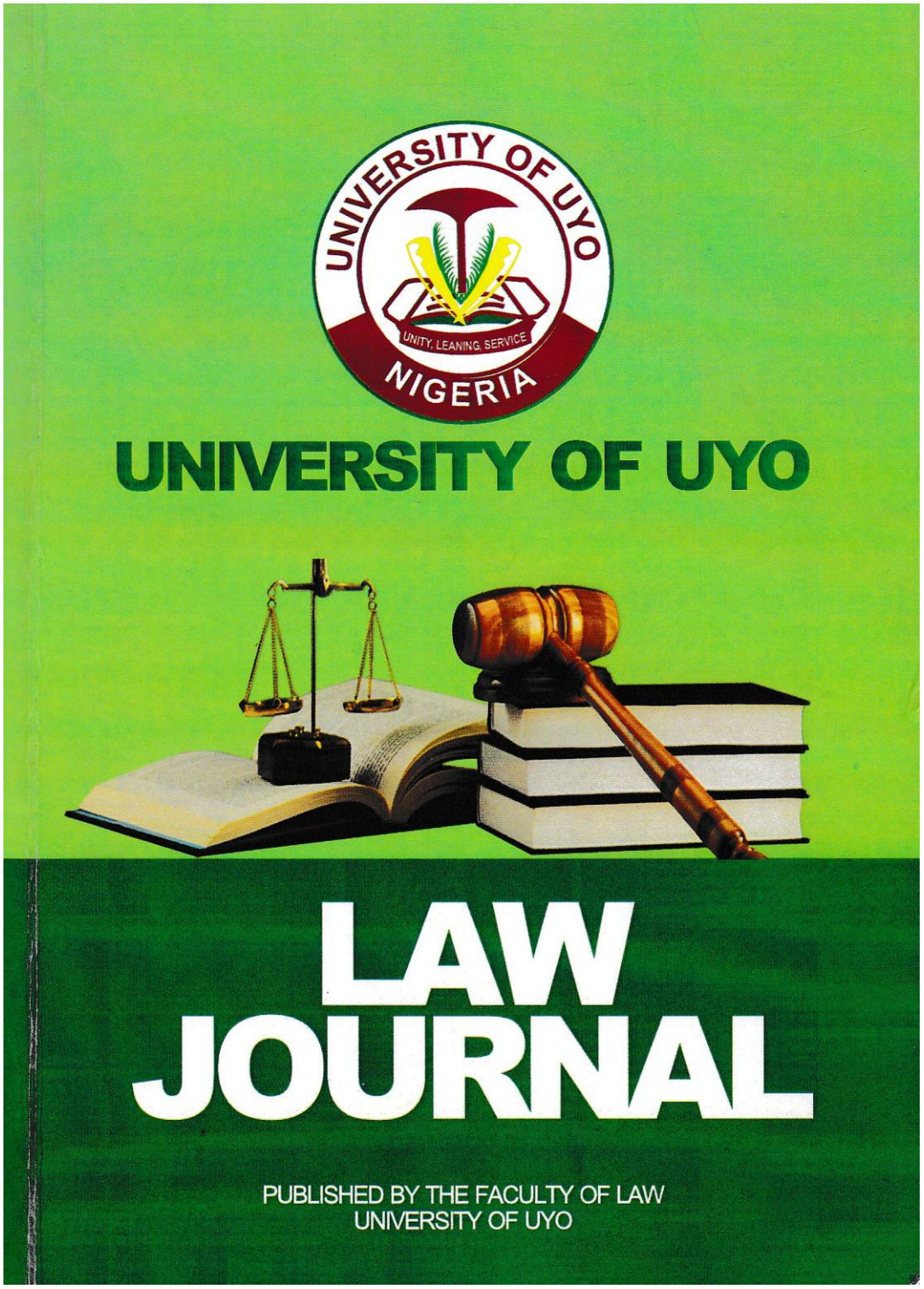

TOWARDS ENRICHING THE CONTENTS OF NIGERIAN LABOUR LAW THROUGH INTERNATIONAL LABOUR STANDARDS*

BY

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Abstract

This study overviews the contextual indices of Nigerian labour law through the prism of international labour standards with the Indian jurisdictional labour law dynamics serving as a yardstick for comparison. Using doctrinal methodology, and drawing inferences from applicable standards in India, this work found that constitutional complicity, outdated statutory enactments, and the incoherencies replete in the Nigerian labour law terrain is foundational to the present pauperization of labour law standards in Nigeria. The work recommends that constitutional intervention by way of entrenching labour rights, statutory congruencies with international labour standards, judicial and policy dynamism remain the way forward in enriching the contents of Nigerian labour law through international labour standards.

