

Covid-19 and Nigerian Workers: The Role of Law in Mitigating The Impact of Crisis Management Measures

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Abstract

In response to the outbreak of the coronavirus disease 2019 (COVID-19), the Nigerian government imposed different measures to curtail and stop the spread of the virus, to protect the health of the public. Despite, the recondite nature of the disease and the proclivity of modern society, the government relied on the almost 100 years old Quarantine Act of 1926 for statutory backing to issue the different emergency orders and measures despite the recondite nature of the disease and the proclivity of modern society. A cursory perusal of the Act reveals that it lacks provisions dealing with the employment implications of public health shut-downs. Drawing from selected reports and works, this paper evaluates the employment implications of the Nigerian government's response to the COVID-19 pandemic from the prism of labour law. The paper recommends a review of extant laws and the involvement of social partners in policymaking processes towards ensuring adequate statutory protection for workers particularly in times of economic crisis

Keywords: COVID-19, pandemic, workers, outbreak.

1. Introduction

In late December 2019, the world recorded the outbreak of a novel virus,¹ which was later christened by the World Health Organisation (WHO) as

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¹ Editorial 'Undiagnosed pneumonia – China' *ProMed* (30 December 2019) <<https://promedmail.org/promed-post/?id=6864153%20#COVID19>> accessed 17 July 2021.

coronavirus disease 2019 (COVID-19).² The virus had spread around the globe like wildfire by mid-2020,³ leaving behind its trail a heavy toll on socio-economic activities and human lives. Considering the spread and magnitude of the outbreak, the World Health Organization (WHO) declared the outbreak a pandemic.⁴ In order to protect individual and public health against the outbreak of COVID-19, national governments, subject to local peculiarities, responded by issuing individual domestic emergency laws and orders designed to curtail and stop the spread of the disease.

Nigeria was among the first sub-Saharan African states to have confirmed cases of COVID-19 infection.⁵ The government's initial response to the outbreak was prompt, decisive and showed strong political willpower to stop the spread of the disease. The executive branch of government at both federal and state levels, without waiting for the respective legislators (empowered by the constitution to make laws), relied on the Quarantine Act of 1926,⁶ and promptly issued emergency regulations and guidelines. This reliance on the emergency regulations and orders, led to the executive branches, at both levels of government imposing tough restrictions on public life.

The measures introduced ranged from partial lock down to full lockdown.⁷ Thus, for several months, movements within the country including entry into or exit from the country were limited to essential and expressly permitted movements. Closure of School, ban on religious activities and social activities, as well as most non-essential economic activities, were suspended. Conducts at approved gatherings were highly regulated. These measures though designed to protect individual and public health, resulted in

² WHO 11 February 2020. <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/interactive-timeline#>> accessed 27 December 2020.

³ WHO International 'Coronavirus disease (covid-19) pandemic' <https://www.who.int/emergencies/diseases/novel-coronavirus2019?gclid=CjwKCAiAn7L-BRBbEiwA19UtkFL_jKwZWK8vPDSSt4hgFbvqioy_8leoz0XIU4Fktu3PzKbP4L0xoCI0OOAvD_BwE/> accessed 6 December 2020 (as at 5 December 2020 covid-19 has entered 220 countries of the world with 65,870,030 confirmed cases).

⁴ On March 11 2020, WHO declared COVID-19a pandemic. A pandemic is a disease that is simultaneously spreading in multiple countries around the world.

⁵ R Maclean and A L Dahir, 'Nigeria Responds to First Coronavirus Case in Sub-Saharan Africa' *The New York Times* (New York 28 February 2020) <www.nytimes.com/2020/02/28/world/africa/nigeria-coronavirus.html> accessed 2 July 2021.

⁶ Cap Q2 LFN 2004 (the Quarantine Act)

⁷ The measures varied greatly from state to state. From 24-hour curfew to curfew from midnight to dawn, closure of non-essential stores, ban or restrictions on indoor gathering, etc.

painful devastating effects on virtually all sectors of the economy including labour. The pandemic revealed a large gap in the public health legal instrument relied upon by the government; there was no provision for dealing with the resulting employment implications of public health shut-downs or involvement of social partners in the decisions and policymaking. In the absence of such laws, what options were open employees?

2. Legal measures underpinning workers' welfare; theoretical and policy justification

Before the outbreak of COVID-19, Nigeria had no comprehensive social security system which supports a minimum living standard (for her residents) accessible to all irrespective of whether they are economically active or not. The existing social security (if it can be so-called) is built on the pedestal of the beneficiary's active contribution to the economy through work or direct contributions to a pool. Nigeria's present social welfare scheme negates the robust national social policy agenda contained in the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999), which promotes the establishment of a social welfare state.

The CFRN 1999, particularly in its Chapter II, spells out the philosophical underpinnings of governance in Nigeria. Named as the fundamental objectives and directive principles of state policy, the chapter obligates every organ of state to extend social welfare benefits to both economically active and inactive persons. In this regard, the CFRN 1999 enjoins the state to direct its policy to ensure that there are adequate medical and health facilities for all persons.⁸

It further enjoins the state to ensure that children, young persons and the aged are protected against any exploitation and material neglect.⁹ In addition, the state is enjoined to render public assistance to the citizenry in deserving cases or other conditions of need.¹⁰

In the same way, a sizeable portion of Chapter II of the CFRN 1999 is devoted to the welfare of workers. The chapter, in unambiguous terms, stipulates the national minimum social security standard for workers in Nigeria and provides the template as well as the yardstick to measure and

⁸ CFRN, 1999 s 17(3)(d).

⁹ CFRN, 1999 s 17(3)(f).

¹⁰ CFRN, 1999 s 17(3)(g).

safeguard workers' welfare and social security. In safeguarding these objectives, the Chapter specifically requires every organ of government in Nigeria to ensure that (a) all citizens, without discrimination on any ground whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment;¹¹ (b) conditions of work are just and humane;¹² (c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused,¹³ (d) there is equal pay for equal work without discrimination on account of sex, or on any other ground,¹⁴ and (f) reasonable national minimum living wage, old age care and pensions, unemployment and sickness benefits are suitable and adequate.¹⁵ On the whole, the underlining ideological worldview of Chapter II of the CFRN 1999 is to promote social equality.¹⁶ In realisation of these objectives, all organs of government are enjoined to prioritize fulfilling the social egalitarian goals of the Chapter and to apply them as the minimum yardstick for measuring policies.

The provisions of the Chapter are salutary, however, in a plethora of cases, the courts have held that section 6(6)(c) of the CFRN 1999 makes the provisions of Chapter II non-*justiciable*; that is the court cannot adjudicate on or lack jurisdiction over matters founded *simpliciter* on Chapter II of the CFRN 1999.¹⁷ By implication, the subsection declares the provisions of Chapter II of the CFRN 1999 otiose and unenforceable. In other words, from a literal interpretation of section 6(6)(c) of the CFRN 1999, any right cause of action purportedly founded on the provisions of Chapter II is not enforceable in a court of law, unless and until such right is specifically provided for by any other legislation.¹⁸ From a plethora of cases, the Supreme Court endorses literal interpretation and application of section 6(6)(c) to Chapter II of the CFRN 1999. Applying the literal interpretation rule, Ogwuegbu JSC, aptly expressed the attitude of the courts towards enforcement of the provisions of Chapter II, when he said, 'that courts

¹¹ CFRN, 1999 s 17(3) (a).

