

## LEGAL FRAMEWORK FOR THE PROTECTION OF WORKERS' HUMAN RIGHTS IN NIGERIA

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### Abstract

*Nigeria, as a leading African economy, has made strides in establishing legal frameworks that govern the relationship between employers and employees, ensuring the protection of workers' rights, promoting industrial harmony, and fostering fair working conditions. Protecting workers' human rights is a complex area of law that intersects with various legal frameworks, including labour law, human rights law, and international law. The protection of workers' human rights in Nigeria has serious legal implications as it is paramount for productivity. However, despite the existence of various statutes and constitutional provisions, many gaps remain in the protection of employees, often rendering legal protection ineffective or insufficient. This article provides an in-depth analysis of key employment and labour laws in Nigeria, highlighting their scope, limitations, and the challenges faced in their implementation.*

**Keywords:** Protection, Worker, Human Rights, Security, Discrimination.

### 1. Introduction

The Nigerian experience reveals that industrial actions in particular the weapon of strike is the only instrument left in the arsenal of employees to compel a recalcitrant employer to recognize and bargain with employees or their representative, to comply with collective agreement or to agree to make improvements in terms and conditions of employment of employees.<sup>1</sup> It is stifling to legislate and insist that employees must exhaust internal dispute mechanisms before declaring an industrial action.

Equally, there is yet another international labour standard vitamin deficiency in the Trade Disputes Act and judicial precedent that requires best industrial relations practice supplements. This has to do with the limiting of issues for which Unions can declare dispute to only issues of employee welfare as was demonstrated in the case of *FG and Attorney General of the Federation v Adams Oshiomhole and Nigeria Labour Congress*<sup>2</sup> where the Court declared as illegal the strike embarked upon by the NLC over the hike of petrol price as it was outside issues recognized as issues of employee welfare and conditions of service.

Some of the laws in Nigeria that hinge on the protection of the rights of workers are:

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<sup>1</sup> E E Uvieghara, *Labour Law in Nigeria* (Malthouse Press Ltd 2001) 6.

<sup>2</sup> (2004) 1 NILR 326.

## 2. Constitution of the Federal Republic of Nigeria (CFRN 1999)

One of the major legislations in Nigeria that seeks to protect employees' rights and deals with labour or industrial relations is the 1999 Constitution (as amended) which is the grundnorm. As posited by Okene<sup>3</sup> the most important legal instrument that provides rights for employees and protocols for them is the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) as it prescribes the rights, obligations, duties and responsibilities of employers to the employees.

However, some scholars have argued that the provisions in the Constitution are not far-reaching enough to ensure a comprehensive legal protection of employees' rights, especially before the third Constitutional alteration. In addition, the lame duck Federalism that is being practised in the Country where there is no absolute rigid demarcation between the coercive powers of the Federal Government in enforcing issues listed in the Exclusive Legislative List on the federating States has made the issue of protection contained in the Constitution too cosmetic to warrant the wearing it the crown of employee's rights protector.

As Suberu contended, although Nigeria operates a Federal System of Government where power is shared as provided in Sections 4 and 5 of the 1999 CFRN (as amended) the devolution of some powers to the States and Local Governments has made it somewhat difficult to enforce labour laws.<sup>4</sup> However, Section 16 made some provisions which could now be justiciable by virtue of the third alteration with some conscientious and convulsive application that could go a long way in ensuring job security and better working conditions.<sup>5</sup> Specifically Section 16(1) provides that:

The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution;

- (a) Harness the resources of the nation and promote national prosperity and an efficient, dynamic and self-reliant economy for every citizen on the basis of social justice and equality of status and opportunity,

Section 16 (2) (d) provides that the state shall direct its policy towards ensuring that suitable and adequate, food, a reasonable national minimum living wage, old age care and persons and unemployment, sick benefits and welfare are of the disabled are provided for all citizens.<sup>6</sup> Similarly, Section 17 (3) (a), (c) & (e) provides that the state shall direct its policy towards ensuring that: all citizens, without discrimination, on any group whatsoever have the opportunity for seeing adequate means of livelihood as well as adequate opportunity to secure suitable employment.