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1. Introduction

The pauperization of the Nigerian Labour Law and by direct implication, the labour space is the bane of the economic impecuniosities in Nigeria. Labour is a core factor of production. An economically viable labour predicates increased and sustainable productivity. Sustainable productivity is the index of economic independence and national prosperity. Regardless of the abundance of natural resources in Nigeria, the stagnated economic growth evidenced in Nigeria is traceable to the consistent indifference of the various governments to the labour force in Nigeria. This paper examines the content of Nigerian labour law with a view to establishing the nexus between domestic labour laws and international labour standards. Within the context of Nigeria, contextual domestic labour law standards include the Constitution,[1] primary Nigerian labour legislation, judicial pronouncements, and government policy.

International labour standards comprise legal instruments drawn up by the ILO's constituents (governments, employers and workers) and setting out benchmark principles, labour rights and acceptable labour practices. The ILO standards include conventions, which are legally binding international treaties that may be ratified by member states, or recommendations, which serve as non-binding guidelines.

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

In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation supplements the convention by providing more detailed guidelines on how it could be applied.

This study outlines existing international labour standards and analyses the parameters of labour law in Nigeria, with a view to identifying and suggesting measures for closing the gaps between the international labour standards, domestic statutes and policy implementation.

1. International Labour Standards: Traversing Social Justice through Conventions and Recommendations

International labour standards are legal instruments drawn up by the component parts of the International Labour Organisation (ILO) to wit; governments, employers and workers.[2] These instruments establish benchmarks for the basic principles and rights at work. These legal instruments comprise conventions and recommendations. Conventions are legally binding international treaties that may be ratified by the member states of the ILO while recommendations are non binding guidelines agreed upon by these member states.[3] While a convention essentially establishes the basic principles to be adopted by state signatories, a related recommendation delineates in detail,

[2]International Labour Organisation, *An Introduction to International Labour Standards*, available at https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm last accessed on 17th May 2019

[3]*ibid*

The ways by which the convention can be applied.[4] Conventions and recommendations are conceived by representatives of governments, employers and workers and are adopted at the ILO's annual International Labour Conference.

In the event of the adoption of an international labour standard, the member states are required to submit the convention so adopted to the competent authority in their countries, which is usually their parliaments for consideration which is done with a view to adoption. Ratifying countries commit themselves to adapting the convention to the national law and policy and reporting to the ILO on its application at regular intervals. The ILO provides technical assistance if it deems fit and representation and complaints procedures can be initiated against countries for violations.[5]

The basic conventions delineating international labour standards encapsulate areas which are regarded as fundamental principles and rights at work. These rights are: freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation.[6]

These principles are enshrined in the ILO's Declaration on the Fundamental Principles and Rights at Work (1998).[7]

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[4] *ibid*
[5] *ibid*
[6] *ibid*
[7] Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998, (Annex revised 15 June 2010) Available at https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm last accessed on 17th May 2019

At present there are currently over one thousand, three hundred and sixty seven ratifications of these conventions which represent ninety one percent of the possible number of ratifications.[8]

A further one hundred and twenty nine ratifications are required to meet the benchmark of universal ratification for all the fundamental conventions. The fundamental conventions are the Freedom of Association and Protection of the Right to Organise Convention,[9] the Right to Organise and Collective Bargaining Convention,[10] the Forced Labour Convention,[11] the Abolition of Forced Labour Convention,[12] the Minimum Age Convention,[13] the Worst Forms of Child Labour Convention,[14] the Equal Remuneration Convention,[15] and the Discrimination (Employment and Occupation) Convention.[16]

For purposes of the efficacy of the international labour standards system, the ILO's Governing Body has prescribed four other conventions has having a priority status and strongly encourages member states to ratify them due to their imperativeness in the functionality of the established standards.