¹² CFRN, 1999 s 17(3) (b).

¹³ CFRN, 1999 s 17(3)(c)

¹⁴ CFRN, 1999 s 17(3)(e).

¹⁵ CFRN, 1999 s 16(1)(d).

¹⁶ CFRN, 1999 S 13.

¹⁷ CFRN, 1999 s 6(6)(c).

¹⁸ *Attorney General of Ondo State v Attorney General of the Federation & Ors* (2002) 99 LRCN 1329.

cannot enforce any of the provisions of Chapter II of the Constitution until the National Assembly has enacted specific laws for their enforcement ...'¹⁹

From the cases, in addition to the existence of a direct enactment on the provisions of Chapter II, Nigerian courts have also shown willingness to hold that the non-justiciability of section 6(6)(c) of the Constitution is neither total nor sacrosanct, particularly in circumstances where by virtue of a mutual conflation of other provisions of the CFRN with the provisions of the Chapter, the provisions of the Chapter becomes justiciable.²⁰ The courts can do this by placing reliance on the leeway provided by the opening wordings of section 6(6)(c) CFRN to wit, “[T]he judicial powers vested in accordance with the foregoing provisions of this section ... (c) shall not, except as otherwise provided by this Constitution, ...”

The implication of the phrase ‘except as otherwise provided by this Constitution’ is that if the CFRN provides for a similar subject matter elsewhere, by a community reading of the two provisions, the subject matter dealt with by Chapter II becomes justiciable and it will be so interpreted by the courts.²¹ In other words, where justiciability of any of the provisions Chapter II is guaranteed elsewhere in the Constitution, it provides the courts with a window to enforce the provisions.²² Thus in *Lafia Local Government v The Executive Governor Nasarawa State & Ors*,²³ the Supreme Court from a combined reading of Chapter IV (sections 41 and 42) and Chapter II (sections 14 and 17) came to the conclusion that section 14(4) of the Constitution of the Federal Republic of Nigeria 1999, directs that the composition of the Government of a State, a Local Government Council or any of the agencies of such Government or Council and the conduct of the affairs of the Government or Council or such agencies be carried out in such manner as to recognize the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the peoples of the Federation. Also, that in line with section 17(3) of the CFRN, the state has an obligation to ensure that all citizens without discrimination on any ground whatsoever have adequate opportunity to

¹⁹ Ibid, 1400.

²⁰ *Centre for Oil Pollution Watch v. NNPC* [2019] 5 NWLR (Pt. 1666) 518, 568-569; *A.-G., Lagos State v. A.-G., Federation* [2003] 12 NWLR (Pt.833) 1.

²¹ *FRN v. Anache* (2004) 14 WRN 1.

²² *Olafisoye v. FRN* [2004] 4 NWLR (Pt. 864) 580, 661.

²³ [2012] 17 NWLR (pt. 1328) 94.

secure suitable employment. Consequently, the court held that a policy statement by Nasarawa State Government under the Nasarawa State Local Government Edict No. 6 of 1998, which directed all unified local government staff serving in Local Government Councils other than their councils of origin to relocate to their Local Government Councils on their existing ranks, run contrary to the provisions of section 42(1) and (2); sections 14 (4) and 17(3)(a) of the CFRN 1999.

Beyond this narrow approach, the courts have not been able to harness the provisions of Chapter II into positive gains for the Nigerian citizens. This unfortunate legalistic and restrictive approach contradicts the underlining ideological worldview of the CFRN 1999, whose main objective is the promotion of social equality and justice²⁴ through the enactment of egalitarian centred legislations as well as the entrenchment of those pursuits in the course of performing executive and judicial functions by the respective arms of government. Unlike the situation in Nigeria, the Indian Supreme Court has been able to convert similar provisions in India's Constitution to a judicial elixir for resolving a multitude of social problems.²⁵ In achieving this, the Indian Supreme Court prioritizes fulfilling the social egalitarian goals of the Directive Principles of the Indian Constitution above upholding static jurisprudential concepts. Consequently, it advocates that the Directive Principles should not be subordinated to fundamental rights²⁶ but should be engaged in the advancement of social equality and social justice.

Between the two judicial approaches, the progressive approach of the Supreme Court of India is to be preferred. Courts in Nigeria should take a clue from the progressive approach. Rather than emphasizing the non-justiciability of the provisions of Chapter II of the CFRN 1999, the judiciary should, in the performance of its constitutional oversight functions, employ the Chapter as a measurement instrument to assess the activities of other organs of government in the exercise of their powers and ensure they meet with the core social-egalitarian ideals embedded in the CFRN 1999. The

²⁴ CFRN, 1999 s 13.

²⁵ *Mohini Jain v State of Karnataka*, (1992) 3 S.C.C. 666 (India). The Indian Supreme Court held that the right to education was an enforceable constitutional; *People's Union for Civil Liberties v Union of India*, (2007) 1 S.C.C. 719 where the Court upheld a right to food for children; etc.

²⁶ D.A. Desai, *Role of Law and Judiciary in Transformation of Society: India-GDR Experiments* (Kalamkar Prakashan 1984), 4.

court does not need any direct legislation to do this. To achieve the objectives of the chapter, a better approach is to discard the literal rule of interpretation and adopt any other rule of interpretation that would promote the objectives of the CFRN 1999. The courts have always been ready to jettison the literal interpretation rule in circumstances where the application of the rule would result in ambiguity or injustice. Under such situations, the court is allowed to seek internal aid within the body of the law under consideration or external aid to avoid perverting justice.²⁷ A better position is though made non-*justiciable*,²⁸ the courts are to be guided and required to rely on the provisions Chapter II of the CFRN 1999 as interpretation aid in the discharge of their constitutional functions;²⁹ That is to say, the court should in all instances adopt pro-constitutional interpretation in all matters. To that extent, the provisions of Chapter II CFRN 1999 are enforceable by the courts; there is a constitutional obligation “to conform to, observe and apply the provisions” of the Chapter.³⁰

In addition to Chapter II, the CFRN 1999 contains other provisions relevant to securing the social egalitarian goals of Chapter II and guaranteeing a better social security system for workers; whether in times of prosperity or crisis. Paramount in this regard is the fact that the CFRN 1999 allocates legislative powers over labour related matters exclusively to the Federal government³¹ (allotted legislative powers are generally coterminous with executive powers of the repository tier of government).³² The rationale for the allocation is simple, labour is an item, which by its inherent nature cuts across states' boundaries and therefore can best be effectively regulated by the Federal Government.³³ To this end, the CFRN 1999 stipulates that the power to legislate on labour matters includes the authority to legislate on

²⁷ See the dictum of Niki Tobi, JSC in *Ugwu v Ararume* [2007] 12 NWLR (Pt1048) 365.

²⁸ CFRN, 1999 s 6(6)(c).

²⁹ CFRN, 1999 s 13.

³⁰ CFRN, 1999 s 13.

³¹ CFRN, 1999 s 4(2).