The non-justifiability of the rights under Chapter II of the 1999 Constitution (as amended) has always had the nod of courts in Nigeria including the Supreme Court relying heavily on Section 6 (6) (c) and in particular the case of *AG Ondo State v AG Federation*<sup>7</sup> it aptly stated that it is well established as per

<sup>3</sup> OVC Okene, 'Curbing State Interference in Workers Freedom of Association in Nigeria' *The International Journal of Not-for-Profit Law* [2006] (8) (4) 86.

<sup>4</sup> CFRN 1999 (as amended) ss 4 & 5.

<sup>5</sup> *Ibid* s (16)1.

<sup>6</sup> CFRN 1999, s. (6)(2)(c).

<sup>7</sup> (2002) LPELR-623(SC).

Section 6 (6) (c) of the Constitution that the right under the Fundamental Objective and Directive Principle of the State Policy are non-justiciable. Equally, the provisions are not as far-reaching as those provided in the legislation of other jurisdictions such as Ghana, South Africa, India and the United Kingdom which we expect to examine in detail while comparing their respect and protection of employees' rights.

Furthermore, Section 42 (1) provides that 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 be the subject of discrimination.

While the above provisions send the message that Nigeria laws abhor any form of discrimination which the courts in Nigeria in particular the Supreme Court have almost always protected especially in the case of *Lafia LG v Governor of Nasarawa State*,<sup>8</sup> the Supreme Court stated that all agencies of government and organs or institution whose powers are derived from the constitution must exercise their authority within the limit and ambits of the constitution.

Contradictorily, both the Constitution itself and some other legislations appear to have provided the fuel for the engine of discrimination to continue to run in Nigeria. For example, Section 42 (3) states that Nothing in subsection (1) of this section shall invalidate any law by reason only that the law restricts with respect to the appointment of any person to any office under the state or as a member of the armed forces of the federation or a member of the Nigerian Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.<sup>9</sup> The above provision has been latched upon to discriminate against certain persons especially female members of the armed forces and the Nigeria Police Force.<sup>10</sup>

### 3. Labour Act Cap L1 LFN 2004

The Labour Act 2004 was first enacted in 1971. The Labour Act ordinarily ought to be the grundnorm of employment and industrial relations issues. Unfortunately, it is so restrictive that it seems not to adequately serve the purpose of protecting the rights of employees and ensuring their welfare as well as engendering industrial harmony. For instance, it did not use the word “employee” expressly, also it did not define casual workers and even the issue of job security is not adequately addressed.

In section 91(1) the Act defines workers to mean any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written and whether it is a contract of service or a contract personally to execute any work or labour but does not include:

- (a) Any person employed otherwise than for the purpose of the employer’s business; or

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<sup>8</sup> (2012) 17 NWLR (Pt. 1328) 94 at 12.

<sup>9</sup> CFRN 1999 as amended, s 42 (3).

<sup>10</sup> O A Obaro, ‘The Nigerian Police Force and the Crisis of Legitimacy: Re-defining the Structure and Function of the Nigeria Police’ *European Scientific Journal* [2014] (10) (8) 43.

- (b) Person exercising administrative, executive technical or professional functions as public officers or otherwise, or
- (c) Members of the employer's family; or
- (d) Representatives, agents, and commercial travellers on so far as their work is carried on outside the permanent workplace of the employer's establishment; or
- (e) Any person to whom articles or materials are given out to be made up, cleared, washed, altered, ornamented, finished, repaired or adapted for sale in his own home or on other premises. Not under the control or management of the person who gave out the articles or the materials; or
- (f) Any person employed in a vessel or a craft to which the laws regulating merchant shipping or civil aviation apply.<sup>11</sup>

As earlier mentioned, there are some lacunas in the definition as provided in the Labour Act. As Erugo noted, the definition provided in the Labour Act at worst is an effort but not the expectation because the definition, to say the least, begs for the definition of terms used such as 'employer' and 'worker' and a number of other unclarified terms.<sup>12</sup> For instance, a worker is a broad term that includes independent employees. For Muhi, there are conditions under which a person working is determined and characterized as an employee or an independent contractor.<sup>13</sup> This is because an employee is one whose work is controlled by the employer, whereas a worker could be classified as an independent contractor if the employer does not control the process of carrying out the work.