These additional conventions are known as governance conventions.

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[8] (n2)
[9] (1948) No 87
[10] (1949) No.98
[11] (1930) No. 29
[12] (1957) No. 105
[13] (1973) No. 138
[14] (1999) No. 182
[15] (1951) No. 100
[16] (1958) No. 111

The functionality of these governance conventions are as encapsulated in the ILO Declaration on Social Justice for a Fair Globalization.[17] They are, the Labour Inspection Convention,[18] the Employment Policy Convention,[19] the Labour Inspection (Agriculture) Convention,[20] and the Tripartite Consultation (International Labour Standards) Convention.[21]

1. The Constitution of the Federal Republic of Nigeria 1999 (As Amended)[22], The Constitution of India and Labour Rights

The Constitution is the supreme law of the country. Any law, which is inconsistent with its provisions, is to the extent of the inconsistency null and void.[23] It contains scanty enforceable labour provisions. However, the labour rights derivable parts of the CFRN are deliberately made unenforceable.[24] This deliberate constitutional hamstringing of labour rights is, perhaps the sole reason for the underdevelopment of the constitutionality of these rights in Nigeria.

[17] Adopted in 2008 by the representatives of governments, employers, and workers from all ILO member States, the Declaration expresses the contemporary vision of the ILO mandate in the era of globalization. Available at https://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCM_099766/lang-en/index.htm last accessed on 17th May 2019

[18] (1947) No. 81

[19] (1964) No. 122

[20] (1969) No. 129

[21] (1976) No. 144

[22] CFRN, 1999 (n 1) above

[23] Section 1(3) *ibid*

[24] Section 17(3) *ibid*

In the Nigerian jurisdiction, the enforceable provisions include; Section 40 which guarantees the right of every person to form or belong to any trade union or any other association for the protection of his interest. However, section 45 permits derogation from this all important right in the interest of defence, public safety, public order, morality or public health or for the purpose of protection of the right and freedom of other persons.

Section 17 (3) which contains the main *corpus* of what could be alluded to as labour rights is non-justiciable. Depriving it of justiciability, the framers of the Constitution inserted the section in the Part II, which the Constitution[25] has made non-justiciable. The non-justiciable section stipulates that the judicial powers vested in the court shall not extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decisions is in conformity with the Fundamental objectives and Directive Principles of State Policy set out in Chapter II.

India has been described as the largest democracy in the world which is governed by a detailed and written constitution. The preamble of the Constitution of India tags it a socialist country which toga is indicative of governmental inclination to social welfare and State responsibility in this regard.[26]

[25] Section 6 (6) CFRN, 1999, (n1)

[26] Constitution of India (1950) the word 'socialist" in the Preamble to the to the constitution was substituted by virtue of Section 2 the Constitution (Forty-second Amendment) Act (1976). Accessed from https://india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf last visited on 20th July 2019

Indeed in the case of *D.S. Nakara v Union of India,*[27] the Supreme Court of India describes the preamble to the Indian Constitution as the 'floodlight illuminating the path to be pursued by the State to set up a Sovereign Secular Democratic Republic'.[28] It went further to state that 'the principal aim of a socialist State is to eliminate inequality in income and status and standards of life. The basic principal framework of socialism is to provide a decent standard of life to the working people and especially provide security from the cradle to the grave'.[29] Granville Austin sees the Directive Principles enshrined in the Constitution of India as 'first and foremost a social document', adding that 'the core of commitment to social revolution is in Parts III & IV in the Fundamental Rights and Directive Principles of State Policy' which he describes as 'the consciences of the Constitution'.[30]

Initially, these Directive Principles of State policy were regarded as mere aspirations, bearing insignificant legal force because of their character of non-justiciablity and non enforceability.[31] The Supreme Court of India, however, put paid to such legislative demarcations by holding in *State of Madras v Chempakam Dorairajan*[32]