³² M.O. Adediran, ‘Critical Examination of the Constitutional Provisions on the Legislative Powers of the Federal and States’, in O.J. Ojo (ed), *Proceedings of the Conference on the 1995 Nigerian Draft Constitution* (1995) 11; O. Fatula, ‘Constitutional Issues in Nigerian Federalism’ [2003] 6 *University of Maiduguri Law Journal*, 84; T. Akinola-Aguda, *The Challenge of Nigerian Nation: An Examination of its Legal Development 1960-1985*, (Nigerian Institute of Advanced Legal Studies, 1985) 21.

³³ *A.G. Ondo State* (n18) 1465. The Supreme Court held that where a subject matter in its manifestation spreads across the states, such matter is best suited for legislation by National Assembly.

conditions, safety and welfare of labour as well as prescribing a national minimum wage for the Federation or any part thereof.³⁴ In promotion of the welfare of workers in times of crisis as witnessed during the Covid-19 pandemic, some of the principal federal enactments with some measure of implications for the labour sector are the Labour Act,³⁵ the Factories Act 1987,³⁶ the Employees' Compensation Act 2010, the Pension Reform Act of 2014. To what extent did government in response to the outbreak of COVID-19 observe and enforce the observance of the constitutional social egalitarian ideals in the protection of workers?

3. Government Response to the outbreak of Covid19

Nigeria was among the first sub-Saharan African states to record cases of COVID-19 infection.³⁷ Commendably, the government at various levels responded promptly to curtail the spread of the disease. However, despite the novelty of COVID-19 disease, the government (federal and state) sought statutory backing to issue emergency regulations and orders from the near one-century old Quarantine Act of 1926. For instance, placing reliance on sections 2, 3, and 4 of the Quarantine Act, the Federal Government in the protection of public health on the 29 March 2020 issued COVID-19 Emergency Regulations (Emergency Regulation). The Emergency Regulations declared COVID-19 a dangerous disease and empowered the Federal Government to place restrictions on movements within, into and out of Nigeria. Thus, relying on the Regulations the Federal Government imposed full lockdown in some selected states of the federation for a specified period extendable subject to prevailing circumstances; restrictions placed on the gathering of persons, the conduct of business, and other activities in the interest of public health.

In the same way, virtually all state governments in Nigeria relied on the Quarantine Act for statutory backing to issue emergency regulations and measures aimed at curbing and preventing the spread of COVID-19.³⁸ Some of the common measures though not exhaustive, include the imposition of a partial lockdown or full lockdown for a period ranging from

³⁴ CFRN. 1999, 2nd Sch item 34.

³⁵ Cap L 1, LFN 2004.

³⁶ Cap F 1, LFN 2004.

³⁷ Maclean and Dahir, (n5)

³⁸ For example, Lagos State Infectious Diseases (Emergency Prevention) Regulations 2020, was issued in pursuant of the State's Quarantine Law, which is a verbatim copy of the Quarantine Act.

one to four months; residents were directed to stay at home, movements within and outside the states were restricted to those expressly permitted, an interim ban was placed on the gathering of more than 20 persons and observance of special protocol (social distance in permitted gatherings, use of face mask, etc.) closure of all schools as well as the imposition of a dusk to dawn curfew.³⁹ In addition, open markets were either temporarily shut or relocated;⁴⁰ factories and other businesses premises (except those expressly permitted) were also closed.⁴¹

The Federal government advised state governments, in the interest of public health, to consider banning bars, nightclubs, event centres and other recreational related businesses from operating for a while.

Sadly, the emergency regulations, as well as the measures introduced by the government, led to a general decline in economic activity resulting in a recession. As will be shown later, among others, labour was worst-hit. In addition to individual workers' health safety, employees suffered severe collateral damage. A perusal of the emergency regulations and measures introduced by Nigerian governments revealed they were predominantly characterized with concern for the protection of public health and safety, but lacking in provisions designed to directly or indirectly address the employment implications of the restrictions; particularly for vulnerable, low wage precarious workers, which constitutes the bulk of Nigerian workforce. Key issues like the health and safety at workplaces, welfare and stream of income for the self-employed, job security during the pandemic, provision of safety-net for workers declared redundant and other related issues were conspicuously and utterly unregulated.

As mentioned earlier, the existence of these gaps is attributable to the legal substratum relied on by the government to issue the containment orders (Quarantine Act). A perusal of the Quarantine Act reveals that the Act is

³⁹ Yinka Adeniran, 'Makinde imposes curfew as Oyo records new COVID-19 cases' *The Nation* (Lagos 28 March 2020) <<https://thenationonlineng.net/makinde-imposes-curfew-as-oyo-records-new-covid-19-cases/>> accessed 3 July 2021.

⁴⁰ Justin Tyopunsu, 'COVID-19: Taraba Closes Markets, Bans Public Gathering' *Punch* (Lagos 1 April 2020) <<https://punchng.com/covid-19-taraba-closes-markets-bans-public-gathering/>> accessed 1 June 2021.

⁴¹ Dennis Erezi, 'Nigeria imposes new COVID-19 restrictions, bans large gatherings, others'. *The Guardian* (Lagos 21 December 2020) <<https://guardian.ng/news/nigeria-imposes-new-covid-19-restrictions-bans-large-gatherings-others/>> accessed 8 April 2021.

essentially a health law without any nexus to labour or the conditions of work in times of crisis. Put differently, the Act lacks the sophistication and the tenacity to deal with the complex fallouts that arise from placing reliance it provisions; particularly those relating to safeguarding workers' welfare, industrial relations and other conditions of work. Secondly, administratively, while government in the course of implementation provided some measure of palliative (a travesty social welfare, as will be shown later) to cushion the effect of the measures, there is no evidence of engagement of social partners and other stakeholders in the process leading to the issuance of any of the COVID-19 emergency regulations and other measures.

Government concern was primarily to protect public health and thus hastily issued the emergency regulations and measures without consultations with stakeholders. This again shows some of the weaknesses inherent in the legal framework for Labour in Nigeria. At the moment, there is nothing in the laws that obligate the government to consult labour and other social partners before making policies or labour related laws in Nigeria except where expressly provided for.⁴²

4. Impact of Containment Restrictions on Work and Workers

The near-total suspension in the local supply chain of goods and services as well as the freezing of regional and international trade, led to the cancellation of most pre-existing contractual arrangements and by extension disruption of the labour market and increase in unemployment. The majority of the vulnerable and precarious workers who incidentally constitutes the bulk of Nigeria's workforce (low-wage workers, casual workers or non-standard employees, the self-employed, and other employees in the informal sectors), most of whom could not conduct or conveniently conduct their work remotely, were hard hit by the measures;⁴³ particularly those who solely depend on their daily earnings for sustenance.

Though the government provided some measure of financial support to employers and employees in the informal sector, coupled with investment in food distribution designed for low-income earners (most of which did not

⁴² National Minimum Wage Act 2019.

