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Unfair Labour Practices in Industrial Relations in Nigeria and the Role of the National Industrial Court

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Abstract
Basically, the relationship between the employer and the employee is taken as regulated by the individual contract of employment with vital aspect of the contract agreed upon by the parties without interference. The reality is that the freedom of contract does not appropriately consider parties who for economic, social and political reason are in a position that hardly can such a party be said to possess any bargaining strength. This invariably creates unfair and uncivilized industrial relation practices. These are practices that do not conform with best practices in the labour circle as may be enjoined by local and international bodies. Although, there are legislations which protect the right of workers, it is amazing they still suffer some unwholesome acts. These practices include Casualization of Workers, Poor Remuneration, Discrimination at Work, Wrongful dismissal and Sexual Harassment; but not limited to the ones mentioned, as the list is unending. Hence the urgent need to curb this menace, that is ravaging the labour sector.The thrust of this paper is to shed light on the unfair labour practices in industrial relations and the role of the National Industrial Court in handling such unfair labour practice.

Keywords: Unfair Practices, Employers, Employee, Contract of Employment, uncivilized, National Industrial Court, Worker and Labour
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1.0 Introduction

Labour being a vital factor of production and a very crucial part of the economy wields a lot of power and influence, and as a result, employers of labour always want to control the activities of the labour force to channel them in their own direction and interest never minding the implication on employees. It is quite ironical that although the labour force wields a considerable amount of power and influence, the body has not been able to fully suppress all forms of oppression of labour from employers of labour. Presently rather than being contractual, labour is now being commercialized and the employees are majorly the risk bearers, this is as a result of the high level of unemployment that is prevalent in the country and the fact that some employees are ignorant of their right or where they are even aware of this right, they are unable to enforce them, hence the continued exploitation of workers by their employers.

In Nigeria, the scourge of unfair labour practices is fast gaining ground in an unprecedented rate. The increase in the spread and acceptance of these practices has become an issue of great concern. The acceptance of these practices has been traced to the high level of unemployment and accompanying poverty. These factors have bred a dangerous work environment and have given much aid to the prevalence of unfair labour practices as desperate job seekers in the labour market are willing to take any job for survival no matter how degrading and precarious the condition of the job is. An examination of the adequacy of existing labour law has revealed that they and even government policies are inadequate to protect the Nigerian worker against unfair industrial practices, thus, emphasizing the need for the National Industrial Court to ensure the protection of workers against exploitation and unfair labour practices in Nigeria.

2.0 Conceptualization of Unfair Labour Practices

Unfair labour practices can simply be described as such practices which are in contravention or contrary to the stipulated standards of international bodies and which contravenes the provisions of the fundamental human rights of the worker. Such practices are also conduct that can harm the general welfare of workers, or conducts that deviate from the established codes of practice or provisions of the law. It is contended therefore that conducts which are contrary to the notion of work place safety and democracy, equality at the work place and collective bargaining can be recognized as "unfair or uncivilized so as to qualify for litigation in the court of law".

However, unfair industrial relation practices is a two way thing as between the employer/his representative and the employee/trade union; this is because just as employees are susceptible to unfair practices by the employer, there are also conducts of trade union that will qualify as unfair practices as it relates to the employer.

Unfair labour practices are practices that are unfair, immoral and unethical, while uncivilized labour practices are practices that are unethical and ancient.

This was given statutory recognition in the Constitution[1], and categorically granted to every individual respect for the dignity of his persons; and accordingly:

a. No person shall be subjected to torture or to inhuman or degrading treatment.
b. No person shall be held in slavery or servitude and
c. No person shall be required to perform forced or compulsory labour.[2]

By virtue of subsection (1) (a) it will be unconstitutional, in the course of employment for an employee to be subjected to degrading treatment. It is of great note, that despite all kinds of protection or standards laid down by International bodies or statutes, majority of workers still suffer in the hands of their employers. And the reasons for this attitude are not farfetched while some employees are not aware of their rights, some will accept any kind of job condition, which is below the minimum standard because of poverty and unemployment.

3.0 The Nature of Contract of Employment

The contract of employment is based on the agreement of the parties which could be express, implied or by custom of a trade. Therefore, parties are at liberty to determine the nature and the terms of the employment relations. Labour Act[3]defines a contract of employment as any agreement whether oral or written, express or implied whereby one person agrees to employ another as a worker and that other agrees to serve for a prescribed remuneration. In employment situations the offer usually comes from the prospective employer and acceptance from the prospective employee. Statutory provisions such as; the Trade Union Act, 1973, the Labour Act, 1974, the Trade Dispute Act, 1976 and the National Minimum Wage Act, 2011[4] provides for who a worker is. Trade Union Act, s 52 states as follows:

> *'Worker' means any employee that is to say any member of the public service of the Federation or for a State or any individual (other than a member of any such public service) who has entered into or works under a contract with an employer, whether the contract is for manual labour, clerical work or otherwise, expressed or implied, oral or in writing and whether it is a contract personally to execute any work or labour or a contract of apprenticeship*[5]

