whenever the Constitution speaks, any provision of an Act/Statute, on the same subject matter, must remain silent".*

Accordingly, the courts have consistently upheld the Constitution and struck down any other, in the event of conflicts. See **MUSA vs. INEC (2003) LPELR-24 927 (SC).** See also, the recent decision of the NICN in case of ***Dr. Abubakar Gidado Halilu v The Chief of Naval Staff & anor Suit No. NICN/ABJ/112/2024***, a judgment delivered on the 13th day of November 2025 by Hon. Justice B. B. Kanyip PhD, President of the National Industrial Court of Nigeria.

2. Statute of Limitation

In the course of carrying out their duties, military personnel enjoy the immunity conferred by the Public Officers Protection Act (POPA), otherwise known as the "Statute of Limitation". This is because actions against public officers, (which include military personnel) in their official capacity, are generally governed by the Public Officers Protection Act, which imposes a strict limitation period of three months from the date a cause of action arose.

There is no doubt that officers of the Nigerian Navy, (and the Armed Forces as a whole) are public officers. This was resolved in **TSARO IGBARA TUAMENE GODSWILL V. THE CHIEF OF AIR STAFF & ANOR** unreported Suit No. NICN/ABJ/364/2024, judgment delivered on 4th March 2025 where the President of the National Industrial Court applied the definition of public officer in Section 18(1) of the Interpretation Act where the phrase is expressed as referring to "a member of the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria or of the public service of a State". Item (h) in section 318(1) of the 1999 Constitution recognises service as a member of the armed forces of the Federation as part of the public service of the Federation. Accordingly, the "public service" in Nigeria is defined to include not only the civil service but also the Armed Forces, the judiciary, and statutory corporations.

In terms of the "time – limit" within which a legal action may be instituted against or by a military personnel, I refer to the case of ***LCPL INALEGWU OCHOECHI BLESSING V NIGERIAN ARMY, UNREPORTED, SUIT NO. NICN/JOS/08/2025***, a judgment delivered by Hon. Justice I.S. Galadima on 9th July 2025 where it was held that: "when a statute prescribes a deadline for bringing certain claims, any litigant whose dispute falls within that statute must initiate legal proceedings within the specified period. If the claim is filed after that period expires, it is statute-barred. In effect, a statute of limitation extinguishes the claimant's right of action. In other words, the limitation period starts to run as soon as there is someone with the capacity to sue, someone capable of being sued, and all the material facts needed to establish the claimant's case have occurred. See ***Fadare v. Attorney General of Oyo State (1982) 4 SC 1 at 11***."

Section 2(a) of the Public Officers Protection Act contains the relevant provision, which is reproduced below in full:

> 2. where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any law or of any public duty or authority, the following provisions shall have effect-
>
> > a. The action, prosecution or proceeding shall not be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury, within three months next after the ceasing thereof…"

The objectives of the Public Officers Protection Act have been clarified in numerous judicial decisions. For instance, in ***BUREAU OF PUBLIC ENTERPRISES V. REINSURANCE ACQUISITION GROUP LTD (2008) LPLR-8560 (CA)***, the court held that:

> *"the object of the public officers protection law is to afford protection to public officers in respect of anything done in the execution of or carrying out their duty. The protection comes into play after the expiration of 3 months from the date of the commission for the act or acts which give rise to the cause of action…"*

However, in order for a person to benefit from the immunity clause of POPA, two conditions must be met. First, the individual must be a public

officer. Secondly, the act giving rise to the lawsuit must have been performed in the execution or discharge of a law or public duty. See **HASSAN V. ALIYU (2010) 17 NWLR (PT.1223) 547.**

It is also settled that the protection granted by the Public Officers Protection Act is not absolute as, like every statute, it admits of exceptions. The court is therefore obliged to examine the facts and circumstances of the alleged act or cause of action to decide whether the Act applies or whether the case falls within a recognized exception to it. See **EGBE V. ALHAJI (1990) 3 SC (Pt. 1) 63**. The principal exceptions in this regard are as follows:

1. where the Public Officer abused his office.
2. where the Public Officer acted in bad faith.
3. where the Public Officer acted maliciously.
4. Cases of recovery of land.
5. Cases founded on contract or breach of contract.
6. where a person acted outside the authority or Constitutional duty or without legal justification or in breach of the Constitutional provisions.