⁴³ ILO Monitor *COVID-19 and the world of work, Updated estimates and analysis* (27 April 2020) <www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_740877.pdf> accessed 27 April 2020.

reach the desired destination), the totality of government palliative responses juxtaposed with the population, amounted to an infinitesimal intervention.⁴⁴

4.1 Impact on contracts of employment

While workers in the public sector enjoyed a measure of job security, coupled with full salaries (though there were pockets of reports cases of delay in payment of salaries, pay-cuts by some state employers⁴⁵), the position of their counterparts in the organised private sector was largely different. For the organised private sector, the emergency measures resulted in dwindling receipts for employers and impaired their ability to continue to meet salary payment obligations. To break even and continue in business, a lot of employers had to cut down on overhead costs.⁴⁶ As mentioned earlier, owing to the absence of provisions regulating employment implications of public health shut-downs, the fate of workers was left to the whims and caprices of the employers. As a result, the treatment of workers differed from one employer to another. Employers whose businesses could be conducted remotely (basically those whose operation could substantially be conducted via ICT), leveraging on ICT technology, directed workers to telework (operate from their private locations through telephone or other ICT modes).⁴⁷ On the other hand, employers whose businesses could not be effectively conducted remotely shut down temporarily. While some directed their workers to stay home with either full pay or reduced salaries,⁴⁸ others

⁴⁴ Timothy Obiezu (2020) "Nigerians Justify Massive Looting of Covid-19 Supplies" *Voice of America* (October 27 2020) < <https://www.voanews.com/covid-19-pandemic/nigerians-justify-massive-looting-covid-19-supplies>> accessed 31 July 2021.

⁴⁵ Aniefiok Udonquak, 'Industrial Crisis Brews in Akwa Ibom Over downward Review of Minimum Wage' *Businessday* (Nigeria 6 July 2020) <<https://businessday.ng/news/article/industrial-crisis-brews-in-akwa-ibom-over-downward-review-of-minimum-wage/>> accessed 31 January 2021.

⁴⁶ Ifoma Okeke, 'Arik Air Management Declares 300 Staff Redundant' *Businessday* (Nigeria, 4 December 2020). <<https://businessday.ng/aviation/article/arik-air-management-declares-300-staff-redundant/>> accessed 31 January 2021; Joshua Bassey, 'Workers Protest at Chevron; Say Company Plan to Sack 600 Nigerians' *Businessday* (Nigeria 2 October 2020) <<https://businessday.ng/news/article/workers-protest-at-chevron-say-company-plans-sack-of-600-nigerians/>> accessed 31 January 2021.

⁴⁷ Nigerian Stock Exchange 'Coronavirus (Covid-19) Our Response' <www.nse.com.ng/mediacenter/news_and_events/Pages/covid-19-our-response.aspx> accessed 20 April 2020

⁴⁸ Kelvin Osa Okunbor, 'Arik Air cuts workers' salaries by 80 per cent' *The Nation* (Lagos 25 April 2020) <<https://thenationonlineng.net/arik-air-cuts-workers-salaries-by-80-percent/>> accessed 12 October 2021.

placed workers on temporary layoffs without pay (furlough).⁴⁹ In other instances, the employment contracts were terminated; some cases without payment of terminal benefits. Incidentally in all the instances, the rule on redundancy as provided for under the Labour Act, of consulting with the relevant workers' trade unions and that of first in last out were not complied with.⁵⁰ One of the factors that facilitated the stringent responses by most private-sector employers was the absence of a statutory backed job retention scheme under which an employer is allowed to place workers on involuntary unpaid leave with the understanding that the worker will be reinstated and the declaration qualifies the worker to receive unemployment benefits for a specified period. Variant models of the scheme exist and were adopted in most OECD countries during the pandemic.⁵¹ The alternative to this is that the workers retain their job and enjoy a measure of financial support, pending when the employer can overcome the economic crisis.⁵²

Available data reveals that long before the outbreak of COVID-19, high unemployment rate (along with underemployment) was already a major perennial socio-economic problem in Nigeria. Data from the National Bureau of Statistics (NBS) revealed that as of 2018, the unemployment rate was as high as 23.1%. Studies conducted by NBS within the first two quarters of 2020 shows that this figure has been on a steady increase since the outbreak of the COVID-19 pandemic. During the period, 116,871,186 of the population were adjudged economically active or within the working-age population (15 – 64 years of age) out of which 80,291,894 are willing and able to work. As of the second quarter of 2020, 27.1% of these persons were unemployed, 28.8% underemployed and youth unemployment

⁴⁹ [Nicholas Ibekwe](http://www.premiumtimesng.com/business/business-news/389578-covid-19-arik-cuts-salaries-by-80-places-90-of-staff-on-leave-without-pay.html), 'COVID-19: Arik cuts salaries by 80%, places 90% of staff on leave without pay' *Premium times* (Nigeria [April 24, 2020](http://www.premiumtimesng.com/business/business-news/389578-covid-19-arik-cuts-salaries-by-80-places-90-of-staff-on-leave-without-pay.html)) <www.premiumtimesng.com/business/business-news/389578-covid-19-arik-cuts-salaries-by-80-places-90-of-staff-on-leave-without-pay.html> accessed 23 February 2021.

⁵⁰ Labour Act S 20.

⁵¹ OECD (2020). 'Supporting People and Companies to Deal with the Covid-19 Virus: Options for an Immediate Employment and Social-Policy Response' *ELS Policy Brief on the Policy Response to the Covid-19 Crisis* (Paris: OECD) <<http://oe.cd/covid19briefsocial>> accessed 12 October 2021; OECD (2020), *OECD Employment Outlook 2020: Worker Security and the COVID-19 Crisis*, OECD Publishing, Paris <<https://doi.org/10.1787/1686c758-en>> accessed 12 October 2021.

⁵² Leah Achdut, 'The Labour Market in the Coronavirus Crisis' [2020] *Israel Economic Review* 18(1), 59-79.

witnessed an upsurge from 29.7% to 34.9%.⁵³ 42% of the overall jobless persons for the period were traceable to the ravaging impact of the COVID-19 pandemic on the economy. The impact had been widespread on employment cutting across virtually all sectors of the economy; though the low-income earners were the hardest hit, with a higher percentage of job loss of 49%.⁵⁴

The situation was further exacerbated by the fluctuating oil price on the global market (the main source of Nigerian fiscal earnings), which plummeted by over 60%. This factor along with the emergency measures led to low economic activities within the period. Government official reports had earlier on, during the pandemic, projected that about 39.4 million persons may lose their jobs by the end of 2020. From NBS data, by the second quarter of the year 2020, about 21,764,614 Nigerians were unemployed. On the other hand, workers fortunate enough to retain their jobs during pandemic also had to contend with different challenges; ranging from modes of operation to safety at work,⁵⁵ pay-cut to delayed payments, payment of allowances and other issues. For instance, the health workers had to work under severe limitations, sometimes without personal protective equipment and some losing their lives in the process.⁵⁶

4.2 Health and Safety at Workplace during the Pandemic

Reports indicate that a large number of workers particularly in the health sector were infected with COVID-19; many were placed in isolation, some are still struggling with the disease and others, lost their lives in the process.⁵⁷ Exposure of workers to COVID-19 infection is attributed to a range of challenges which include but not limited to shortage of protective equipment at the workplace; non-provision of sanitary facemask,

⁵³ NBS. 2020. *Labour Force: Unemployment and Underemployment Report (Q2, 2020), August 2020*. <https://www.nigerianstat.gov.ng/pdfuploads/Q2_2020_Unemployment_Report.pdf> accessed 6 March 2021.