Also, section 91[6] defines a worker as, '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 labour work, but does not include:

a. Any person employed otherwise than for the purpose of the employer's business or
b. Persons exercising administrative, executive, technical or professional functions as public officers or otherwise or
c. Members of employer's family or
d. Representatives, agents and commercial travelers in so far as their work is carried on outside, the permanent work place of the employer's establishment or
e. Any person to whom articles or material given out to be made up, cleared, washed, altered, ornamented, finished, repaired or adapted for sale in his own home or on the other premises not under the control or management of the person who gave out the articles or the material or
f. Any person employed in a vessel or aircraft to which the laws regulating merchant shipping or civil aviation apply: "young person" means a person under the age of eighteen years'

4.0 The Employer/Employee Relationship

The pivot of this relationship is the contract of employment which an eminent jurist has described as "that indispensable figment of the legal mind". A contract of employment is "a voluntary relationship into which the parties may enter on terms laid down by themselves within limitations imposed only by the general law of contract. It is governed by the ordinary rules of contract and in Nigeria those rules exist under common law and some Nigerian statutes. Subject to these, terms and conditions of employment may be settled by the employer alone, or on the basis of an agreement between the worker and his employer or by a collective agreement between a group of workers forming a trade union and the employer or a group of employers or by the state through legislation or by some combinations of these various methods.

[1] S 34 CFRN, 1999 (As Amended)
[2] *Ibid*
[3] Cap L1, LFN 2004, S 91(1)
[4] The Act was signed into law in 2011 and yet to be amended to include casual workers.
[5] TUA, Cap 437 LFN 2004
[6] Cap LI, LFN 2004

By virtue of the relationship of employer and employee or 'master and servant' certain rights and obligations between the parties are implied at common law. In general, the master has to exercise reasonable care in the choice of servants, provide and maintain proper plants and appliances and establish a safe system of work. On his part, the servant is expected to give honest and faithful service, display reasonable skill and care in the performance of his duties and obey lawful orders. He should not commit misconduct though he may be under no duty to disclose previous misconduct. The employer employee relationship is governed not only by common law rules but also by some Nigerian statutes of which the labour Decree of 1974 is one of the principal enactments [1]

The contract of employment deals with the relationship between an employer and an employee. It is the basis on which the employer and employee relates to work together. At common law, the assumption is that the term of the contract are freely established by parties who are equal, but this presumption is often fictitious, except for rare employees who can match the bargaining power of the employer, for the majority of employees, the major terms of the contract are fixed by the employer and are offered to the employee on the basis of 'take it or leave it' for such employees.[2] The employment relationship in the words of Roper "implies a relation of undefined authority on the side of the employer and undefined subordination on the side of the workman. It is a relation which inevitably gives rise to the need for guarantees against abuse and a relation which the trade unions constantly seek to improve"[3]

5.0 Unfair Labour Practices on Workers

The quest for profit maximization as well as better pay and conditions of service is unending. While the employer seeks to maximize profit and increase output at the lowest cost possible, the employee seeks to ensure better pay and better conditions of service. This disparity in the bargaining position of both parties as resulted into a clear vulnerability of the work force through unfair and uncivilized practices of employer. It is therefore necessary to establish structures that would assist in upholding and protecting the rights of the work force in a bit to ensure that both parties to an employment contract are on a fair level in the exercise of their bargaining power. Presently in Nigeria, there is no legislation on the concept of unfair and uncivilized industrial relation practices. Thus, it has been argued that the concept is unknown to our labour laws and as such, the fact that ban employer is uncivilized, unfair or high handed cannot be the subject of a court action or litigation.[4]

Having established the inadequacy of labour law in Nigeria as regards what constitute unfair labour practices, built within the existing framework are labour practices which will qualify as unfair and unethical practices. The word fairness connotes justice, morally right, equality and acceptable, while the word civilized connotes ethical, culture, refined, polite and elegant. Thus, the concept of unfair and uncivilized industrial relation practices refer to all labour practice that are barbaric, immoral and unethical that do not conform to practices in labour circles as may be stipulated by domestic or international legislations and practices.[5] These practices include; casualization of worker, wrongful dismissal of workers, discrimination in the work place, sexual harassment, discrimination against persons with disability, anti-unionism policy.

5.1 Casualization of Workers

Casualization as a form of labour practice is the process by which employment shifts from a preponderance of full time and permanent positions to higher levels of casual positions.[6] It involves employment of an irregular or intermittent nature. Casualization is gradually becoming a cankerworm in the flesh of the work force in both developed and developing countries. In Nigeria the scourge of casualization of employment is gaining grounds in an unprecedented proportion intensity and scale. The increase in the spread and gradual acceptance of this labour practice in the Nigeria labour market has become an issue of great concerns to stakeholders. Employers of labour are increasing filling positions in their organizations that are supposed to be permanent with casual employees. The trend has been largely attributed to the increasing desperation of employers to cut down organizational costs.[7]

Casual work is often temporary with uncertain wages, long hours and no job security. [8] Nigerian workers