Secondly, the law has moved on to include lightworkers such as hairdressers, train drivers, people employed to make chemical inventions, conductors and those who make bouquets which are not labour intensive and not manual work that is not accommodated in Section 2 of the Labour Act.<sup>14</sup> Similarly, professionals such as doctors, nurses, pilots, engineers, lawyers, accountants, and surveyors among others possess specialist skills that their employers may not possess and who have the technical know-how to determine how their work is to be done without the employer's control or directive are now regarded as employees which has exposed the limitation and loss of potency of the common law provision of the control test which hitherto was the major determinant of who is an employee and the inadequacy of using the word workers.<sup>15</sup> This position has a judicial sanctification in the case of *Cassidy v Ministry of Health*<sup>16</sup> where Lord Somerwell stated that the control test is not universally correct and applicable in all circumstances as there are many contracts of service wherein the master cannot control the manner in which the work is to be done. Furthermore, it is old fashioned to state that a person exercising administrative, executive and technical service as public officers are not employees (or workers as used by the Labour Act).

<sup>11</sup> Labour Act Cap L1 LFN 2004 s. 91 (a)-(d).

<sup>12</sup> S Erugo, *Introduction to Nigerian Labour Law: Contract of Employment and Labour Practice* (2nd edn Princeton & Associate Publishing Co. Ltd 2019) 27.

<sup>13</sup> CI Muhi, 'The Employment-at Will Doctrine: Three Major Exceptions' [2000] (1) 1, *Monthly Labour Review*.

<sup>14</sup> *Hoore v Robert Green Ltd* (1907) 2 K.B 315.

<sup>15</sup> BA Hepple and O Higgins, *Employment Law* (4<sup>th</sup> edn, Sweet and Maxwell 1981) 6.

<sup>16</sup> (1951) 2 KB 343, 352, 353

This is because the various Civil Service Commissions at the Federal, State and Local Government Service Commission have the power to employ and determine the employment of their staff in accordance with their contract of services.<sup>17</sup> Both the constitutional and judicial precedents have proven to the contrary that the strict application of the Common law principle of master and servant is not absolute as stated in the case of *Shitta Bay v Federal Public Service Commission*; and *Olaniran v University of Lagos*.<sup>18</sup> In the above cases, the Court held that the law in Nigeria especially as it regards is that a contract of employment cannot be terminated without following due process particularly employment in the Public Service which is statutory employment. The procedure set out in the law must be followed in the termination of the contract of employment.

#### 4. Employees Compensation Act 2010

Furthermore, the ECA clearly stated the procedure and time within which to give notification in case of injury as well as expanded the definition of liability to include injuries and death occurring in the workplace and out of and in the course of employment. Equally casual workers, domestic workers and some workers of government agencies who were hitherto excluded in some legislations are included as employees. Furthermore, the Act did not provide for payment of compensation resulting from the fault of an employer's agent(s) that is the issue of vicarious liability because it is a settled law and an accepted exception to the principle of no liability without direct personal fault.<sup>19</sup>

Although, this runs parallel to the principle of Common Law which insists that a person should only be held liable for losses damages or injuries caused by his or her wrongful acts and that liability should be fault attached meaning that there should be no liability without a fault.<sup>20</sup> However, the position of the law and practice in Nigeria is that the concept of vicarious liability remains a part and parcel of the Nigerian common law and one of the several indicators of an employer and employee relationship.<sup>21</sup> Unfortunately, the ECA appear to have taken what it gave with the right hand back with the left hand because of the complicated process involved in determining and laying liability on the employer as provided in Section 9(4)(a) and (b).<sup>22</sup>

The objectives of the Act are to:

- (a) provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependents for any death, injury, disease or disability arising out of or in the course of employment;
- (b) provide rehabilitation to employees with work-related disabilities as provided in this Act;
- (c) establish and maintain a solvent compensation fund managed in the interest of employees and employers;
- (d) provide for fair and adequate assessments for employers;
- (e) provide an appeal procedure that is simple, fair and accessible, with minimal delays; and

<sup>17</sup> *Ibid.*

<sup>18</sup> (1981) 1 SC 40; (1985) 2 NWLR (Pt. 9) 589.

<sup>19</sup> C D Drake, *Labour Law* (Sweet and Maxwell 1973) 81.

<sup>20</sup> F S Atiyah, *Vicarious Liability in the Law of Tort* (Butterworth's 1967).