⁵⁴ Ibid.

⁵⁵ Joshua Basse, 'Covid-19: Call for Safe Practices in Workplace' *Businessday* (Lagos 28 April 2020). <<https://businessday.ng/coronavirus/article/covid-19-fg-calls-for-safe-practices-in-workplace/>> accessed 29 June 2021.

⁵⁶ Olalekan Adetayo, 'Covid-19: Buhari Mourns 20 Doctors, NKanga' *Punch* (Lagos 26 December 2020) <<https://punchng.com/covid-19-buhari-mourns-20-doctors-nkanga/>> accessed 30 June 2021

⁵⁷ Ebere Nwoji 'COVID-19: Providing Life Insurance to Health Workers' *Thisday* (Lagos 8 April 2020) <<https://www.thisdaylive.com/index.php/2020/04/08/covid-19-providing-life-insurance-to-alth-workers/>> accessed 23 December 2020.

disinfectants and cleaning agents, hand-washing time and other related facilities in the workplaces like non-enforcement of social or physical distancing directives within workplaces (workers and or clients). The worst-hit sector in this regard is the health sector. As in other countries, health workers in Nigeria are at the frontline of the battle against the pandemic. The exposure of the health worker to the disease is also majorly attributable to the near non-availability of personal protective equipment at the different units or departments of the hospital.

Closely connected to the foregoing, the outbreak of COVID-19 exposed the ‘near systemic’ non-implementation, by both private and public⁵⁸ sectors, of the compulsory group life insurance policy for workers, imposed by section 4(5), Pension Reform Act 2014. The insurance policy is designed to compensate a worker, in the event of permanent disability or death, or his named beneficiary to a minimum amount not less than three times his annual total emolument. The implication in the absence of valid group life insurance, is that the families of all workers who died as a result of contacting COVID-19 in the course of work including the health sector workers will not receive insurance payment; unless there are other internal arrangements or action brought under common law or the Employees’ Compensation Act, 2010.

The emergency regulations failed to make any specific standards regulating exposure to COVID-19 at the workplace, even among health workers. Thus, in the event of being infected with COVID-19, workers may only be able to seek redress under extant statutes like the Factories Act 1987,⁵⁹ Employees’ Compensation Act 2010 and or Common law. Incidentally, most employers have not, against the backdrop of COVID-19, taken special actions to safeguard their workers. Despite treating the health and safety of workers with levity during the period, there is no reported court case brought against an employer for breach of employers’ duty of care to prevent health-related hazards in the workplaces as a result of inadequate protection from exposure

⁵⁸ For instance, as of the end of the fourth quarter of 2019, only two states out of the 36 states in the country had a modicum of group life insurance arrangement for the state’s workers. See Pencom, Fourth Quarter Report 2019, <<https://www.pencom.gov.ng/wpcontent/uploads/2020/10/APPROVED-Q4-2019-REPORT.pdf>> accessed 29 December 2020. As of the end of the third quarter of 2020, only four states have valid group life insurance policies for their workers. See Pencom, Third Quarter Report 2020 <https://www.pencom.gov.ng/wp-content/uploads/2020/12/APPROVED-Q3-2020-REPORT_FINALIZED.pdf> accessed 29 December 2020

⁵⁹ Cap F 1, LFN 2004 (Factories Act).

to COVID-19. However, the absence or near absence of protections in several high-hazard workplaces like the public health sector and aviation industry led to agitations; with the concerned trade unions threatening strike actions in protest of the inadequate or non-provision of protective equipment against COVID-19.

5. Mitigating the impact

Whether in times of peace or crisis, contrary to the provisions of the CFRN 1999, there is no specialized legislation regulating unpaid leave, unemployment and sickness benefits,⁶⁰ as is the case in some jurisdictions; such as Europe,⁶¹ United Kingdom, Israel, and the United States of America,⁶² among others. After the outbreak of the pandemic, no serious attempt has been made in this direction. A feeble attempt was made to bridge the gap by the House of Representatives via the instrumentality of the Emergency Economic Stimulus Bill, 2020 (the Bill), few weeks after the first confirmed case of COVID-19.⁶³ However, the trajectory of the Bill was not directly centred on the protection of workers', but it was rather centred on businesses. The Bill seeks, among other issues, to provide incentives for corporate employers to retain their workers by proposing a 50% income tax rebate on the total amount due or payable as Pay-As-You-Earn Tax on behalf of its worker under the Personal Income Tax Act, where the employer maintains its staff strength throughout the pandemic period;⁶⁴ peradventure any of the workers die of natural causes, voluntarily disengaged from work or the employment contract is terminated, due to a breach by the worker, the incentive will subsist. Sadly, the Bill is yet to become law because it has not been ratified by the Senate and signed into law by the President. To encourage job creation, retention and to mitigate the impact of the emergency measures on the workers, the executive, once again without consultation with social partners, introduced a series of economic policies.

⁶⁰ CFRN, 1999 s 16(1)(d).

⁶¹ OECD. 2020. *OECD Economic Outlook*, Volume 2020 Issue 1: Preliminary version, No. 107, OECD Publishing, Paris <<https://doi.org/10.1787/0d1d1e2e-en>> accessed 23 July 2021.

⁶² Abigail Adams-Prassl, Teodora Boneva, Marta Golin, and Christopher Rauh (2020). "Inequality in the Impact of Coronavirus Shock: Evidence from Real Time Surveys", IZA Discussion Paper No. 13183, April 2020.

⁶³ <<https://www.nassnig.org/news/item/1472>> accessed 23 April 2021.

⁶⁴ Cap P8, LFN 2004.

5.1 Job retention and creation, self-employed income support schemes

In the area of job creation and sustainability, the Federal Government through the Central Bank of Nigeria made the sum of the 100billion Naira facility available for the benefit of pharmaceutical companies, hospitals and healthcare practitioners who intend to build or expand their drug manufacturing plants or health facilities to reduce Nigeria's over-dependence on importation for her medical supplies and create more jobs.⁶⁵

In addition, the Federal Government introduced what it termed 'Economic Sustainability Plan' which among other initiatives established a support fund, called 'survival fund'⁶⁶ to aid in creating and sustaining existing jobs by providing payroll support, guaranteed take-off grants to Micro, Small and Medium Enterprises (MSMEs), with beneficiaries cutting across the different sectors of the economy. As part of the survival fund scheme, the government extended operations grant to individual transport workers (taxi, cab, tricycle, mini-bus operators and other self-employed artisans. To benefit from the one time-payment of thirty thousand Naira, the applicant must show that he is a member of a trade union.⁶⁷ On its part, the payroll support programme is designed to assist MSMEs employers, whose businesses have been disrupted by COVID-19, to retain their workers and create new jobs, by providing funds to pay salaries for not more than 10 workers for a period of three months.⁶⁸ These economic palliatives in terms of the number of the beneficiaries, the amount offered and the period of coverage, were disappointing, being extremely too little and inadequate to make any meaningful impact.