[27] 1983 AIR 130, 1983 SCR (2) 165
[28] *ibid* p.188
[29] *ibid* p198
[30] G Austin, *The Indian Constitution: Cornerstone of a Nation*, (Oxford University Press, 1966) p50
[31] O Chakra Reddy, *The Court and the Constitution of India: Summits and Shallows* (Oxford University Press, 2012) p76
[32] A.I.R 1951 S.C. 226

That Directive Principles were to conform and run as subsidiary to the chapter on Fundamental Human Rights for the reason that while the former were not legally enforceable, the latter had judicial potency of legal enforcement.[33]

The above stated precedent laid down by the Supreme Court of India has been validated in a plethora of judicial pronouncements[34] thereby propounding a theory of harmonious construction of both the directive principles and fundamental rights. However, this theory came with the cautionary note by the Supreme Court of India stating that 'A harmonious interpretation must be placed upon the Constitution, and so interpreted it means that the State should certainly implement the directive principles, but it must do so in a way as not to take away or abridge fundamental rights'.[35]

The Court, in addition, observed that in the determination of the scope of fundamental rights relied on by or on behalf of any person or body of persons, the Court might not entirely ignore these Directive Principles of State Policy but should adopt harmonious construction with the objective of, as much as possible, giving effect to the two.[36]

[33] *ibid* p.250 per S.R. Das J
[34] *Mohd.Hanif Qureshi v State of Bihar* (A.I.R. 1958 S.C. 713) per S.R. Das J, *Re Kerala Education Bill* (A.I.R. 1958 S.C. 956 pp 967) per S.R. Das CJ
[35] *Mohd.Hanif Qureshi v State of Bihar ibid* p715
[36] *ibid* p720

The bearing of the Indian apex Court was later to shift towards a more progressive stance as regards giving effect to Directive Principles of State Policy in tandem with Fundamental Human Rights. In *Sajjan Singh v State of Rajasthan*,[37] the Court observed that even if Fundamental Rights could be perceived to be unchangeable, the needs of a viable dynamism would still be satisfied by properly interpreting these rights through the prism of the values and ideologies contained in the Directive Principles of State Policy.

Article 42 goes further to provide that the 'State shall make provision for securing just and humane conditions of work and for maternity relief', while Article 43 mandates obligates the State to endeavour to secure, *inter alia,* 'a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities'. Article 39(f) provides the direction of government policy towards ensuring, among others, 'that the childhood and youth are protected against exploitation and against moral and material abandonment'.

However, the 3rd Alteration to the Constitution of the Federal Republic of Nigeria Act which was signed into law on March 4, 2011 has radically altered the constitutional disposition to labour rights and litigations in Nigeria with respect to the jurisdiction, status of and the matters which are before the National Industrial Court.[38]

[37] A.I.R 1967 S.C. 845

[38] Section 254 Constitution of the Federal Republic of Nigeria, Third Alteration Act (2010)

The Act grants exclusive jurisdiction to the National Industrial Court with respect to trade disputes and matters relating thereto with appeals from the decisions of the Court lying to the Court of Appeal.[39] The National Industrial Court is given further powers to deal with any matter connected with the application of international conventions, treaty or protocol which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.[40]

It is submitted that while this section attempts to inject international labour standards into the corpus of Nigerian labour law via the jurisdictional backdoor of the National Industrial Court, the applicability of this section is limited only to conventions and other international instruments to which Nigeria is a signatory. The parameters of this section of the CFRN are also restricted to matters before the National Industrial Court and therefore not generally applicable.

1. Gaps in the Nigerian Labour Law through the Prism of International Labour Standards

4.1 Parental Leave

Parental leave is an employee benefit that provides paid or unpaid time off work to care for a child or make arrangements for the child's welfare. The term "parental leave" includes maternity, paternity and adoption leave. Often, the minimum benefits are stipulated by law. The Labour Act[41]

[39] Section 243 (2) and (4) *ibid*

[40] Section 254 (2) *ibid*

[41] Cap L1 Laws of the Federation of Nigeria 2004, see Section 54

provides for a minimum of 12 weeks maternity leave with half pay for pregnant women workers. These are minimum requirements under the Act and have been found to fall short of international best labour practices.[42]

In consequence, it is apposite to state that while the Indian Employee State Insurance Act attempts conformity with international labour standards regarding maternity as prescribed by the ILO and contained in the Maternity Protection Convention,[43] the Nigerian labour standards continue to dawdle in this crucial sphere of labour relations with its obvious connotations. The restrictive scope of the Nigerian legislation in its applicability to only biological maternity and failure to accommodate adoptive maternity, surrogacy and paternity is inimical to the domestic application of emerging trends in international labour law.