[1]O.I Odumosu, *Land Marks in Nigerian Labour Law*, Inaugural lecture delivered at the University of Ife (Now Obafemi Awolowo University on Tuesday, January 13, 1987
[2]A.N Nwazuoke, *Introduction to Nigerian Labour Law,* the Department of Public Law jurisprudence Faculty of Law, Olabisi Onabanjo University Ago Iwoye , p. 12
[3]J.I Roper, *Labour Problems in West Africa* (Penguin Publications 1958)
[4] *National Union of Food Beverages and Tobacco Employees v Cocoa Industries Limited* (2005) 3 NLLR, pt 8, 206
[5] B. Atiola, *Recent Developments in Nigerian Labour and Employment Law* (2nd edn, Hybrid Consult Ltd, 2017)
[6] T.M Fapohunda, 'Employment Casualization and Degradation of Work in Nigeria' (2012) 3 (9) *International Journal of Business and Social Science,* p. 257
[7]T.M Fapohunda, 'Employment Casualization and Degradation of Work in Nigeria' [2012] *International Journal of Business and Social Science, Department of Industrial Relations and Public Administration Lagos State University Ojo, Nigeria* (3)(9) 257; M. Armstrong, *Handbook of Human Resource Management Practice* (11th edn, Kogan Publishers, 2009)
[8] T.M Fapohunda, *Ibid*

are under pressure from corporate practice that seek to undercut their hard-fought victories at the bargaining table and replace good jobs (i.e jobs with benefits, training and security) with various forms of insecure and lower paid contract, short term and temporary work. This practice is called 'casualization' and is alarming trend, considering that working was once a hope for raising living standards in the country. The growth in irregular work has changed the nature of employment from a labour relationship to a commercial relationship, with the worker taking all the risks. There is now a sharp worldwide rise in casual employment and a parallel rise in the gap between wages and benefits of permanent and casual workers

Formal workers called 'regular' company employees are hired directly by the company. They receive contracts that explain work conditions, wages, hours of work and benefits. They have the right to form unions in some cases and bargain collectively to extend their voice in the work place.[1] In contrast, casual workers are often employed by third party contractor under various types of part time and or short term work arrangement. They perform many of the same technical and professional duties as regulars but with no job security. They face frequent layoffs and long period of revolving short term contracts under a never ending probation. Most casual workers are not part of any union structure; they earn lower wages than the regular workers, receive fewer benefits and can be fired at will. The ILO in 2004 observed that companies in Nigeria "tend to fire contract workers just before the expiration of their three, six or twelve months contracts when they are about to become permanent workers …." [2]

5.2 Wrongful Dismissal of Workers

The concept of dismissal can be defined as the exclusion of an employee from further employment with the intention of severing the relationship of employer and employee while wrongful dismissal is usually the claim of an employee at common law where he contends that his contract has been wrongfully repudiated by the employer or where he feels that his contract has not been brought to an end in accordance with the procedure laid down by the contract[3]. A contract of employment 'dismissal' is not without its stigma. Dismissal is said carry infamy and deprives one of benefits which termination of appointment with retirement does not. The term does not apply to termination of appointment with retirement benefit. This in fact is the fundamental difference between dismissal and termination of or retirement form employment[4].

The acts which may give rise to dismissal may arise from willful disobedience of lawful and reasonable orders, misconduct of the masters business, neglect and conduct incompatible with his duty or prejudicial to the master's duty. This right is exercisable whether the contract is for a fixed period or for an unspecified term[5]. An employee is held to be validly removed from his employment if he is removed for a good cause with proper notice and by an agreed or statutory procedure. When that is not done the termination of or dismissal from employment is said to be wrongful dismissal. But we know that under the common law the termination of an employment may be lawful without its necessarily being fair. That is why in a redundancy situation the principle of "last in first out" has been statutorily entrenched at least to prevent an arbitrary use of the employer's power to discharge his worker. This provision is however not enough[6].

Under the present law, an employer is held entitled to terminate an employment at any time without giving any reason for doing so unless a statute or the agreement between the parties provides otherwise. The law reports are replete with cases where this power has been misused by the employer[7]. *In Akindiji v Public Commission*[8] the Plaintiff was employed in the public service at the age of 47 years when the retirement age was 60 years and qualification for pension was ten years continuous service. He was appointed to the pensionable post of magistrate and had two promotions during the probationary period – first to the post of senior magistrate and then to that of acting chief magistrate. In 1966, however, the government by a treasury circular reduced the retiring age to 55 years thus reducing the possible period of pensionable service by the plaintiff from thirteen to eight years. The legal effect of this reduction is that the plaintiff could no longer qualify for pension.[9] In a case which is rather akin to that of *Akindiji v Public Service Commission* in principle (if not in facts) decided under the Industrial Relations Act 1971, the English Court of Appeal restrained an employer from terminating the employment of the plaintiff for pension. Lord Denning said:

> *"If the common law did not want him (i.e the worker) to come to work the court would not order the company to give him work. But so long as he was ready and willing to serve the company, whether or not they required his services, the court would order*

[1] J.I Roper (n9)
[2] *Ibid*
[3] O Ogunniyi, *Nigerian Labour and Employment Law in Perspective*, (2nd edn, Folio Publishers ltd 2004)
[4] A Emiola, *Nigeria Labour Law*, (4th edn, Emiola publishers limited 2008), 162.
[5] ibid 164.
[6] Ibid 578.
[7] Ibid.
[8] (1975) I/372/74 (23 June 1975)
[9] Although the plaintiff lost the case on grounds other than 'fairness', the case underscores the injustices inherent in the law as it now stands.