<sup>21</sup> I N E Worugji. 'Modern Labour Law in Nigeria' (1<sup>st</sup> edn, Malthouse Press Ltd 2021) 227; *R O Iyere V Bendel Feed Flour Mills Ltd* (2008) 18 NWLR (Pt. 1119) 30

<sup>22</sup> ECA s 9(4)(a).

- (f) combine efforts and resources of relevant stakeholders for the prevention of workplace disabilities, including the enforcement of occupational safety and health standards.

The ECA substantially reflect the sentiment of International legal regimes in particular ILO Recommendations that deal with issues of employees' compensation. It divorces itself from the inadequacies associated with the Common Law provision which placed so much burden of proof on the employee to succeed in a claim of damage against the employer for injuries sustained, occupational diseases acquired, or disability suffered arising out of and in the cause of employment. The Act has claimed to be against a fund and not the employer whose mandate is to contribute; it also stipulated the amount payable for the various types or categories of injuries as well as established a Board to manage the fund.<sup>23</sup> The ECA also entrenched the "No fault" principle which hitherto limited the capacity of the employee or their dependent to claim compensation for injuries suffered at the workplace.

This new provision makes the issue of who was at fault a no issue in particular the principle of violent non-fault injuries and contributory negligence.<sup>24</sup> This is because before the enactment of the ECA employees and their dependents sometimes had a long walk to compensation as some claimants only get compensation after the matter has been determined by the Supreme Court especially where it involves a very uncooperative employer. This also resulted in compensation neurosis. Again, with the provision of sections 4, 5 and 8 of the ECA the Nigerian Social Insurance Trust Fund Board has the power to determine claims.<sup>25</sup> And with the third alteration that made appeals now lies with the National Industrial Court (NIC) it has saved employees the strenuous and slippery sloppy walk to the Supreme Court before the settlement of their compensation claims.<sup>26</sup>

As recommended and acknowledged by Okene, complying with and observing the new procedures specified in the ECA is very crucial to the payment and receipt of compensation.<sup>27</sup> However, the ECA is not entirely infallible as there are some lacunas and challenges to the full realization of the benefits of the Act and employee compensation. For instance, the ECA in section 260) made the additional medical and non-medical support that an injured employee may receive optional and at the discretion of the Board.<sup>28</sup> This provision could be exploited to deny genuine employees who need extra support for injuries suffered at the workplace the privilege and leave them to their fate.

## 5. Trade Unions Act T14 LFN 2004

The Trade Unions Act has in Section 1(1) defined a Trade Union as

any combination of workers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers, whether the combination in question would not, apart from this Act, be an unlawful combination

<sup>23</sup> O D Amucheazi, *Employees Compensation Under Nigerian Labour Law* (1<sup>st</sup> edn, Kraft Books Ltd 2019) 31.

<sup>24</sup> *Ibid* 23-24.

<sup>25</sup> Employees' Compensation Act 2010 ss 4, 5 & 8

<sup>26</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) Third Alterations 254.

<sup>27</sup> O V C Okene, *Labour Law in Nigeria* (3<sup>rd</sup> edn, Claxton and Derrick Publications, 2010) 159.

<sup>28</sup> Employees' Compensation Act 2010 s 26.



because of any of these purposes being in restraint of trade, and whether its purpose do or do not include the provision of benefits for its membership.<sup>29</sup>

The Act also in Section 3(2) provides that

no combination of workers or employees shall be registered as a trade union serve with the approval of the Minister on his being satisfied that it is expedient to register the union either by regrouping existing trade unions, registering a new trade union or otherwise however, but no trade union shall be registered to represent workers or employers in a place where there already exists a trade union.<sup>30</sup>

The Act went further in Section 3(3) to state that

no staff recognized as holding a managerial office with written management structure of any organization shall be a member of a such office in a trade union (whether or not the member of that union is a worker of a junior rank, equal or higher than his own) if such membership or the holding of such office in the trade union would lead to a conflict of his loyalty to either the union or to the management.<sup>31</sup>