Federal public servants in Nigeria are entitled to sixteen weeks maternity leave at a stretch with full pay starting not less than four weeks from the expected date of delivery.[44] The maternity leave under this rule shall include annual leave and, where the public officer has already taken annual leave, the annual leave period shall be computed as part of the maternity leave and shall be without pay.

[42]**ILO Maternity Protection Convention, 2000 (No. 183)** - [ratifications] This convention is the most up-to-date international labour standard on maternity protection, although the earlier relevant instruments - the Maternity Protection Convention, 1919 (No. 3), and the Maternity Protection Convention (Revised), 1952 (No. 103) - are still in force for countries in certain countries. .Available at https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/maternity-protection/lang--en/index.htm. Accessed on 25th April, 2019

[43]No. 183 (2000)

[44]Rule 100218 of the *Public Service Rules (2008 Edition), Federal Republic of Nigeria Official Gazette No.57 (2009)* (Federal Government Printer, Abuja, 2009)

A nursing mother in this respect is allowed two hours every day to nurse her child for a maximum period of six months from the time she returns from maternity leave.[45] This is in discrepancy to employees under the auspices of the public service of the states. These employees are accommodated under the position obtainable under the Labour Act.[46]

Lagos State of Nigeria deviates from the statutory position as evinced by the Labour Act. In Lagos State, the Public Service Rules[47] provides that with respect to public servants, maternity leave with full pay shall be for a period of six months and paternity leave for ten days on the birth of the first and second babies with reversion of entitlement to the provisions of the Labour Act with subsequent births.[48]

The Indian Maternity Benefit (Amendment) Act (2017)[49] echoes the position applicable in Lagos State of Nigeria by raising maternity leave from twelve weeks as was applicable in the pre-2017 position[50] to twenty six weeks.

[45]Rule 100219 *ibid*

[46]*vide* Section 54 of the Labour Act (n41)

[47]Revised Lagos State Public Service Rule 2015 available at http://www.ghlagos.org.ng/wp-content/uploads/2015/01/LASG-PUBLIC-SERVICE-RULES-CHAPTER-1-7.pdf last accessed on 3rd May 2019

[48]Chapter 12, Section 1 Rule 120207 *ibid*

[49]No. 6 (2017)

[50]*vide* the Maternity Benefits Act (n42)

The 2017 Indian law also provides for pre-natal leave which has been raised from six weeks to eight weeks, and is also synonymous with the provision in Lagos State of Nigeria with its applicability being limited to the first and second pregnancies, with subsequent pregnancies reverting to the *s tatus quo ante* as regards both maternity leave and prenatal leave.

This 2017 Indian Act amends the Maternity Benefit Act of 1961 was primarily enacted to assure the income security of the working woman. This principal legislation focused mainly on assurance of income and employment for the working woman throughout the period of pregnancy and confinement by prohibiting termination of service during the period of pregnancy and confinement, providing for maternity leave and the payment of monetary benefits to women workers during the stated period.

The Maternity Benefit (Amendment) Act expanded the scope of the principal enactment by providing also for paid adoption leave of twelve weeks for a woman who adopts a child under the age of three months[51] and a twelve-week leave to a commissioning mother (that is, a biological mother who uses her egg to create an embryo planted in another woman) from the date the baby is handed over to her.[52]

[51]Section 5(4) of the Maternity Benefits (Amendment) Act No.6 (2017)
[52]*ibid*

The Indian income security of women with respect to maternity is still as provided for under the Maternity Benefits Act (1961) wherein pregnant workers are entitled to medical bonus of one thousand Rupees if there is no pre-natal confinement and post-natal care is to be provided by the employer free of charge.[53] The post-natal care includes allowing the woman work from home where the nature of jobs permits[54] and ensuring the availability of crèche facilities within or proximate to the work environment and allowing the woman four visits a day to the crèche.[55] There are no replications of these innovations of the Indian labour law within the ambit of Nigerian law.