It follows that any military officer who seeks re-dress must act promptly (within three months) after exhausting the internal complaint procedures prescribed by the Armed Forces Act before he can file an employment-related matter at the NICN. This process is governed by statute which characterises employment within the Armed Forces as one having "statutory flavour." The relevant criterion in this regard is neither the employee's rank (either high or low) nor whether the employee is probationary, permanent or confirmed. Rather; what matters is whether the terms of engagement and termination are prescribed and controlled by statute. See **BABATUNDE V. THE GOVERNING COUNCIL, FEDERAL POLYTECHNIC, EDE & ANOR, Unreported, (2014) LPELR-24236 (CA).**

However, this was not always case, as it can be recalled, that to the applicability of one of the established exceptions of section 2[a] of POPA is that it does not apply to cases whose cause of action or subject matter is contract or breaches of contract or claims for work and labour done. This was the view of the Supreme Court in **NATIONAL REVENUE MOBILISATION ALLOCATION AND FISCAL COMMISSION VS. AJIBOLA JOHNSON [2019] 2 NWLR [Pt. 1656] 247** where it held,

that where the claim is simply for wrongful termination, unpaid salaries, gratuities, or other contractual entitlements, breach of contract of service, the POPA does not apply.

Somewhat surprisingly, the apex court shifted its position in **IDACHABA V. UNIVERSITY OF AGRICULTURE, MAKURDI [2021] LPELR-53081[SC]**, where it held, that where the acts complained of are disciplinary in nature (e.g., suspension, interdiction, removal) taken by a public officer/statutory body in the discharge of public/statutory duties, the Court may treat them as acts "done in pursuance of public duty." In which case, the provisions of POPA apply.

Although the National Industrial Court of Nigeria had previously followed the earlier decision of the apex court in **AJIBOLA JOHNSON CAS**E (by invalidating the defence of POPA which was used to prevent legal actions filed more than three months after the breach occurred), the recent Supreme Court decision in the Idachaba case has forced us to depart from it and return to the strict conditions of POPA. This, of course, is in deferrence to the hallowed doctrine of judicial precedent. Hopefully this issue will be revisited and laid to a proper rest.

3. The Right to Voluntarily Resign or Retire

The next question on our radar is: "are military officers entitled to voluntarily resign from the service of their employers?" As noted earlier, Section 217[1] of the CFRN 1999 provides that there shall be armed forces for the Federation which shall consist of an Army, a Navy, an Air Force and such other branches of the armed forces of the Federation as may be established by an Act of the National Assembly. Thus, Naval officers are clearly public officers and are entitled to the benefits of the provisions of officer's Section 306 [1] and [2] of CFRN 1999 the right to resign from the employment at any time he desires.

In this regard, see **ELKANAH JOHN GARANG V. THE CHIEF OF AIR STAFF & ANOR**, Unreported, Suit No. NICN/ABJ/117/2023, the judgment delivered on 29th February 2024 by my humble self, where the court answered the question in the affirmative, relying on Section 306 (1) and (2) of the 1999 Constitution which provides thus:

> (1) Save as otherwise provided in this section, any person who is appointed, elected or otherwise selected to any office

established by this Constitution may resign from that office by writing under his hand addressed to the authority or person by whom he was appointed, elected or selected.

(2) The resignation of any person from any office established by this constitution shall take effect when the writing signifying the resignation is received by the authority or person to whom it is addressed or by any person authorized by that authority or person to receive it.

The court categorically held that, to the extent that the Constitution provides that the resignation shall take effect when the letter of resignation is received by the relevant authority, it implies that the authority has no input in that determination (that is) resignation. In other words, whether the authority accepts the resignation or not, the appointment is terminated the moment the letter of resignation is received by the authority or on the date indicated in the resignation letter. This provision of the Constitution is specific and applicable to offices established by the Constitution.

This position had previously been laid down in **ADEFEMI V. ABEGUNDE [2004] 15 NWLR (Pt. 895) 1** where the court of appeal held that resignation takes effect from the date notice is received; and there is absolute power to resign and no discretion to refuse to accept the notice. See also **YESUFU V. GOV. EDO STATE [2001] 13 NWLR (Pt. 731) 517 SC**. Accordingly, any attempt by an employer to stop an employee from disengaging would be interpreted as forced or compulsory labour. See **INEH MONDAY MGBETI V. UNITY BANK PLC** unreported Suit No. NICN/LA/98/2014. This canon of industrial relations law is rooted in the following statutory provisions:

Section 34(1)(c) of the 1999 Constitution which provides for right to dignity of human person provides thus:

(1) Every individual is entitled to respect for the dignity of his person, and accordingly –

(c) no person shall be required to perform forced or compulsory labour.