Again, there appear to be some restrictions in the Trade Union Act as it attempts to be at conflict with the 1999 Constitution (as amended), the ILO Convention on Freedom of Association as well as the African Charter on Human and Peoples Rights especially Section 3(2) and (3) which are an affront to the freedom of association. The purpose of trade unionism is to organize members in a given employment in order to protect and improve their wages, working conditions and other benefits which they as individual employees would not be able to achieve or enforce.<sup>32</sup> The above provisions of the Trade Unions Act which excluded some categories of staff (employees) and imposed conditions to be met as well as subject the right to form a union to the whims and caprices of the Minister are implied breach of the rights of employees to form and join trade unions of their choice. This is because industrial democracy begins with the right to form a union, undertake collective bargaining, enter into collective agreements and enforce such agreements.<sup>33</sup>

Unfortunately, Nigerian laws have not allowed this freedom of Association as enshrined in Section 40 of the 1999 Constitution as amended and ILO convention No.87 which has been domesticated by the National Assembly to be fully consummated.<sup>34</sup> Again the Trade Unions Act exhibited some level of discrimination against employees when it provided in Section 3(1)(a) that in the case of a trade union of employees, at least fifty (50) members of the union should sign the application form while in Section 3(1)(b) it provided that in the case of a trade union of employers only two(2) members of the union should sign.<sup>35</sup> Especially because most organisations have less than 50 employees and, as noted by

<sup>29</sup> Trade Unions Act T14 LFN 2004 s 1(1).

<sup>30</sup> *Ibid* s 3(2).

<sup>31</sup> Trade Unions Act T14 LFN 2004 s 3(3).

<sup>32</sup> Okene (n 27) 69.

<sup>33</sup> A Timoye, 'Human Rights, Workers Rights and Equality in the Nigerian Workplace: An Overview' *Developing Country Studies* [2015] (5) (17) 100.

<sup>34</sup> CFRN 1999 as amended 540; ILO Convention No 87 1948 Articles 2 & 3 Convention No. 98 1951.

<sup>35</sup> Trade Unions Act, T14 LFN, 2004 s 3(1)(a) and (b).

Erstling<sup>36</sup> the enlarging requirement that employee unions must have 50 members to qualify for registration is an undue restraint of employees' right to freedom of association and a direct opposite to the ILO Convention 87. Furthermore, the Act in Section 11(1) provides that members of the armed forces, police, and so on are prohibited from forming and joining trade unions.

This section of the Trade Unions Act not only appears obsolete but also unduly interferes with the rights of employees to freedom of association and in addition passing the role of law-making to the Minister of Labour by virtue of paragraph 'h' that gives such wide powers to the Minister to determine which employees that should form unions. As rightly observed by Davis and Freedland<sup>37</sup> the several legal constraints contained in the Trade Unions Act which restrict membership of a trade union tend to frustrate the full realization and consummation of the right to belong and form a trade union which is one of the fundamental rights of employees.

Paradoxically, despite the recommendation of several labour scholars and practitioners that the armed forces be allowed to unionize the government especially the legislature appears indifferent. Okene posits that the denial of the rights of freedom of association of the armed forces and the police as well as other para-military agencies is justifiable.<sup>38</sup> However, it is submitted that our legislation should be forward integrating to conform with international best practices and norms contained in UDHR, the ICC&PR and the African Charter.

## 6. Violence Against Persons (Prohibition) Act 2015 (VAPPA)

The uncertainty that trailed the position of Nigeria as regards the ILO recommendation of UN's member states to address the issue of sexual harassment was laid to rest in 2015 when the Violence Against Persons (Prohibition) Act came into force on the 26<sup>th</sup> of May 2015. This Act addresses specifically sexual harassment and more so punishments attached to persons engaged in it. Section 46 of the Act<sup>39</sup> defines sexual harassment as:

Unwanted conduct of a sexual nature or other conduct based on sex or gender which is persistent or serious and demeans humiliates or creates a hostile or intimidating environment and this may include physical, verbal and non-verbal conduct.

With this definition, no person in Nigeria can be left in doubt as to what constitutes acts and conducts of sexual harassment. The legal implication of sexual harassment under VAPPA covers extensively rape, sexual assault, domestic violence spousal abuse and other sexual-related offences. VAPPA can be said to be a landmark statute for the protection of the integrity of the human person by prohibiting acts and conducts which can humiliate and denigrate a person.

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<sup>36</sup> J Erstling, *The Right to Organise* (International Labour Office 1977) 3.

<sup>37</sup> P Davies and M Freeland Kahn-Freund, *Labour and the Law* (2<sup>nd</sup> edn, Sweet and Maxwell 1983) 200-2001.