4.2 Determination of Employment Contract

Under Nigerian Law, employment contracts can be terminated at will. This principle of common law has been codified in the Labour Act[56] which provides that a party to a contract of employment may terminate the contract on the expiration of notice given by him to the other party of his intention to do so. The Labour Act[57] also expressly retains the common law right of an employer to summarily dismiss an employee for gross misconduct. There is no statutory obligation on the path of the employer to inform the worker of the grounds of termination.

[53]Section 8 (n4)
[54]Section 5 (5) *ibid*
[55]Section 11 (1) *ibid*
[56]Section 11 (1), Labour Act, n41 above
[57]*ibid* (5)

The principle provides that in all employment governed only by the agreements of the parties, and not by statute, removal by way of termination/dismissal will be in the form agreed to, which in most cases is as contained in the letter of appointment. Any other form connotes only wrongful termination or dismissal[58] but not to declare such dismissal/termination null and void. The only remedy is a claim for damages for that wrongful dismissal. It is further established that a master is entitled to dismiss his servant from his employment for good or for bad reasons or for no reason at all, and that such an action, even if unlawful, brings to an end the relationship of master and servant, employer and employee. On damages payable for wrongful termination, the courts have held that in the payment of damages, it is the salary and other entitlements already lawfully accruable and payable for the period for which the employee should have been given notice of termination and nothing more.[59]
However, employment with statutory flavour is different.

[58] *UBN v. Ogboh* (1995) 2 NWLR (Pt. 380),649 at 664, *Osakwe v. Nigerian Paper Mill Ltd.* (1998) 7 SCNJ. 222
[59] *Imoloame v. West African Examination Council* (1992) 9 NWLR (Pt.265)303 at 318, *Ibama v. Shell B.P Co. Ltd.* (1998) 3 NWLR (Pt.542) 493 at 499 C.A."

The Supreme Court[60] restated the position on employment with statutory flavour when it ruled "that when an office or employment has a statutory flavour in the sense that its conditions of service are provided for and protected by statute or regulations there under, any person holding that office or in that employment enjoys a special status over and above the ordinary master and servant relationship. In the matter of disciplining of such a person, the procedure laid down by the applicable statute or regulations must be fully complied with. If materially contravened, any decision affecting the right or tenure of office of that person may be declared null and void in appropriate proceedings.

In any case, on the accepted general legal principles, an employee may be summarily dismissed without notice and without wages if he is guilty of gross misconduct. Gross misconduct has been identified as a conduct that is of a grave and weighty character as to undermine the confidence which should exist between an employee and the employer.[61]

Generally, the courts can only order reinstatement of a sacked employee under the Nigerian labour laws in two cases.

[60] *Osisanya v. Afribank Nigeria Plc* (2007) 6 NWLR (Pt 1031), *Bamgboye v. University of Ilorin* (1999)10 NWLR (Part 622) 290 at 320
[61] *Eze v.Spring Bank Plc* (2011) 12 S.C. (Pt. 1) 173.

The first is where the employment has statutory flavour and the processes enjoined by the statutes for terminating employment were not followed, and the second is where the termination is a product of union activities on the part of the employee.[62]

Although, Labour Act[63] prohibits the employer from giving a notice of dismissal to a woman during her maternity leave or to a women who is absent from her work for a longer period as a result of illness certified by a registered medical practitioner to arise out of her pregnancy or confinement and to render her unfit for work, there is no security of job or employment protection under the Nigerian Labour laws save for the case of "employment with statutory flavour" as aforementioned. It is sad and a very unfortunate position that the worker finds himself.

The ILO Convention[64] however prescribes that "the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service."

[62] Sections 9(6) Labour Act & 42(1) Trade Disputes Act T8 Laws of the Federation of Nigeria 2004

[63] Section 54 (4) Labour Act, n.41 above

[64] Article 4, International Labour Organisation (ILO) 158 Concerning Termination of Employment at the Initiative of the Employer (adopted at the 68th Session of the ILO in 1982)

Similarly Article 5 of provides that the following, inter alia, shall not constitute valid reasons for termination:

a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;

b) seeking office as, or acting or having acted in the capacity of, a workers' representative;

c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

e) absence from work during maternity leave.