> *the company to do their part of the agreement, that is allow him his free house and coal and enable him to qualify for the pension fund*[1].

From the decision in *Shokoya v Nigeria Tobacco Ltd*,[2] it is apparent that a dismissed employee will have no remedy where he has collected all his separation entitlement before going to court to sue for wrongful dismissal. Other cases abound in Nigeria where employees were wrongful dismissed at work. The abuse takes the form of terminating the employment of a highly paid worker who had put in several years of service to enable the employer employ a cheaper labour. Again the employer may give adequate notice to the worker where there is no express stipulation as to notice. What the courts do at present at least in majority of cases has been to estimate what they consider to be 'reasonable notice' and quantify such period in terms of money. As a result of this method of trail and error judicial opinions are as diverse as there are courts on what may be regarded as 'reasonable notice'. In consequences, the courts have been unable to evolve a coherent principle which could be considered as fair and just to both the worker and the employer[3]. Hence the need for the reform of this aspect of the law of employment is now highly desirable. And such reforms should be statutory rather than judicial.

5.3 Discrimination at Workplace

When an employee is treated somewhat differently from other employees on grounds not supported by contract or that are indeed in conflict with the law such a worker is said to have been discriminated against sex, age, ethnicity, religion, trade union membership and political opinion are some other grounds upon which workers may be discriminated against in this country. While positive discrimination like affirmative action may be morally defensible, discrimination in most cases is difficult to justify or defend. As a matter of fact the International Labour Organization (ILO) regards the elimination of discrimination in respect of employment and occupation as a fundamental principle which all members states are obliged to respect.

Although Nigeria has ratified the ILO equal remuneration convention, 1951 and the Discrimination (employment and occupation) convention 1958, one can state without equivocation that the state of protection against discrimination in Nigeria is very weak[4].

Section 42 of the Constitution provides some protection against discrimination. The section 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 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 origin, sex, religious or political opinion are not made subject ……."*[5].

This section protects Nigerians against discrimination based on a statute or arising from the application of a statute or discrimination based on the executive or administrative action of the government. Given the fact that government is increasingly becoming an insignificant employer vis -a vis the private sector. It follows that there is no constitutional protection as such for employees in respect of discriminating policies in the work place[6]. Section 17 of the Constitution also frowns at discrimination. The section is to the effect that the state social order is founded on the ideals of freedom, equality and justice. It goes on to provide that every citizen shall be entitled to the equality of rights, obligations and opportunities before the law. More specifically the section stipulates that the state shall ensure that "all citizens without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment and that there is equal pay for equal work without discrimination on account of sex or any other ground whatsoever. Section 17 being a provision under chapter II of the constitution is non-justiciable. It follows therefore that unless a law is passed embodying the provision, it is impossible to rely on it as a basis for

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[1] A Emiola (n18) 579. There are several other forms of abuse of the power of termination by the employer but only few examples need to be considered. The general principles underlying the assessment of damages in contrast is that of restitution in intergrum but this principle is restrictively applied to cases of wrongful dismissal. Thus in *Western Nigeria Development Corporation* v *Jimoh Abimbola*, (1966) NMR 381 It was held that the measures of damages for wrongful dismissal is prima facie, the amount the plaintiff would have earned had he continued with the employment. In this case, the court held that he was entitled to one month salary in the absence of notice and that was all he could get as damages. Likewise, the court held in *Nigeria Produce Marketing Board* V. *Adewunmi* (1972) 1 ANLR 433 that in cases of wrongful dismissal, the plaintiff may not recover more than the pay for the contractual notice period. *Olaniyan and others V University of Lagos* (1985) 2 NWLR 599 is another locus classicus on wrongful dismissal depicted by employers. The principle in this case has been severally adopted and applied by the courts in similar circumstances and the courts have held that the opportunity for fair hearing must be offered at all times necessary irrespective of the prevailing atmosphere.

[2] (1987) 1 NWLR 284.

[3] A. Emiola (n18) 580.

[4] B. Aturu, *Nigerian Labour Laws*: Principles, Cases, Commentaries and Materials (Frankard Publishers, 2005)

[5] CFRN, 1999 (As amended)

[6] B. Aturu (n27) p. 251.

challenging any discriminatory practice in a court of law.[1]

5.4 Sexual Harassment

Among the prominent issues bothering on the work experience of female employees is that of sexual harassment at work. Sexual harassment is the repeated sexual advances, remarks or behaviours that are offensive to the recipient and cause discomfort or interference with job performance. The definition is by no means exhaustive as daily, various forms of unacceptable sexual behaviour are birthed. These range from outright coercion or rape to subtler yet shamelessly repulsive action, unwelcome touches, lewd remarks and lascivious stares. Sadly, women have always been so favoured especially here in Nigeria. A phenomenon that is now trending is the issue of sexual harassment. Like a flea, it has sucked deep into what remains of the Nigerian fluid and the very endemic nature of this scourge threatens to wipe off any vestige of our moral fibers as Nigerians.