Section 73(1) of the Labour Act 2004 in prohibiting forced labour provides thus:

(1) Any person who requires any other person, or permits any other person to be required, to perform forced labour contrary to section 34 (I) (c) of the Constitution of the Federal Republic of Nigeria 1999, shall be guilty of an offence and on conviction shall be liable to a fine not exceeding ₦1,OOO or to imprisonment for a term not exceeding two years, or to both.

ILO Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol) – It was adopted at the 14th International Labour Convention session on June 28, 1930, came into force on May 1, 1932, and contains 33 articles. It covers subject matter like the Suppression of Forced Labour, a Convention ratified by Nigeria on 17th October 1960. See: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312174 as accessed on 12 November 2025.

Let me refer to the case of **TSARO IGBARA TUAMENE GODSWILL V THE CHIEF OF AIR STAFF & 1 OTHER** (unreported) NICN/ABJ/364/2024, a judgment delivered on the 4th day of March 2025 per Hon. Justice B. B. Kanyip PhD, PNICN. The judgment references the **ILO Convention Concerning Forced or Compulsory Labour, 1930 (No. 29)**, which Nigeria ratified on **17 October 1960**. The convention prohibits forced or compulsory labor, emphasizing that individuals cannot be compelled to work against their will. The court aligned this principle with **Section 34(1)(c) of the 1999 Constitution of Nigeria**, which guarantees freedom from forced labor. Referencing the case of **MOHAMMED V. NIGERIAN ARMY COUNCIL & ANOR [2021] LPELR-53390(CA),** the PNICN affirmed the claimant's right to voluntarily resign from the Nigerian Air Force. This supports the broader legal principle that individuals have the right to resign from employment, including military service, and that such resignation should not be obstructed. It also aligns with the constitutional right to freedom from forced labor under **Section 34(1)(c) of the 1999 Constitution** and the **ILO Convention No. 29**.

It should be noted however, that the ILO Convention No. 29 admits of limited exceptions to the forced-labour ban, including compulsory military service of a purely military nature, normal civic duties like jury or community service, prison labour after a lawful conviction (under public supervision), work in emergencies that threaten life or safety, and minor

communal services that benefit the community and aren't overly burdensome. Simply put, the ILO's forced-labour definition exempts compulsory military service only when the work is strictly military, and it acknowledges that career servicemen should be able to resign in peacetime with reasonable notice.

In the Survey by the Committee of Experts on the Application of Conventions and Recommendations of the national legislation and practice on forced labour, it was reported as follows, with regard to *Eradication of forced labour - General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105) - (2007)*

> The Committee of Experts on the Application of Conventions and Recommendations has for the fourth time examined national legislation and practice concerning the issues dealt with in the two ILO Conventions relating to forced labour (Conventions Nos. 29 and 105). In spite of the universal condemnation of forced labour and the adoption of constitutional and legislative provisions abolishing it, forced or compulsory labour practices unfortunately continue to exist and many people around the world are still subjected to it. The Survey also shows that, besides "traditional" forms of forced labour which still exist, new forms of forced labour have emerged in the past decades and have come into greater prominence.

https://www.ilo.org/resource/conference-paper/eradication-forced-labour-general-survey-concerning-forced-labour

In **NNAEMEZIE DIM V. THE CHIEF OF ARMY STAFF & THE NIGERIAN ARMY**, Unreported, Suit No: NICN/ABJ/223/2024 judgment delivered on May 27, 2025, the NICN (per Hon. Justice E. D. Subilim) illuminates the right to voluntarily resign/retire from military service. In the instant case, the claimant, a commissioned officer who served as a regimental medical officer in various locations, tendered a resignation letter dated July 22, 2019, which was acknowledged by the defendants. The defendants nevertheless, contended that his letter of resignation did not take automatic effect as such requests were subject to administrative process to maintain the required ratio of officers to soldiers for the purpose of operational effectiveness. The army further argued that officers are generally required to serve for a minimum of fifteen years, though earlier resignation may be permitted; and that this case was not one of the recognized exceptions.