<sup>38</sup> Okene (n) 3.

<sup>39</sup> Violence Against Persons (Prohibition) Act 2015.



The punishments in VAPPA range from three years of imprisonment without an option of fine to one year of imprisonment or a fine of N200,000.00 or both and even lesser punishments based on the kind of crime committed.

## 7. Factories Act Cap F1 LFN 2004

The current legislation that deals with the issue of factories (workplace) as we shall interchangeably use in this study is the Factories Act, 2004.<sup>40</sup> But the first legislation concerning employment in factories in Nigeria was the Factories Ordinance No. 33 of 1955<sup>41</sup> which is based largely on the British Factories Act of 1937<sup>42</sup> by virtue of the fact that Nigeria was a former British colony. The Nigerian Factories Act is divided into eleven (11) Parts made up of eighty-nine (89) sections. Part I deals with the processes, and procedures for registration and registration of premises as factories and this is very crucial because not all premises can qualify as a factory and where a premises is not qualified as a factory the rights of employees working in such employment are not protected. Part II contains general provisions on health and similar conditions of the workplace while Part III deals with general safety obligations of the employer and the standard of safety required in each factory which varies from factory to factory.

The purpose of the Factories Act is to impose mandatory obligations on the employers of labour and require them to take and put in place adequate and varying precautionary measures for the safety of their employees.<sup>43</sup> Part IV has to do with provisions relating to the general welfare duties of the employer. Part V is concerned with special provisions and regulations bordering the health, safety and welfare of the employees at the workplace. Part VI deals with the duty imposed on employers to notify and investigate workplace injuries, accidents and occupational diseases. Part VII deals with the mode for making some special applications and Part VIII is concerned with the general registers, duties of persons employed and prohibition of wage deductions. Part IX deals with the administration of the Act, the appointment and power of factory inspectors while Part X focuses on offences and punishments, and Part XI deals with general application of the Act.

The Act in section 87 defined a factory to mean any premises in which or within which or within the close cartilage or precincts of which one person or more persons are employed in any process for or incidental to any of the following purposely, namely - (a) the making of an article or part of any article ...<sup>44</sup> Specifically, the Act is intended to play a preventive role in industrial domain to limit, reduce and minimizing the rate of accidents and diseases acquired in the workplace. This point was succinctly made in the case of *Stone v Hygath*<sup>45</sup> where it was stated that the object of the Factories Act is to secure proper working conditions for persons employed to do manual labour and other forms of work in certain operations, and the penalties for failure to provide such conditions.<sup>46</sup> Also, it extended the banks of what

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<sup>40</sup> Factories Act Cap F1 LFN 2004.

<sup>41</sup> Factories Ordinance Act 1955.

<sup>42</sup> British Factories Act 1937

<sup>43</sup> British Factories Act 1937.

<sup>44</sup> Factories Act Cap F1 LFN 2004 s 87.

<sup>45</sup> 449 U.S. 39 (1980).

<sup>46</sup> (1968) AC 157.

is meant by factories to include open-air premises and factories belonging to or occupied by various levels of government.<sup>47</sup>

From the spirit and intendment of the Act, there are some duties imposed on the employer to ensure that the employees do not have any accident or contact with any disease from the workplace. This position was reinforced in the 1999 Constitution (as amended)<sup>48</sup> and the view of Dike and Wondikom<sup>49</sup> that our norms recognize the need to ensure health, safety and welfare in the workplace. The various types of responsibilities and duties imposed on factory or workplace owners to ensure the welfare, health and safety are provided in Section 7-44 of the Factories Acts.<sup>50</sup> Despite the elaborate definition of Factory by the Act and Other provisions in both the 1999 Constitution of the Federal Republic of Nigeria as amended and other subsidiary legislation which seems inadequate to ensure the health, safety and welfare of employees in most Nigerian workplaces.

For instance, the definition of the factory itself has left more questions begging for answers as acknowledged by Oji and Amucheazi.<sup>51</sup> The scope of what constitutes a factory under the Act is not only too enormous but has also made it difficult to explain and define some terms which have made the determination of the exact scope of the factories herculean and required a resort to the repealed Factories Act or phrases or terms in the English Act. In addition, the Act falls short of being the law employees have been waiting for to have healthy and safe factories or workplaces. As Dike and Wondikom<sup>52</sup> aptly stated the legal instruments, regulations and laws made by the Nigeria government to address the issues of welfare, health and safety at the workplace are not only grossly inadequate and prescriptive, but they have also led to the existence of many health, safety and welfare issues at the workplace.