Sexual harassment results in the real or perceived fear that lack of cooperation with the harasser will result in the denial of benefits, deprivation of or diminished employment opportunities, or other adverse impacts on the affected employee. It is therefore capable of creating unnecessary tension and trauma for victims while also undermining their confidence and constitutes an affront to their dignity.[2] In recent times, a growing number of women have entered the job market and this to unscrupulous men means more sexual preys to descend on. Considering the very real fact that jobs are hard to come by many women would rather endure a daily torture than opt out of a job where a supervisor or employer haunts them sexually. Most times victims have had to privately absorb the emotional, social and economic consequences of this morally objectionable behaviour has there was no legal framework in Nigeria for dealing effectively with the issue of sexual harassment. Others suffer in silence because of fear of stigmatization, lack of awareness of legal rights and in extreme cases actual rejection by family members and community. Others also fear that little will be accomplished by reporting as those who are supposed to protect them often turn out to be the perpetrators of heinous crimes.[3]

Some have argued that the practice of sexual harassment is not as serious as some women make it appear, especially if rape is not involved. Others go to the extent of alluding that women actually feel flattered by the attention they receive. But experts have proven that the messy practice is meant not to attract women but to coerce them: therefore it is an expression of power. This crude force often has far reaching consequences. Sexual harassment by employers in whatever guise it may take amount to unfair labour practice by such employer and needs to be curbed. Under the 1999 Constitution, the right to protection of dignity and freedom from inhuman and degrading treatment as well as freedom from sexual discrimination is possibilities which could be meaningfully and creatively explored to respond to some of the dimensions on sexual harassment. In particular the right to freedom from discrimination on the ground of one's sex guaranteed under section 42 of the Constitution provides possibilities for redress in line with developments in other climes where sexual harassment has been classified as a form of sex discrimination which is therefore actionable under laws prohibiting discrimination. A major limitation of the provision however is that section 42 only forbids discrimination by any executive or administrative act of the government or by the application of any law in force. It would therefore appear doubtful that the provision affords anyone in the private sector protection from sexual harassment or any other form of discrimination[4]

In 2011, the Lagos State Government adopted provisions within its criminal law to deal with the problem of sexual harassment in the work place and educational institutions.[5]However, until judges and other actors in the criminal justice system have been effectively re-oriented to view harassment with the seriousness it deserves, they may be very few convictions, in order to protect perpetrators from years of prison from an offence that many may erroneously attempt to trivialize as a romance gone wrong. Another challenge posed by criminal prosecution for sexual harassment is the high burden of proof i.e beyond reasonable doubt, and the challenge of securing a conviction, particularly when it comes to the ability to gather evidence. Hence if the criminal justice system is to serve a meaningful role in breaking the culture of silence and bringing perpetrators to trial, there is a need for the adoption of special measures to provide conducive conditions for victims to report sexual harassment .Indeed it is hoped that the provision will not go the way of the now defunct law on bigamy, which

[1] ibid.
[2] A.O Oyewunmi, 'The Criminalization of Sexual Harassment in the Workplace: Is it an Adequate Response?' [2012] *The International Journal of Comparative Labour Law and Industrial Relations*, (28) 366
[3] *Ibid.*
[4] *Ibid*, p. 382
[5] Lagos State Criminal Law, 2011 makes provision for a variety of sexual offences including rape, sexual assault by penetration and sexual assault. One measure in the chapter which stands out as unprecedented in the history of Nigeria's Criminal Law system is the novel provision criminalizing sexual harassment. In this regard, LSCL 2011 s 261(1) provides that "any person who sexually harasses another is guilty of a felony and liable to imprisonment for three years". This provision has elevated sexual harassment has a work place issue of public concern, while also imposing appropriate criminal sanctions on the perpetrator. In particular the stipulation of a three year term of imprisonment for offenders has the advantage of ensuring that the offence is not trivialized.

has been more honoured in the breach than its observance.[1]

However, beyond this and without detracting from its importance, the criminalization of sexual harassment insufficiently deals with vital issues such as the provision of compensatory mechanisms as well as preventive measures. Compensatory remedies particularly reinstatement and damages should be the priority, to ensure that the victim does not suffer economically and financially. The absence of an unfair dismissal law means a victim of sexual harassment who fails to cooperate with her harasser may have her employment terminated by the employer who is not obliged to adduce any reasons for the termination.