The claimant argued that "military service is not slavery" and that the defendants could not force him to remain in service when he desired to exit and had given due notice.
The court in its judgment, ruled in favour of the claimant, Nnaemezie Dim. The court made a declaration that the claimant had a right to voluntarily exit from the service of the defendants. It was further declared that the claimant's resignation letter dated July 22, 2019, was valid and effective.

This judgment, which followed my earlier decision in **ELKANAH JOHN GARANG V. THE CHIEF OF AIR STAFF & ANOR,** emphasized that individuals have the right to leave military service, and the authorities cannot compel an officer to stay against their will once proper notice has been given.

The challenge of compulsory retirement in the Nigerian military lies in the tension between preserving hierarchy and losing valuable experience. Ironically, instead of the natural progression of retirement based on age or years of service, the appointment of a junior officer by political superiors (usually the president) invariably results in mass compulsory retirement of experienced personnel who are the seniors of such appointees in the service. Permit me to say that there is no legal document nor any statute or law, nor indeed the Constitution itself, which supports such obsolete practice. Officers are denied the right to voluntarily resign, meanwhile experienced senior officers who are willing to continue service are compulsorily retired following the appointment of new service chiefs, I believe that this is biggest irony within the military service.

When experienced officers are forced out, it obviously undermines the morale of the remaining personnel, who may lose faith in a system that clearly prioritizes expediency over all other considerations.
The consequences are a diminished ability to combat security challenges, such as the one which the country presently faces. This is not the practice in such countries like Britain, India the US and Canada with whom Nigeria has historical ties through security partnerships and peacekeeping operations. These countries retain the services of military officers strictly on the basis of merit and capacity and they are not forced out for reasons of political expediency arising from the elevation

of their juniors above them. Our deviation from this ideal is more worrisome given the escalating incidence of insecurity when that very expertise is most needed. In this regard, I commend the National Assembly for its on-going proposal to review the Armed Forces Act. I urge the armed forces to collaborate with the legislature in order to align its provisions with current realities and international best practices including, of course, the constitution which, as ever, is supreme.

4. The 15-year Voluntary Disengagement Rule in Nigeria's Armed Forces

Section 26 of the Armed Forces Act empowers the President of the Federal Republic of Nigeria to enact regulations for the purpose of implementing the provisions of the act relating to officers, their terms of service, promotions, retirement, resignation, dismissal etc. Pursuant to this power, the President enacted the Harmonised Terms and Conditions of Service for Officers (HTACOS), which contains rules defining the terms of service for officers in the Armed Forces.
A key feature of this regulation is its prescription of a service period before officers or enlisted personnel can voluntary retire or resign from the Nigerian Armed Forces (the "15-year Rule"). More than any other provision of HTACOS, this prescription has generated widespread concern in military circles.

While the 15-year Rule might appear to be salutary in terms of maintaining service discipline, preventing premature departure (thus ensuring a return on the government's investment in personnel development and training) however, a more thorough study reveals that it undermines fundamental issues such as individual freedom, the limits of state authority, and the scope of military service in a democracy.

In this regard, the National Industrial Court of Nigeria, recently upturned the supposedly entrenched tradition and policy of tenured service in the Armed Forces. This was in the case of **AKERELE ADEDOYIN JEREMIAH V. THE CHIEF OF AIR STAFF & ANOR**, unreported, Suit No: NICN/ABJ/25/2025 judgment delivered by Hon. Justice E.D. Subilim on 2nd September 2025 where the Air Force rejected the claimant's/officer's resignation letter because it ran foul of the 15-year period prescribed in HTACOS 2017 for an officer to qualify.

The court held that that provision violated section 306 (1) and (2) of the 1999 Constitution as amended, which stipulates the effective day of resignation of public officers (including members of the Armed Forces).

Section 306 (1) and (2) of the 1999 Constitution as amended on the subject of resignation in the public service states thus;

> *"(1) Save as otherwise provided in this section, any person who is appointed, elected or otherwise selected to any office established by this Constitution, may resign from that office by writing under his hand addressed to the authority or person by whom he was appointed, elected or selected.*
>
> *(2)The resignation of any person from any office established by this Constitution shall take effect when the writing signifying the resignation is received by the authority or person to whom it is addressed or by any person authorized by that authority or person to receive it."*

The court stressed that, as resignation is guaranteed under Section 306, of the constitution, its validity does not depend on the employer's approval. Accordingly, the Courts have consistently upheld the right to resign, and striking down attempts by employers to impose additional conditions.