5.2 Working conditions

The Nigerian Government response to ensuring healthy and safe working conditions has been unsatisfactory, tardy and reactionary. Aside from the

⁶⁵ CBN 'CBN Policy Measures in Response to Covid-19 Outbreak and Spillovers' <<https://www.cbn.gov.ng/Out/2020/FPRD/CBN%20POLICY%20MEASURES%20IN%20RESPONSE%20TO%20COVID19%20OUTBREAK%20AND%20SPILLOVERS.pdf>> accessed 26 April 2020.

⁶⁶ <<https://survivalfund.gov.ng/>> accessed 27 December 2020.

⁶⁷ Government Press Release. 2020, 'Nigeria Government Commences payment of N30,000 Grant to Taxi, Bus, Okada Riders' *Premium Times* (Nigeria 6 December 2020) <<https://www.premiumtimesng.com/news/top-news/429770-nigerian-govt-commences-payment-of-n30000-grant-to-taxi-bus-okada-drivers.html>> accessed 30 March 2021.

⁶⁸ Ibid.

health sector, concern over the health and safety conditions of the workers has been limited to mere issuing of general COVID-19 protocol guidelines; lacking statutory backing with no legal obligation on the part of the employers to adhere to the guidelines. The health sector was the only sector that received a measure of protection and improvement on safety and other working conditions. This was achieved because of the active and loud agitation of the various health workers' trade unions; following series of threats and actual embarkation on strike actions as well as protest by most of the trade unions within the health sector. This compelled the government to meet with worker's representatives. In the end, the Federal Government undertook to provide adequate personal protective equipment to health workers, approved three months special COVID-19 allowances for healthcare workers and payment of 50 % of net salary as hazard allowance as well as 40% increase on the consolidated salary for all health care workers in Federal Government employment.⁶⁹ Furthermore, health workers directly involved in the treatment of COVID-19 patients were approved to receive additional risk allowances of 20% of their salaries, while non-core health workers get 10% of their salaries.⁷⁰ Government also approved a tax exemption for health care workers during the period of the emergency. In line with section 4(5) Pension Reform Act 2014, the Federal Government also agreed to take out a third party insurance cover for employees (including healthcare workers), against job hazards.⁷¹ At the state level, similar packages were extended by some states to health workers.⁷²

6. Closing the Gaps

Despite the recondite and intricate situation created by the outbreak of COVID-19, the Nigerian Government for inexplicable reasons and against all odds relied on a century-old law to design emergency regulations in protecting and suppressing the spread of the virus. The policies that were

⁶⁹ Temitope [Obayendo](#), 'FG Approves COVID-19 Allowances for Health Workers' *Pharmanews* (22 April 2020) <www.pharmanewsonline.com/fg-approves-covid-19allowances-for-health-workers/> accessed 9 January 2021.

⁷⁰ Ibid.

⁷¹ Abulu Osemuaghu, 'FG approves special Covid-19 allowances for Health workers' *African Independent Television* <<https://ait.live/fg-approves-special-covid-19-allowances-for-health-workers/>> accessed 23 March 2021.

⁷² Lagos State Government increased health workers hazard allowance by 400 %. 'Covid-19: Sanwo-Olu Increases Hazard Allowance of Health Officers' <<https://lagosstate.gov.ng/blog/2020/04/22/covid-19-sanwo-olu-increases-hazard-allowance-of-health-officers/>> accessed 27 April 2020.

introduced, lack legislative engagements and have limited coverage, particularly in the area of protection of jobs, welfare and safety of workers. Similarly, except to the extent discussed in the preceding paragraphs, the involvement of the social partners –employers and workers’ trade union- in the policymaking processes leading to the responses of government, was near zero.⁷³ On the other hand, the unilateral responses by the employers raise legal queries. Such as the legality of the employers unilaterally terminating employment contract or converting the period of the restriction to paid or unpaid leave or reducing the salary without the consent of the worker, and others. To address most of the deficiencies identified in the preceding discussions and improve their protection, the two most effective options open to workers, are legal action based on extant laws and or collective action.

6.1 Engaging the law

Labour Law and practice in Nigeria is still very much in the developmental stage; lacking most of the sophistication and protections already being enjoyed by workers in some more advanced economies. When the Federal Government of Nigeria cited the Quarantine Act as the basis for issuing the first set of emergency regulations, it was expected that more legislation will be introduced and engaged to instigate major changes, rewrite many of the existing rules and procedures particularly those relating to industrial relationships and stimulate the economy; that has not happened. Workers are therefore left to make the best use of existing laws in the protection of their rights.

6.1.1 Right to work

The right to work is not expressly provided for under the CFRN. But Nigeria is a signatory to several international instruments which expressly guarantee the right to work. Notably are the International Covenant on Economic, Social and Cultural Rights,⁷⁴ and at the African regional level, one such legal document is the African Charter on Human and Peoples'

⁷³ ILO: *COVID-19 and the world of work; Country policy responses* <<https://www.ilo.org/global/topics/coronavirus/country-responses/lang--en/index.htm#NG>> accessed 25 March 2021.

⁷⁴ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, UN Treaty Series, vol. 993, p. 3.

Rights.⁷⁵ The Charter has continued to influence various national governments and set the agenda for the recognition of certain social rights as enforceable human rights in African. Given its normative structure, the Charter represents Africa's premier comprehensive human rights legal instrument with far-reaching implications for virtually all manner of rights including the actualization of the rights to work and social security in Africa.⁷⁶ In addition to guaranteeing most egalitarian (economic, social and cultural) rights,⁷⁷ the Charter enjoins party-states to recognize and promote the realization of all the rights guaranteed by its provisions, within their territories.⁷⁸

In securing the right to work, the Charter provides that 'Every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work.'⁷⁹ The Charter remains a regional template and the minimum benchmark for the protection of human rights in Africa;⁸⁰ ipso facto the right to work.

To facilitate the ease of enforcement of the provisions of the Charter, Nigeria domesticated the Charter through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.⁸¹ Again in 2009, Nigeria tacitly through the Fundamental Rights Enforcement Procedure Rules, 2009 (FREP Rules), further enhanced the prospects of enforcing the provisions of the Charter, by enjoining judges to liberally apply and interpret the CFRN 1999 along with other laws and subsidiary legislation in a manner that will advance the rights and freedoms guaranteed by the African Charter on Human and Peoples' Rights (African Charter) amongst other international instruments. The combined effect of the domestication and the FREP Rules effectively made the Charter an integral part of Nigeria's *corpus juris* which workers can rely on. The Court of Appeal in

⁷⁵ Adopted June 27, 1981, OAU Doc. CAB/LEG/67/3/rev.5, reprinted in 21 I.L.M. 59 (1982), entered into force Oct. 21, 1986 (African Charter or Charter) <www.africa-union.org> accessed 20 July 2020.

⁷⁶ Nsongurua J. Udombana, 'Social Rights Are Human Rights: Actualizing the Rights to Work and Social Security in Africa' [2006] 39 (2) Cornell International Law Journal, 181<<http://scholarship.law.cornell.edu/cilj/vol39/iss2/1/>> accessed 21 July 2020.

⁷⁷ African Charter arts 14-18. Egalitarian rights relate to social equality.

⁷⁸ African Chapter arts 1, 25, 26

⁷⁹ African Chapter art 15.