Article 6 provides that "temporary absence from work because of illness or injury shall not constitute a valid reason for termination." Article 7 states that "the employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity". Nigeria has yet to ratify this convention which became effective since 1985.

4.3 Occupational Health, Safety, and welfare

Contemporary cogent and coherent Occupational Safety and Health (OHS) data are largely unavailable in Nigeria.[65] A study by Hämäläinen[66] puts the annual work-related death rate of Nigeria at about 24 fatalities per 100,000 employees, which is one of the highest in the world. This is based on the data available in 2003. However, a relative recent study, suggests that work-related fatalities are on the increase in Nigeria between 2003 and 2012. This conclusion is based on actual field data reported to the Inspectorate Division of the Federal Ministry of Labour and Productivity.[67]

Currently, OSH management in Nigeria is largely based on the Factories Act,[68] which appears to be quite inadequate in terms of coverage, empowerment, independence and currency. The Constitution[69]

[65] O Okojie. System for Reporting Occupational Diseases in Nigeria. African Newsletter on Occupational Health and Safety. 2010; 20(3):51-53.

[66] P Hämäläinen P, et al. "Global Trend According to Estimated Number of Occupational Accidents and Fatal Work-related Diseases at Region and Country Level." J Saf Res 2009; 40(2): 125-139

[67] N Umeokafor, K Evaggelinos, et al. The Pattern of Occupational Accidents, Injuries, Accident Causal Factors and Intervention in Nigerian Factories. Developing Country Studies 2014; 4(15):119-127.

[68] Factories Act Cap F1 Laws of the Federation of Nigeria 2004.

[69] Section 17(3) CFRN 1999, n. 1 above

Kafor-Isaac/7581380a4299afce609fdb5ae91215Accessed on 22nd April, 2019

made mention that the State shall direct its policy towards ensuring that the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused. This provision is however unjusticiable.

The very few complementary OSH related regulations are distributed across various legal documents.[70]

Nigerian Nuclear Regulatory Authority (NNRA) is responsible for nuclear safety and radiation protection. NNRA was established by the Nuclear Safety and Radiation Protection Act of 1995 and became functional in 2001.[71]

NNRA is currently under the administrative purview of Ministry of Petroleum Resources.

In principle, the Inspectorate Division of Ministry of Labour and Productivity is vested with the responsibility of OSH management, which so far has been grossly effective.[72]

[70] N Umeokafor, etal. "Enforcement of Occupational Safety and Health Regulations in Nigeria: An Exploration", European Scientific Journal February 2014 /SPECIAL/ edition vol.3 ISSN: 1857 – 7881 (Print) e - ISSN 1857- 7431. Available at https://www.semanticscholar.org/paper/ENFORCEMENT-OF-OCCUPATIONAL-SAFETY-AND-HEALTH-IN-%3A-Umeo

[71] Nuclear Safety and Radiation Protection Act

[72] Eidubor, M Oisamoje. "An Exploration of Health and Safety Management Issues in Nigeria's Effort to Industrialize." European Scientific Journal 2013;9(12).

There is no National Occupational Safety and Health Board in place neither has a formal National OSH Management Systems been developed by OSH authorities in place at the moment. The functions of such Board have been purportedly taken up by the Department of Occupational Safety and Health of the Federal Ministry of Labour and Employment.[73]

The requirement for duty holders (employer or occupier)to report OSH related incidents is stipulated in the Factories Acts. However, enforcement has been poor so far. This failure has been attributed to some structural deficiencies associated with the Factories Act. For instance, duty holders who fail to report specified OSH incidents are liable to a fine no more than N1000.[74] An important goal of sanctions, which include correction and deterrence, is defeated here. In terms of data gathering, currently, there is no reliable online central OSH database in Nigeria.[75] Nevertheless, the Health Management Information System in Nigeria and the National Bureau of Statistics are valuable sources of generic demographic data.