Needless to say, this decision has elicited reservations and some disquiet amongst high-ranking military officers who believe that HTACOS 2017 and the Armed Forces Act supersede every other law, and by extension, the 1999 Constitution, arguing that those primary statutes are the only laws applicable to the Military. This view is erroneous, because, while there is no question that the HTACOS 2017 and the Armed Forces Act are the primary statutes which govern military service, however the oath of office taken by every Nigerian military officer is of allegiance and fidelity to the country, its Constitution to the President as his/her Commander-in-Chief. The Armed Forces Act is therefore inferior to the Constitution.

The reason is clear: the military, being a creation of the 1999 Constitution (vide Section 217 thereof), is subject to its provisions. Therefore, the laws, rules, or regulations of the Armed Forces must be consistent with the 1999 Constitution, not otherwise, as the Constitution is the pinnacle, grundnorm and ultimate law. It is supreme. In this connection, in **ATTORNEY-GENERAL, ABIA STATE V. ATTORNEY-**

GENERAL FEDERATION [2002] FWLR [PT. 101] 149, the Supreme Court per Kutigi JSC put it succinctly as follows:

> *"Where the provision in an Act is within the legislative powers of the National Assembly but the Constitution is found to have already made the same or similar provisions, then the new provision will be regarded as invalid for duplication and or inconsistency and therefore inoperative. The same fate will befall any provision of an Act which seeks to enlarge, curtail or alter any existing provision of the Constitution. The provision of provisions will be treated as unconstitutional and therefore null and void".*

While it is accepted that the Armed Forces are unique and peculiar however, this peculiarity is only to the extent that it is, by nature, marked by discipline, hierarchy, (regimentation and sacrifice); nonetheless, it is part and parcel of the broader structure of constitutional governance in Nigeria. The Constitution of the Federal Republic of Nigeria remains the highest and most basic law.

At this juncture, it is pertinent to delve deeper into the relevant provisions of the Harmonised Terms and Conditions of Service for Officers of the Armed Forces of Nigeria (HTACOS) 2017 juxtaposing them with those of Section 34(1), Section 34(2)(b) and (e)(ii) of the 1999 Constitution. Paragraph 03.12 of the HTACOS 2017 provides as follows:

> *"Any officer sponsored by any of the Services or released on sponsorship (including self-sponsorship) for any course, military or civil, lasting up to a session of 9 months shall not be allowed to proceed on voluntary retirement or resign his appointment within 3 years from the completion of the course except on recommendation by his Service Chief and approved by his Service Council/Board. Where the course lasts more than one session, the period of debarment from resignation or retirement shall be 5 years. This provision does not apply to officers on resettlement courses pending retirement."*

Paragraph 05.04a of the HTACOS Officers 2017 on the other hand, provides as follows:

> *"Officers with a DRC shall be eligible to apply to retire if they have served for at least 10 years of commissioned service subject to the regulation in force except for medical consultants".*

The above provisions are clear and unambiguous. They simply mean that military officers who have not served for the required number of years

and who wish to resign or retire do not have that liberty. If they do so they risk being declared Absent Without Official Leave (AWOL), and may face disciplinary action or persecution, the reason being the aforesaid provisions of HTACOS Officers 2017.

Paradoxically, however, officers who remain in the service may, suffer compulsory early retirement simply for having the misfortune of the appointment of their subordinates ahead of them by a particular elected President. This promotes the question of the wisdom of such a policy in a country that is virtually at war with non-state actors. "Can it afford to sacrifice such well-trained members of its armed forces?" Certainly not, as we shall all collectively, be the worst for it. In ordinary parlance it would hardly make sense military officers who are at the pinnacle of their careers to be prematurely released into the labour market; especially when we view the enormous financial and human resources that are lost in terms of the cost of training. The same cost we think we save by debarring officers from retiring voluntarily.