⁸⁰ Udombana, (n 76) 187

⁸¹ Cap A 9, LFN 2004

*Ohakosim v. C.O.P., Imo State*⁸² while holding that the appellant in the case was entitled to apply to the trial court for leave to seek redress for the alleged infringement of his rights as guaranteed by the CFRN 1999 and by the African Charter, commented on the status of the Charter that:

By virtue of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act ... the African Charter on Human and Peoples' Rights constitutes part of the laws of Nigeria and must be upheld by all law courts in the country. Indeed, Nigeria has given due recognition to African Charter on Human and Peoples' Rights by enshrining most of the Rights and obligations guaranteed therein in Chapter IV of the 1999 Constitution.⁸³

Under relevant international instruments and Chapter II of the CFRN, the right to work may be construed as implying among others an enforceable legal right imposing a corresponding obligation on the State to provide decent jobs under fair and just working conditions.⁸⁴ It includes the right not to work under dangerous conditions.⁸⁵

These legal instruments are of particular importance because going to work during the pandemic raises significant safety and health issues particularly against the backdrop of poor working conditions which during the pandemic gained a lot of concern. Unfortunately, the relevant legislation like the Factories Act and others do not provide much protection for a worker whose contract of employment is terminated by his employer for exercising his right to temporarily withdraw his services due to poor unhealthy and dangerous working conditions. In comparison with the position in European Union member states, including the United Kingdom, termination of a contract of employment resulting from the exercise of such right is

⁸² [2009] 15 NWLR (Pt 1164) 229

⁸³ Ibid, 251 -252

⁸⁴ UN Committee on Economic, Social and Cultural Rights: General Comment No 18, The Right to Work, UN Doc. C/C/12/GC/18, 6 February 2006 para. 7; Guy Mundlak, 'The Right to Work, the Value of Work' in Barak-Ezez, Daphne and Gross, Aeyal (eds), *Exploring Social Rights: Between Theory and Practice* (Hart 2007) 341, 343; and Huge Collins, 'Is there a Human Right to Work?' in V. Mantouvlou (ed) *The Right to Work* (Hart 2015) 17, 29.

⁸⁵ N O'Conner, 'The Right to Work and Rights in Work during the Coronavirus Pandemic: The Response of the United Kingdom' [2020] <DOI: 10.5526/xgeg-xs42_018> accessed 8 July 2021.

considered unfair dismissal and wrong.⁸⁶ An insertion of similar provisions in the Nigerian labour law legal framework will aid the workers' ability to refuse to work under unsafe conditions.

6.1.2 Compensation for infection or death

In the absence of COVID-19 specialized regulation on compensation for infected or workers who died as a result of COVID-19 infection in the course of work, the remedy open to such workers or their families is to seek relief under common law in an action for breach of employer's duty of care or under the Employee Compensation Act (ECA) 2010. The ECA makes provisions for payment of compensation to workers who suffered from occupational diseases or those who sustain injuries or death arising from an accident at the workplace or in the course of work. The ECA which to a large extent was spurred by the International Labour Organization's (ILO) recommendations and global best practice⁸⁷ has wider coverage than the Common law remedy and the employer are held liable without proving negligence. The ECA covers all workers employed in the public and private sectors of the economy.⁸⁸ To qualify for protection under the ECA, an employee must be

... a person employed by an employer under oral or written contract of employment whether on a continuous, part time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in the Federal, State and Local Government agencies and in the formal and informal sectors of the economy.⁸⁹

To ensure prompt compensation, an employer is required on the occurrence of any contingency insured against, to promptly report to the administrator of the fund designated for the purpose. In recognition of the extended family system prevalent in Nigeria, the ECA enlarged the meaning of terms like

⁸⁶ Employment Rights Act 1996 (UK) ss 44 & 100; Stuart Brittenden, 'The Coronavirus: Rights to Leave Workplace and Strikes' *UK Labour Law* <<https://uklabourlawblog.com/2020/03/27/the-coronavirus-rights-to-leave-the-workplace-and-strikes-by-stuart-brittenden/>> accessed 24 February 2021.

⁸⁷ J O Omoro and E O Okaka, 'Evaluation of the implementation of Employees Compensation Amendment Act 2011 of Nigeria' [2016] 11(1) *International Journal of Development and Management Review*, 187

⁸⁸ ECA s 2(1).

⁸⁹ ECA s 73.

‘dependant’ (includes adoptive and foster family, of the employee who was wholly dependent upon his earnings at the time of the happening of the contingency), spouse (includes a person legally married to the worker or with whom the worker cohabited as a couple for at least 12 months immediately before the death).⁹⁰ In the event of permanent disability arising from the infection, the worker is entitled to payment of compensation for life.⁹¹ Compensation under the regime of the ECA is in place of any right of action at common law or any other statutory provision.⁹²

Another notable law in this regard is the Pension Reform Act 2014. As mentioned earlier, the Act makes provision for a compulsory third party insurance scheme in favour of workers, to protect the interest of workers who suffer injury or death in the course of work. If properly engaged this provision will bring succour to affected workers.

6.1.3 Unemployment benefits and unpaid leave

A close consideration of the defined beneficiaries of the palliative measure introduced by the Nigerian Government to cushion the effect of economic crunch on households shows that the measures did make provision for workers who lost their job or were placed on unpaid leave, following the impact of COVID-19 pandemic on business. In the absence of a statutory backed job retention scheme under which an employer is allowed to place workers on involuntary unpaid leave, what are the options open to a worker who has been placed on unpaid leave or whose contract of employment has been terminated? Statutorily, one statute that can be effectively employed during this crucial moment to cushion the suffering or provide succour to workers who lost their jobs or are placed on unpaid leave is the Pension Reform Act 2014. The Act creates a contributory pension scheme that obligates both the employer and worker to make statutory prescribed monthly contributions into the Retirement Savings Account (RSA) in the name of the worker. The contributed fund is to serve as the retirement benefits of the worker.⁹³ The fund in the RSA may be accessed upon attaining the age of retirement (fixed at 50 years)⁹⁴ or before attaining the

⁹⁰ ECA s 73.

⁹¹ ECA s 7.

⁹² See Omoro & Okaka, (n 87). Given the low compliance level, the Nigerian Lawmakers between 7 and 11 October 2019 were compelled to cause an investigation into the non-compliance with the provisions of the ECA by employers of labour.

⁹³ Pension Reform Act s 1(d).

⁹⁴ Pension Reform Act s 16.

age of 50, the worker voluntarily retires, disengaged or is disengaged and is unable to secure another employment for a continuous period of 4 months.⁹⁵ Under such circumstances, the worker with the approval of the Pension Commission (the administrator of the Act), would be able to access not more than 25% of the funds standing to his credit in his RSA.

Under the current COVID-19 pandemic situation, a worker who is less than 50 years old and has lost his job, and is unable to secure another job for a continuous period of four months may approach the appropriate authority to access not more than 25% of the funds in his RSA. But the situation of a worker who is placed on unpaid leave is a bit ambiguous, as he has not, (strictly, on an incisive reading of the Pension Reform Act), been disengaged. As a result, such a worker may not be able to access his RSA. In the absence of a statutory backed job retention scheme under which an employer is allowed to place workers on involuntary unpaid leave, there is a need to amend the Pension Reform Act to enable such a worker to have defined access to his RSA where the unpaid leave exceeds four months in addition to reducing the waiting period of workers who lost their job. A cue can be taken from some jurisdictions where pension regulations have been reviewed as a result of the prevailing economic crunch brought about by the COVID-19 pandemic. For instance, Australia has enacted the Coronavirus Economic Response Package Omnibus Act 2020,⁹⁶ which allows eligible individuals affected by COVID-19 access up to \$20,000 of their pension savings within two years; 2019-20 and 2020-21 financial years.