Thus redress under the labour law, at least in its present form is fraught with uncertainties.[2]

5.5 Discrimination against Persons with Disability

Persons with disability are just like every other person who live in the community and are part of the society. Just like every other person these special sets of people suffer from one form of disability or the other which makes them a subject of discrimination even when it comes to employment in work place or consideration for appointment. In 1993, the government promulgated a law to protect the disabled persons and ensure they are accorded equal treatment due to other person.[3] The Discrimination Against Persons with Disability (Prohibition) Act, 2018 defines a disabled person as one 'Who has received preliminary or permanent certificate of disability to have a condition which is expected to continue permanently or for a considerable length of time which can reasonably be expected to limit the persons functional ability substantially but not limited to seeing, hearing, thinking, ambulating, climbing, descending, lifting, grasping, rising, any related function or any limitation due to weakness or significantly decreased endurance so that he cannot perform his everyday routine, living and working without significantly increased hardship and vulnerability to every day obstacles and hazards[4]

Furthermore, section 28 of the Act imposes a duty on the government to take measures to promote the employment of the disabled, accordingly a disabled person shall not by reason only that he is such a person be subjected to any discrimination or conditions by an employer. There is however what may be referred to as positive discrimination in favour of disabled person as section 6 (2) of the Act require all employers of labour to reserve for the disabled not less 10% of the work force.[5] According to the ILO, "one out of every ten people in the world – or some 650 million people worldwide has a disability. Approximately 470 million are of working age. While many are successfully employed and fully integrated into society, as a group, persons with disabilities often face disproportionate poverty and unemployment".[6] Workers with disabilities are a vulnerable group and, like women, children and young persons, and those living with HIV/AIDS they face discrimination in the workplace. They are discriminated against at the point of entry, and within the workplace.

It is therefore not surprising that the physical conditions of the workplace are not friendly to the disabled. There are no special provisions to ease the mobility of the physically challenged. The fundamental right to the freedom and dignity of the human person as enshrined in Chapter IV is not being honoured. Physically challenged workers should enjoy the provision of suitable amenities to ease their mobility and general integration with other workers. Nigeria ought to adopt International best practices as enshrined in the ILO Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons), 1983 and the accompanying Recommendation No. 168.[7] In practice, the public sector is compliant when it comes to the employment of persons with disability. They are considered and given job but the private sector has not fully complied with this law. In the private sector, some employers will not employ persons with disability into their establishment no matter how competent such a person is and where they are even employed in the first place, these people suffer from some kind of discrimination from their employers for instance when there is need for promotion, persons with disability are likely to suffer discrimination.

5.6 Anti-Unionism Policy

The non-formation of or participation in a trade union workplace policy is another unfair labour practice predominately experienced within the private sector. Although, the provisions of the Constitution[8] and the Trade Unions Act[9] expressly states that 'every person shall be free to form or belong to a trade union', the employers of labour particularly the private sector have constantly stood against the enforceability of this fundamental right with all might, and at all fronts. The Act on Labour further buttressed the position of the Nigerian Constitution. It

[1] A.O Oyewumi, (n31) p. 386
[2] *Ibid*
[3] ibid.
[4] Section 22 Discrimination Against Persons with Disability (Prohibition) Act, 2018
[5] B. Aturu (n27) p. 252
[6] Inclusion of Person with Disability, International Labour Organization, Skills and Employment Department.
[7] C.K Agomo 'Nigeria Labour Law and Industrial Relations' in Prof. Blanpain (ed), *International Encyclopaedia of Law,* (2000), 100
[8] Section 40 CFRN, 1999 (as Amended)- "Every person shall be entitled to assemble freely and associate with other persons, and in particular may form or belong to any political party, trade union or any other association for the protection of his interests"
[9] Section 12 Cap T14 LFN, 2004

provides that no contract of employment shall make it a condition precedent that a worker shall or shall not join a trade union, or shall or shall not relinquish membership of a trade union.[1]

Apart from the provisions above, this right is given recognition under the international law instruments such as International Labour (ILO) Organisation Declarations of Human Rights.[2] Whenever workers are victimised for their role in the advancement of the course of the union without justification or denied participation in union activities, it is regarded as violation of freedom of association.[3] In Africa, workers have continued to be denied free and independent right to associate. They are impeded from joining and forming associations and this infraction against labour persist despite international, continental and national legal frameworks. The persistent abuse of this right is an essential fulcrum for the defence, sustenance and promotion of other rights of workers.[4]
In the public sector, although employers do not brazenly reject the formation or joining of a trade union by workers, they have on the pretext of essential services denied workers their right to join a trade union, and this has been achieved through expansion of the scope of the definition of essential services beyond the settled scope. In Nigeria, officers of the Nigerian Police Force, Military, Paramilitary and parliamentary services had been designated as performing essential services and as such exempted from forming or joining a trade union.[5] It is worthy to note that unionism has been a catalyst that has tremendously assisted in saving workers from abuse of their rights. Besides, roles of union as watch dog has greatly assisted many employees to achieve their goals. Thus, if there are no Trade Unions, workers will not be protected against abuses by the employer.