The key issue on whether HTACOS could restrict the fundamental right of an employee to withdraw their service was thoroughly considered in the case of **SMART A. AMOUGH V. THE NIGERIAN AIR FORCE & ANOR UNREPORTED SUIT NO. NICN/ABJ/453/2024**, the judgment of which was delivered on 30th September 2025 by my humble self. I addressed the issue of whether the provisions of paragraph 03.12 of the HTACOS 2017 constituted a bar or an encumbrance to the exercise of an officer's right to voluntarily retire under paragraph 05:04 of the HTACOS Officers 2017. It was held that, besides the fact that the provisions of paragraph 03.12 of the HTACOS 2017 does not affect the right of the claimant in paragraph 05:04 of the HTACOS Officers 2017 to voluntarily retire from the service of the 1st defendant, which is the same as resignation from service, the claimant has the unfettered right under section 306 [1] and [2] of the Constitution of Federal Republic of Nigeria 1999 to resign from service and the defendants have no right to refuse or decline the resignation.

I am gratified to note that the above decision was followed, two months later, by the President of the National Industrial Court of Nigeria, My Lord, Hon. Justice B.B. Kanyip, Ph.D, OFR, in a judgement which he delivered on 13th November 2025 in the case of **DR. ABUBAKAR HALILU**

VS. CHIEF OF NAVAL STAFF & THE NIGERIAN NAVY, Suit No: NICN/ABJ/112/2024 where, the same issue (whether Paragraphs 03.12 and 05.04 HTACOS 2017 could debar the claimant from voluntarily retiring from the Navy) arose. My Lord the President categorically held that Section 306 of the 1999 Constitution could not be qualified by Paragraph 03.12 of HTACOS 2017 and that the claimant had an unqualified right to voluntarily retire.

My Lord also observed in the same judgment that: "Paragraph 03.12 of HTACOS 2017 may not even be enforceable on grounds of unreasonableness and unfair labour practices, as it qualifies as a training bond". Continuing, my Lord referenced the decision in **OVERLAND AIRWAYS CAPTAIN RAYMOND JAM (2015) 62 NLLR (pt. 219) pg. 525**, and held, categorically, that: "training bonds approximate to contracts in restraint of trade . . . (which are) unenforceable unless the defendants can show that (are) reasonable". My Lord then added that: "reasonability is determined by taking into account factors like the duration of the bonding period, how slavish or restrictive the covenants are, etc"

In light of the above, the legal status of the aforesaid provisions of HTACOS 2017 is more or less settled. I, however, feel that to the extent that none of the foregoing provisions categorically invalidated it, the following question is pertinent, that is to say:

> *"CAN HTACOS 2017 BE RATIONALISED IN ANY WAY OR DOES IT VIOLATE THE RIGHT TO EQUAL PROTECTION OF THE LAW OR THE FUNDAMENTAL RIGHT TO FREEDOM FROM DISCRIMINATION?"*

I believe that this poser is often overlooked in the debate over the 15-year retirement rule. The juridical basis of the question is that the law frowns upon any discrimination between persons which it regards as being similarly circumstanced. Such persons are supposed to be treated equally and any inequality between them is unconstitutional unless it can be justified on the basis of rational criteria. This rule is codified in Article 3(2) of the **African Charter on Human and Peoples Rights (Ratification and Codification) Act, LFN 2004**. This right is defined in **BLACK'S LAW DICTIONARY, 8TH EDITION PAGE 577**, as follows:

> *"Equal protection of the laws demand laws will only be legitimate if they can be described as just and equal…equal protection guarantees that the government must treat a person or class of*

persons the same as it treats other persons or classes in like circumstances…equal protection means a legislation that discriminates must have a rational basis for doing so. And if the legislation affects a fundamental right or involves a suspect classification, it is unconstitutional unless it can withstand strict scrutiny".

The Court of Appeal examined the scope of this right in **NNPC V FAWEHINMI (1998) NWLR PT. 559 PG. 598 @ 616**, where it held (per Ayoola, JCA, as he then was) that: "Although Article 3 of the Charter appears general and absolute in its terms, the right of equal protection of the law which recognizes must be understood as "equality among equals". . The guiding principle is that all persons similarly circumstanced shall be treated alike, both in privileges conferred and liabilities imposed . . . what it forbids is discrimination between persons who are similarly in similar circumstances. It does not forbid different treatment of unequals. The rule rather is that like should be treated alike and that unlike should be treated differently".

I humbly submit that, to the extent that all public officers as defined in Section 18 of the Interpretation Act are equal, the 15-year pre-resignation rule presented by HTACOS for military (including naval) personnel unfairly discriminates against them vis-a-vis non-military public officers. I believe this is also a strong argument on the validity of HTACOS, and not merely the general resignation provision of Section 306 of the Constitution, as aforesaid – powerful as those undoubtedly are, given that (as is only too obvious) they are constitutional.