6.2 Collective Action

As mentioned earlier, virtually all efforts by the Nigerian Government aimed at mitigating the impact of measures introduced to curb COVID-19 on workers were unilaterally put in place without the active involvement of the social partners-workers and employers' trade unions. One of the reasons for unionising is to improve the conditions of employment, especially the elimination of inhuman practices.⁹⁷ Thus, most workers join trade unions because there is strength in numbers. Collectively, they can have considerable power and influence, expressed through strike actions, protests and other activities including class action, which in most cases may be

⁹⁵ Pension Reform Act s 7.

⁹⁶ Australian Government Federal Register of Legislation <<https://www.legislation.gov.au/Details/C2020A00022/Download>> accessed 15 October 2021.

⁹⁷ Emeka Chianu, *Employment Law* (Bemicov 2006), 279-288.

impossible to ignore by employers and the government.⁹⁸ If policies are intended to be productive and achieve the desired objectives, all stakeholders must be involved in the process of making. World over, trade unions are known to have contributed immensely to developmental reforms through participation in the decision-making process.⁹⁹

Having been omitted from the COVID-19 policymaking process, among the options open to Nigerian workers' trade unions in the protection of workers is to legally engage statutory framework in mitigating the negative impact of the pandemic on workers and use the labour law statutory framework to engage in self-help to secure safe and better working conditions for workers during the pandemic as was done in some jurisdictions such as the United States of America.¹⁰⁰

Important laws in this context are the CFRN, the Labour Act, the Trade Union Act,¹⁰¹ Trade Dispute Act,¹⁰² Factories Act, Employees' Compensation Act 2010, Pension Reform Act 2014 and other specialized statutes and regulations in that regard. These laws though not comprehensive enough, certainly have the potential of improving conditions of work and protecting the workers. For instance, there is a statutory obligation on an employer who wants to navigate safely the rough tides instigated by a crisis of the nature of COVID-19 health shutdown measures and consequently cut down the running costs by declaring some posts redundant, to comply with the requirement of the Labour Act. The Act obligates the employer to "... inform the trade union or workers' representative concerned of the reasons and extent of the anticipated redundancy."¹⁰³ The rationale for the requirement is to accord the workers through their trade union the opportunity of ascertaining first, whether it is imperative to declare redundancy and secondly, to ensure that the process is just, transparent in line with existing laws and regulations. In addition, the

⁹⁸ M.S Mayer, 'Managing Without Union' in Addison-Wesley (ed) Reading Massachusetts (1996) Chapter 2.

⁹⁹ E. Lee, 'Trade Union Rights: an Economic Perspective' [1998] 137 (3), *International Labour Review*, 313, 318.

¹⁰⁰ Sara J. Slinn, 'Protected Concerted Activity and Non-Unionized Employee Strikes: Worker Rights in Canada in the Time of COVID-19' [2020] 57 *Osgoode Hall Law Journal*, Vol. 57, <<https://ssrn.com/abstract=3700582> or <http://dx.doi.org/10.2139/ssrn.3700582>> accessed 12 October 2021.

¹⁰¹ Cap T 14, LFN 2004

¹⁰² Cap T 8, LFN 2004

¹⁰³ Labour Act s 20.

employer is required to use his best endeavours to negotiate redundancy payments to the discharged workers who are not covered under any regulation or agreement. In doing this, the employer has a responsibility to observe the requirement of international best practices to determine equitable redundancy payment to the discharged workers who may not be so covered.¹⁰⁴

A trade union in the Nigerian context is “any combination of workers or employers, whether temporary or permanent the purpose of which is to regulate the terms and conditions of employment of workers...”¹⁰⁵ A worker is defined 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 work or labour...” Juxtaposed with the provision of section 40 CFRN, all workers whether on temporary or permanent employment, are at liberty to form, join a trade union of their choice. The National Industrial Court in *Patovilki Industrial Planners Limited v. National Union of Hotels and Personal Services Workers* held that a relevant trade union can admit as members daily paid workers. Sadly, the majority of workers affected by the layoff occasioned by the pandemic are the causal workers and other non-unionised workers, who contrary to the constitutionally guaranteed fundamental right to unionise,¹⁰⁶ are not allowed to belong to trade unions by their employers and therefore have no collective body to advocate for their rights. In this regard, there is a need to accord further protection to non-unionised workers in Nigeria by adding to the Trade Disputes Act, provisions similar to sections 7 and 8 of the United States of America’s National Labor Relations Act.¹⁰⁷ These provisions established workers’ rights to engage in concerted labour activities for their mutual benefit and protect such workers from the negative consequences of their actions. Section 7 provides that “Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection...”

¹⁰⁴ M. Okorodudu, ‘The Worker and Privatisation of Public Enterprise in Nigeria: A Legal Perspective’ [1985] *Nigerian Current Law Review*, 134, 146

¹⁰⁵ Trade Unions Act s 1(1).

¹⁰⁶ CFRN 1999 s 40.

¹⁰⁷ National Labor Relations Act, 29 USC §§ 151–69 (1935) at §157

7. Conclusion

COVID-19 exposed some of the weaknesses inherent in the Nigerian labour law legal framework. Rather than use the opportunity to address some of the inherent labour law weaknesses, the Nigerian government, without putting in place proper legislative backing and involvement of social partners, issued emergency orders and measures along with policies designed to retain and create more jobs. Although COVID-19 is a passing phase in human history, there is a need to adequately protect workers both in times of peace and during a crisis period of the nature of Covid-19. This calls for legislative reform and the involvement of relevant stakeholders in the process. Without attempting to exhaust the list, these reforms are needed in the area of judicial interpretation of the law, workers' friendly health and safety laws and regulations, economic protection, insurance, among others. In summary,

- (a) There is a need for the executive arm of government to be more dedicated to the realisation of the social objectives principles contained in Chapter II of the CFRN.
- (b) In the interpretation of the provisions of Chapter II CFRN (particularly section 17 thereof) in employment centred causes, the courts should jettison the restrictive interpretation approach and adopt a more progressive approach to enable workers to harness the enormous benefits embellished in the provisions.
- (c) The legislature needs to review the entire body of Nigeria's labour legislation to be in line with the subject matter under consideration and Chapter II of the CFRN 1999. The review should include the following:
 - i. Provide job security for all class of workers in time of similar crisis, guarantee the right of the worker to temporarily withdraw his services under poor unhealthy and dangerous working conditions and other related matters.
 - ii. Secure a statutory backed job retention scheme that allows an employer in times of similar crisis to place workers on involuntary unpaid leave with the understanding of reinstatement when conditions improve and qualified to receive unemployment benefits for a specified period.
 - iii. Place a general statutory obligation on the government to consult labour and other social partners before making policies or labour laws.