[73] Nigeria Country Profile on Occupational Safety and Health <https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-addis_ababa/---ilo-abuja/documents/publication/wcms_552748.pdf. Accessed on 22nd April 2019

[74] Section 51(4), Factories Act, n68 above

[75] O Okojie. n65 above

Nigeria became a member of the ILO upon gaining independence in 1960. Nigeria has ratified forty (40) ILO Conventions till date, out of which ten (10) has been automatically denounced.

The country has presently three (3) core occupational safety and health Conventions in place, namely: C155 – Occupational Safety and Health, 1981; C032 – Protection against Accidents (Dockers) 1932; and C019 – Equality of Treatment (Accident Compensation) 1925. The country has in place a National Policy on Occupational Safety and Health developed in 2006, the goal of which is to facilitate the improvement of occupational safety and health performance in all sectors of the economy and ensure harmonization of workers" rights protection with regional and international standards.[76] However, enforcement and implementation have always remained the challenge.

Success of OSH regulatory and enforcement framework may be measured in terms of its ability to reduce human vulnerability (fatalities, injuries & Loss Time Injuries (LTIs)), Environmental damage and Commercial losses to a tolerable level and without entailing disproportionate costs.

[76] Umeokafor, *et al* n70.

Conclusion and Recommendations

This work has highlighted some divergences existing within the *corpus* of Nigerian Labour Law ruminating through local and international standards with comparative slant to the Indian jurisdiction. International labour standards were copiously referred to as the minimum standards to which Nigerian labour laws must of a necessity aspire to in light of international labour law and labour relations practices. Besides the general but concise overview of the Labour laws in Nigeria, other aspects of labour relations which the paper considered vital were analysed against the minimum benchmark of acceptable labour standards. This study finds that notwithstanding advances in pension reform, employee compensation and the jurisdictional advancement in status of the National Industrial Court, there exist wide implementation gaps between international benchmarks and domestic implementation of labour laws in Nigeria.

This work recommends that the Chapter IV of the CFRN should be amended to include labour rights and the right to social security. Further, there should be governmental ratification and domestication of the as yet to be ratified ILO conventions. An example of such conventions being the Termination of Employment Convention (No. 158) (1982) which became effective on 23rd November 1985 and which has been ratified by some countries namely Niger, Gabon, DR Congo, Uganda etcetera. This will provide some succour to employees whose employments do not have statutory flavour extant labour laws should be amended to reflect international labour standards.

These amendments must be encompassing, comprehensive and enforceable. The legal framework should spell out commensurate penalties to defaulters and grant the administrators adequate but controlled powers to enforce its provisions. To avoid jurisdictional conflicts among related agencies, the law should also clearly define the scope of the labour management authority.

This further recommends a complete repeal of the Labour Act and the Factories Act in light of their out datedness and unwieldiness. This will follow the example of the repealed Workmen Compensation Act which has been efficiently replaced by the Employees Compensation Act which has enhanced the compensation regime for work related injuries and death.

It is additionally recommended that the independence of the Occupational Health and Safety regulatory agency should be ensured. The regulatory and enforcement agency must be shielded from unnecessary political interferences. This can be achieved by designating the enforcement agency as a Non-Ministerial body which arrangement gives the supervising Minister (typically a political appointee) limited stake in the affairs of the OSH management agency.

The Ministry of Labour and Productivity has a critical role to play in strengthening labour standards and practices in all sectors of the economy in order to ensure minimum floors of protection for vulnerable groups such as casual and non-standard workers. In order to check abuses of working conditions emerging from outsourcing of labour arrangements, the Act, put in place a system of licensing and certification of labour contractors/private employment agencies for identification, regulation and streamlining of the labour recruitment business.

This in-built mechanism for control and monitoring of employment agencies has not been adequately deployed by the Ministry to ensure compliance. It is therefore recommended that the Ministry should ensure periodic monitoring of the activities of employment agencies through both scheduled and impromptu visits by officers of the Ministry to ascertain compliance by employment agencies. Defaulters should have their licenses revoked by the Ministry or denied renewal when the issued ones expire.

It is further recommended that the appellate courts should confirm the revolutionary interpretation by the NICN and application of ratified but yet to be domesticated international labour standards in Nigeria.