The right to freedom from discrimination on any basis (including non-membership of the military community i.e. the armed forces) is in itself a fundamental right guaranteed under Section 42 of the 1999 Constitution, which provides as follows:

1. "A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion, or political opinion shall not by reason only that he is such a person-

    a. Be subjected either expressly by or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities,

ethnic groups, places of origins, sex, religious or political opinions are not made subject; or

b. Be accorded, either expressly by, or in the practical application of any law in force in Nigeria or any such executive, administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions".

See **EVANS v ABNEY 396 U.S 435 (1970); ADEWOLE v JAKANDE (1981) NCLR 262 and MOJEKWU V MOJEKWU (1997) 7NWLR PT. 283**

I humbly submit that the ward 'community' used within this provision is not restricted to or defined by physical space (geography) but should be interpreted liberally or broadly (being constitutional), to include professional or occupational communities – such as, in this case, military or non-military public officers. After all, it is well-known that such ties are what binds the Nigerian Army Officers Wives Association, the Nigerian Naval Officers Wives Association and so on. Suffice it to say that the military is a community separate and distinct from the rest of us whom they notoriously dismiss (if not deride) as 'Bloody Civilians'. The Constitution should be interpreted liberally. See **NAFIU RABIU V THE STATE (1980) 2 SC 72**. With the exception of the Constitution, the African Charter is superior to all other laws. See **ABACHA V FAWEHINMI (2000) 6 NWLR PT.660 PG.228, SC**.

THE EXEMPTION OF MILITARY SERVICE FROM THE CONSTITUTIONAL PROVISION ON "FORCED OR COMPULSORY LABOUR"

As previously argued, the Armed Forces of Nigeria (AFN) are part and parcel of Nigeria. Therefore, the argument that military jurisprudence is different from labour law, and that the Armed Forces Act is not subject to the 1999 Constitution is highly misconceived. Beyond the foregoing, I believe that an analysis of the following will bear this out:

The Armed Forces of Nigeria (AFN) cannot be separated from Nigeria. Therefore, the argument that military law jurisprudence is different from labour law jurisprudence, and that, the Armed Forces Act is distinct

from the 1999 Constitution is highly misconceived. This is because the Constitution must be interpreted holistically.

Section 34(1)(c) of the CFRN provides:

> 34. Right to dignity of human person
> (1) Every individual is entitled to respect for the dignity of his person, and accordingly –
> (c) no person shall be required to perform forced or compulsory labour.

By contrast, Section 34(2)(b) and (e)(ii) of the CFRN as provided below, states that "forced or compulsory labour" does not include any labour required of members of the Armed Forces of the Federation in the course of their duties.

Section 34 (2). Right to dignity of human person

> (2) For the purposes of subsection (1) (c) of this section, "forced or compulsory labour" does not include –
> (b) any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such;
> (e) any labour or service that forms part of –
> (ii) such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly;

In my humble view, this exemption is not hard to rationalize, and neither is it controversial. This is because military service is, by its very nature, far more demanding than civilian employment. This does not, however, give the State a blank cheque to subject military personnel to indefinite or unreasonably prolonged service at the pain of the constitution or under threat of disciplinary consequences. The right to dignity in Section 34(1) is not automatically extinguished by the operational necessity clause in Section 34(2). The mere fact that a certain conduct is exempted from being classified as "forced labour" does not mean it is exempt from the broader duty of the State to respect the dignity of the individual.

The Armed Forces (including the Navy) is a creation of Section 217[1] of the CFRN 1999. To that extent, by virtue of the provisions of Section 306 [1] and [2] of the same Constitution, any person who is either appointed or elected or selected to any office established by the

Constitution (including the Armed Forces), has the right to resign from the office or commission, and such resignations shall take effect when the requisite letter of resignation is received by the employer or the authority or the person authorized to receive it.