## 8. Pensions Reform Act, 2014

One of the basic social security benefits and issues of major concern in employment relations for which employees and their dependents require protection is the issue of Pension and gratuity.<sup>53</sup> Pension is described as the amount a retired employee is entitled to earn from their former employer until they die or the company becomes extinguished. While gratuity is a lump sum of money a retired employee is entitled to be paid upon completion of the required period of service as contained in the contract of employment.<sup>54</sup> The Pensions Reform Act was enacted in 2004 however as a result of some inadequacies and public outcry on the need for some amendment to make it more responsive and imbue the Pension Commission with additional powers the Act was amended in 2014 to create the Pension Reform Act, 2014. The new Act was to expand the power of the Pension Commission to enhance its regulatory and enforcement capacity. To ensure better protection of pension funds, review the sanction regimes to

<sup>47</sup> Factories Act Cap F1 LFN 2004 ss. 213-217.

<sup>48</sup> CFRN 1999(as amended) s 17(3)(b) (c) & (d) and 20.

<sup>49</sup> S C Dike and S C Wondikom, 'Situating Health and Safety in the Petroleum Industry; The Nigerian Experience and the Need for Review', [2021] (8) (1) *Rivers State University Journal of Public Law*, 98

<sup>50</sup> *Ibid.*

<sup>51</sup> E. A. Oji and O D Amucheazi, *Employment and labour Law in Nigeria* (Mbeyi and Associates (Nig) Ltd, 2015) 247.

<sup>52</sup> *Ibid.*

<sup>53</sup> I N E Worugji, *Modern Labour Law in Nigeria* (1<sup>st</sup> edn, Malthouse Press Ltd 2021) 288.

<sup>54</sup> S C, Srivastava *Social Security and Labour Laws* (Eastern Books Co. 1983) 431-432.

reflect current economic realities and trends and include the participation of the informal sector of the economy in the pension benefits.

In furtherance of the above the Act in Section 1 provides for the objectives of the Act which includes, amongst others, the establishment of a uniform set of rules, regulations and standards for the administration and payments of retirement benefits for the public service of the Federation, the Federal Capital Territory, the Public Services of the State and Local Government and the Private Sector.<sup>55</sup>

Furthermore, the 2014 Act in Section 2 made the pension scheme applicable to all employees of the Public Service of the Federation, the Public Service of the Federal Capital Territory, the public service of the various states, the public service of the various local government councils; and the private sector. It also included employers of the private sector that are (15) fifteen or more employees and organisations with less than (3) three employees as well as self-employed persons who want to participate in the scheme. Equally, it fixed the minimum amount contributable from the monthly emolument by the employer to be 10% and that of the employee to be 8%. However, this amount could be reviewed upward from time to time upon agreement between the employee and the employer.<sup>56</sup>

Another major innovation in the Act is the provision that it has indirectly made it possible for every dismissed employee to be entitled to their full pension benefits because of the compulsory contribution by the employer to the employee account opened with the Pension Fund Administrator. As Agomo aptly confirmed the old rule that an employee dismissed for misconduct is not entitled to full pension is no longer tenable because the new Act has made the opening of a pension account with a pension fund administrator by an employee compulsory with both parties contributing therefore an employer can no longer withhold their share of the employee's pension entitlement as a result of dismissal.<sup>57</sup> It is presumed that the Courts will enforce it by virtue of the decision in the case of *Ibama v Shell Petroleum Co Nigeria Ltd.*<sup>58</sup>

Similarly, the new Act defined employees more comprehensively to accommodate all categories of employees. As Erugo stated, the Pension Reform Act's definition of employees was wide enough to capture all persons employed including those in private companies and organizations and even firms but it specifically excluded employees of the public services of the various states and local government councils.<sup>59</sup> There is a need to amend the Act to accommodate State and Local Government employees. Ironically, like most other labour legislations we have considered that have some limitations the Pension Act is also bitten by the self-limiting bug by excluding some categories of employees especially those under Section 291 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). These include Judges. Members of the Armed Forces, the Intelligence and Secret Service and employees who ordinarily should be entitled to be subscribers to the scheme but had less than three years to retire before enactment and commencement of the 2004 Act.<sup>60</sup>

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<sup>55</sup> Pension Reform Act 2014 s.1.