6.0 Justiciability of Unfair Labour Practices

By virtue of the provision of section 254c (1) (f) of the 1999 constitution[6], the National Industrial Court is conferred with the jurisdiction to adjudicate on disputes relating to or connected with unfair labour practices or International best practices in the Nigeria Labour Industry. Thus an employee who considers the internal polices/practices in his place of employment inimical to his interest, such as to amount to unfair labour practice, can validly resort to the court to determine the fairness or otherwise of such policies/practices[7]

Under the Nigeria Law, there is no statutory definition of the term unfair labour practices and there is no detailed legislation codifying the subject as obtains in other jurisdiction, save for the inference that may be made from the Labour Act[8] which applies to low cadre employees such as unskilled and clerical employees. Unfair Labour practices can nonetheless be described as those inequitable practice/policies, acts or omissions adopted by employers which operate adversely against the beneficial interest of the employees. Other instances of Unfair Labour practices includes denial of annual leave to an employee, wage differentials, withholding salaries of bank employees to offset loans advanced to customers of the bank, inordinate working hours etc[9]

In the absence of statutory provisions detailing what constitutes unfair labour practices, the National Industrial Court is enjoined upon a proper consideration of the circumstance, to determine whether a policy or practice qualifies as an unfair labour practice for which an employee should be compensated. The Court in the exercise of this jurisdiction is further empowered to consider if such practices conform to International best practices or fall short International labour standard.[10]

7.0 The National Industrial Court (NIC)

Given the dynamics of employment interrelationship and the challenges of the ever expanding society, the need to establish a specialized court to tackle disputes connected with labour and industrial relations has become poignant. This is because labour and industrial disputes are economic issues which need expeditious dispensation and it was felt that the regular courts which were already saddled with enough duties should be spared the additional duties of handling labour and industrial cases. It was also felt that the procedures at the non-specialized courts were too slow and cumbersome such that a nation desirous of rapid industrialization and socio-economic development could not afford to be bogged down by such procedures and delays. Therefore,

[1] Section 9(2) Cap L1 LFN, 2004
[2] Freedom of Association and Protection of the Right to Organise Convention (No. 87), 1948 (ILO)
[3] O.V.C Okene, 'Freedom of Association and Protection of Trade Union rights in Nigeria' (2010) 4 (1) *NJLIR*, p.38
[4] A. Abibu and R.O Adeolu, 'Exploitation and Degradation of Workers Right to Unionise in Public and Private Organisation in Nigeria' (2017) 3 (1) *Legal Mirror*, Pp. 1-25
[5] Africa Commission on Human and People's Right, 'State of Human Rights Situations in Africa - Africa Trade Union Movement Perspectives (2017) available at <https://www.achpr.org> Retrieved 24th November, 2021
[6] CFRN, 1999 (As amended)
[7] Aluko & Oyebode, 'The Justiciability of unfair Labour Practices/International Best Practices in the Employment Labour' (2015) available at <https://www.alukooyebode.com> Retrieved 15th February, 2022
[8] Cap L1, LFN 2004.
[9] Aluko & Oyebode (n52)
[10] Section 254(1)(h) and (2) CFRN, 1999- It then means that in adjudicating labour employment disputes the National Industrial Court is mandated to apply International best practices and treaties, convention and protocols ratified by Nigeria. As lofty as these provisions on the jurisdiction of the NIC on the subject may seem, the success of an action brought by an employee maybe fraught with certain factors which operate to impair its justiciability.

such nations as Trinidad and Tobago, America and India have seen wisdom in establishing specialized courts to handle labour and industrial disputes. Nigeria has also found it necessary to establish the National Industrial Court (NIC) a specialized court to handle labour and trade matters.[1]

7.1 Role of National Industrial Court in Industrial Relations

The Third Alteration Act provides for the inclusion of section 254 (1) which provides that notwithstanding the provisions of sections 251, 257, 272 and anything contained in the Constitution and in addition to such other jurisdictions as may be conferred upon it by an Act of the National Assembly, the NIC shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

(a) Relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker matter incidental thereto or connected therewith;
(b) Relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Workmen's Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;
(c) Relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lockout or any industrial action, or any conduct in contemplation or in furtherance of a strike, lockout or nay industrial action and matter connected therewith or related thereto;
(d) Relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employers association or nay matter which the court has jurisdiction to hear and determine;
(e) Relating to or connected with any dispute arising from national minimum wages for the Federation or any part thereof and matters connected therewith or arising there from;
(f) Relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;
(g) Relating to or connected with any dispute arising from discrimination or sexual harassment at the work place;
(h) Relating to or connected with or pertaining to the application or interpretation of international labour standard;
(i) Connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related to;
(j) Relating to the determination of nay question as to inter alia the interpretation and application of any collective agreement, award/order of an arbitral tribunal, terms of settlement and trade union/employment disputes;
(k) Relating to or connected with trade dispute arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto;
(l) Relating to inter alia appeals from the decisions of the Registrar of Trade Unions and such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;
(m) Relating to or connected with the registration of collective agreement.

The foregoing highlights the jurisdiction of the NIC which clearly covers all matters connected and incidental to labour law, trade dispute and industrial relations. It is also instructive to note that Section 254 (c) grants exclusive jurisdiction to the NIC on labour, trade dispute and other ancillary matters that may arise out of same which hitherto had been within the confines of concurrent jurisdiction of the State High Court and Federal High Court at first instance.