To this end, it is settled that where a right has been conferred by the constitution, it cannot be taken away or whittled down by any statutory provision, subsidiary legislation or Regulation (such as HTACOS 2017), except the Constitution itself. See **SARAKI vs. FEDERAL REPUBLIC OF NIGERIA (2016) LPELR 40013(SC); ARGUNGU vs. ARGUNGU [2010] All FWLR [Pt. 510] 681; ANKPA vs. MAIKARFI [2010] All FWLR [Pt. 506] 1977.**

It remains to be said, however, that the courts have long recognized the importance of proportionality in evaluating the constitutionality of restrictions on rights. Even in the context of the military, any restriction on personal liberty must serve a legitimate public purpose and must not impose more hardship than is necessary to achieve that purpose. I humbly submit that the 15-year Rule, amongst other unconstitutional conditions, appears disproportionate, particularly as it seems devoid of any provision for hardship discharge, mental health exceptions, or administrative review mechanisms.

SUMMARY AND CONCLUSION

The relationship between labour law and military service in the context of the Armed Forces of Nigeria reflects a delicate balance between individual rights and national security. The unique demands of military service often necessitate exceptions to the standard labour protections found in civilian life. This ensures that military personnel can be called upon to serve at any time and under conditions that require discipline, loyalty, and a readiness to sacrifice for national defense. Reforming the intersection of labour law and military service may involve addressing issues of personnel welfare and the need for effective military discipline. Improving welfare and making the service a "career-worthy" option could be the first line of defence against early exits. When accommodation, childcare and workload are taken seriously, the perceived value of staying climbs dramatically. A competitive housing allowance, subsidized childcare

facilities and realistic duty-hours can turn the military into a place people actually want to stay, not just a stop-gap.

With regard to the compulsory retirement of military officers, I have argued that it is not appropriate to retire high ranking members of the armed forces with their vast knowledge and experience, given our on-going and ever-increasing security threats challenges. I agree with the recent suggestion that the government should establish a Nigerian Defence Reserve Force (NDRF) in which retired officers who are still fit and able can be enlisted so that they can continue serving the Nation.

This is all the more so because there is no written law that stipulates that once your junior colleague is promoted ahead of you, you must leave. Or better put, there is no written law or statutory provision that a senior officer must retire when an officer junior to him is appointed as a Service Chief. I therefore encourage both serving and retired members of the Armed Forces of Nigeria to seek directions and interpretations as to the "wasteful tradition" of retiring senior officers prematurely. Infact, I think it is necessary for the armed forces to amend their legislation, and to go whichever way they choose. We cannot have a silent practice and give it so much importance; and at the same time take actions that negate the provisions of the constitution at the cost of rendering active military personnel redundant. Generally, standards should be set for elevations, like in other climes. We could take a cue from countries like Britain, India, the US and Canada with whom Nigeria has historical ties through security partnerships and peacekeeping operations. In those climes, promotions are generally based on a combination of merit, performance appraisal, seniority, and completion of specific training or command courses. Even at that, they also have mechanisms for review.

The relevance of due process and constitutional supremacy even within the Armed Forces is underscored by the dictum of Lord Atkin in the famous case of **LIVERSIDGE VS. ANDERSON (1942) A.C. 206** whose dissenting judgement is arguably more powerful and persuasive than that of the majority. He espoused reasonableness as the yardstick for measuring the legitimacy of administrative dictates, statutes or executive power. In his view, the primacy of law is no less valid in times of war as in peace. I may add that this is equally applicable to the Armed Forces,

whatever concerns about national security may undergird any laws which clearly discriminate in their favour.
In Lord Atkin's words:

> *"In (this country), amidst the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecter of persons and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law"*

It has truly been an honour and a privilege to participate in this landmark Legal Training Seminar for Legal Officers of the Nigerian Navy. I wish to sincerely thank the leadership of the Nigerian Navy for the foresight in organizing this impactful program and for inviting me to serve as a resource person.

This initiative reflects a deep commitment to excellence, professionalism, and continuous learning — values that are essential to the effective administration of justice and the maintenance of discipline within the service while improving the welfare and overall quality of service life of personnel. By investing in the capacity building of its legal officers, the Nigerian Navy is not only strengthening its internal legal framework but also aligning its operations with global best practices.

I commend all participants for their enthusiasm, insightful contributions, and dedication throughout this seminar. I am confident that the knowledge and skills gained here will further enhance your effectiveness in the discharge of your duties and your invaluable support to naval operations.
Once again, I thank the Nigerian Navy for the warm reception and hospitality extended to me, and I look forward to continued collaboration in advancing legal excellence within the Service.

Thank you, and God bless the Nigerian Navy.

Anchors Aweigh!

HON. JUSTICE OLUFUNKE YEMI ANUWE
(Judge, National Industrial Court of Nigeria, Abuja Division)