<sup>56</sup> *Ibid* ss. 4 (I) and (2)

<sup>57</sup> C K Agomo, *Nigerian Employment and Labour Relations Law and Practice* (3<sup>rd</sup> edn. Concept Publications Ltd 2018) 183.

<sup>58</sup> (1998) 3 NWLR (Pt. 542) 493.

<sup>59</sup> Agomo (n 57).

<sup>60</sup> Pension Reform Act 2014 s.5.

## 9. National Industrial Court Act, 2006

The National Industrial Court Act was enacted in 2006 to re-establish the National Industrial Court (NIC) to give it the powers of a Court of Superior jurisdiction with coordinate jurisdiction of a High Court and clothed the court with powers to make declaratory and injunctive orders. Section 71<sup>61</sup> of the Act gives it exclusive jurisdiction to deal with matters related to labour, employment and industrial relations. Section 9 of the Act stipulates that appeal from the Court should lie as of right with the Court of Appeal not on all matters but those bordering on breach of employees under Chapter IV of the 1999 Constitution as amended. This position was reinforced in the case of *Skye Bank Plc v Iwu*.<sup>62</sup>

However, in 2010 during the Third Alteration, the Court was given a new name and additional powers. The Court was renamed the National Industrial Court of Nigeria (NICN).<sup>63</sup> The alteration also vested the new Court with exclusive powers to handle matters relating to labour, employment, trade union, trade disputes and industrial relations issues in their entirety including criminal jurisdiction especially with regard to the issue of contempt.<sup>64</sup> This provision has put to rest the usual jurisdictional conflict between the former NIC under the 2006 Act and the High Court which had unlimited jurisdiction under the 1999 Constitution determining all matters has been resolved as it now has exclusive jurisdiction.<sup>65</sup>

No doubt since the assumption of its new status the Court has been a little more radical and forward-looking in most of its decisions as can be seen in the case of *Ejike Maduka v Microsoft Nigeria Limited*<sup>66</sup> was a landmark decision of labour law with regards to sexual harassment at the workplace, and the extent to which the NICN has assisted in the protection and enforcement of employee's human rights in Nigeria.

## 10. Conclusion and Recommendations

Nigeria's labour laws have evolved significantly over the years, and various statutory provisions—such as the Constitution, Labour Act, Employees Compensation Act, Trade Unions Act, and VAPPA—serve as crucial instruments in regulating employment relationships and protecting workers' rights. However, the legal framework still contains several gaps and contradictions that hinder the full realization of these rights.

The non-justiciability of certain constitutional provisions, the narrow definitions in the Labour Act, the complexity of compensation claims under the ECA, and the restrictive provisions in the Trade Unions Act all contribute to a system that falls short of protecting employees adequately. For Nigeria to achieve more robust labour protections, it is essential to reform these laws, ensuring that they align with international standards, are accessible to all workers (including those in the informal sector), and are effectively enforced.

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<sup>61</sup> National Industrial Court Act, 2006 s.7.

<sup>62</sup> *Ibid* s.11.

<sup>63</sup> *Ibid* ss. 254 (C).

<sup>64</sup> D O Ejere 'The High Court's Jurisdiction to Hear and Determine Inter and Intra Union Disputes is no Completely Ousted by the Trade Dispute Act as Amended and the 2006 NIC Act' [2007] (1) (2) *Labour Law Review*, 61.

<sup>65</sup> Unreported Suit No. N1CN/LA/492/2012.

<sup>66</sup> C Onyechi and B N Edet, 'Issues of National Minimum Wage Fixing and Stability in Nigeria's Industrial Relations' [2017] 2 (4), *Equatorial Journal of Social Sciences and Human Behaviour*, 164.



Reforms should focus on expanding the scope of protections, ensuring enforceability, strengthening workers' rights to organize, and promoting gender equality and workplace safety. These changes would not only improve industrial relations but also foster a fairer and more inclusive economy, ultimately contributing to Nigeria's broader socio-economic development goals.