Section 254 (c) (5) confers criminal jurisdiction and powers on the NIC in criminal causes and matters arising from any cause or matter of which the court has jurisdiction either by this section or any other Act of the National Assembly or by any other law. An appeal shall lie to the Court of Appeal as of right in respect of the Criminal Code, Penal Code, Criminal Procedure Act and Criminal Procedure Code; the Evidence Act shall apply for the purpose of the exercise of the court's criminal jurisdiction.[2] The court can now commit for contempt and even imprisonment, as the case may be.

The NIC shall have and exercise jurisdiction and powers in criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this section or any Act of

[1]Babatunde Adeniran Adejumo, OFR, 'The National Industrial Court, Past, Present and Future'(Being a paper delivered at the refresher course organized for judicial officers of between 3-5 years post appointment by the National Judicial Institute, Abuja at the Otutu Obaseki Auditorium, National Judicial Institute, Abuja on the 24th March, 2011).
[2]S 254 (f)(2) CFRN, 1999 (as Amended)

the National Assembly or any other law.[1] Thus the provisions of the Criminal Code, Penal Code, or Evidence Act shall apply for the purpose of the exercise of the court's criminal jurisdiction.

8.0 Conclusion and Recommendations

The world of work is a dynamic environment and the importance of a dedicated, healthy, knowledgeable and motivated workforce to the development of a nation cannot be overemphasized. Amongst other things, the quality of the workforce affects the productivity and development indices of the country. Work been one of the main ways by which individuals participate in the society, the work place is thus a principal community to which a worker belongs. However this is yet to be recognized officially. However, despite the high level of rights awareness, workers are still subjected to unfair and uncivilized treatment as this rights are not respected nor observed. One of the problems lies in the inability of workers to compel employers to comply with the relevant provisions of the law. The level of compliance on the part of employers is low. In actual fact, it would appear that employers are deliberately avoiding compliance taking advantage of the weak legal framework and vulnerability of workers in an unstable economic environment.

It is noted that both at the international and national levels, there are several laws and standards to ensure that workers enjoy some rights and protection at work. However, the question is the extent to which these rights have been secured by workers. Responses to the non-observance of workers' rights include union meetings, dialogue with management, resignation out of frustration, patience and understanding or seeking redress in the courts. Given an employee's disadvantaged position in the employment relationship, it appears at least on the surface that the provisions of national laws and ILO Conventions mentioned in this work are to render some respite to the worker. The instruments to ensure that workers work in dignity and humane conditions are the International Labour Standards, Code and Recommendations as well as National Legislations.

The provisions of our Labour laws and International Labour Standard of the ILO in, and by themselves are not enough guarantees for the protection of workers' rights and as such there is the need to look beyond these instruments in protecting the rights of workers. There is a need to develop and adopt other means such as political, social actions to secure their rights at work.

Recommendations

1. Under the Nigerian Law, there is no statutory definition of the term unfair labour practices and there is no detailed legislation codifying the subject as obtains in other jurisdiction, save for the inference that may be made from the circumstances of each case, by the Court hence the urgent need to amend our laws to codify the term unfair labour practices and this should not just be left to the discretion of the court alone for determination.
2. There is also a need for a body or committee to supervise the implementation of the minimum wage policy or else some employees will never comply and their workers will continue to suffer in silence as a result of the high level of unemployment and poverty in the country.
3. Law making only without putting in place enforcement machinery which will monitor and supervise compliance can lead to futile efforts in a country like Nigeria. So there is a need to establish enforcement machinery that can actually ensure that legislations are obeyed to the latter and will ensure sanctions are paid by defaulters. The laws shouldn't just be in black and white they have to be fully implemented to maximize the essence of the legislation.
4. After putting the enforcement machinery in place men of integrity and character should be placed in such commission, and not just hungry people who will accept bribe and allow all manner of corrupt practices to be perpetuated again. Considering majority of these unfair practices, are statutory offences which carry statutory punishment already. So once the enforcement machinery can perform their duties as expected, then workers will be adequately protected from every unwholesome act of their employers as such employers know the consequence of contravening the law.
5. Sometimes need may warrant contract employees, especially in the construction companies it is submitted that in such circumstances that their remuneration and condition of service should be very fair and they should not just be used and dumped after use. As this will negate the principle of equal pay for equal work without discrimination on any ground whatsoever Employers of labour be it in the private or public sector should endeavor to provide a good and healthy environment for their workers where this exist productivity will be enhanced, bribery and corruption would be minimized. Employers of labour should not just be concerned with the progress and enlargement of their own business alone, but they have to be their brother's keeper and continually look into the welfare of their employees. The provision of more job opportunities in both the private and public sector will help reduced the level of unemployment in Nigeria.

[1] S 254(c)(5) *Ibid*

6. Also acceptable codes of work place practices should be established with sanctions for non compliance clearly set. Level of compliance with the acceptable work place codes should be a reporting requirement by employees to the board, regulators and chair holders similar to what is been done presently on Corporate Governance practices in the Banking Industry.

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