LEGAL AND INSTITUTIONAL FRAMWORK FOR THE PROMOTION AND PROTECTION OF WORKERS RIGHTS[**]

Abstract
Given its disadvantaged position in the employment relationship it appears, at least on the surface that the provisions of national laws and ILO Conventions are to offer some respite to the worker. The next question to examine is the capacity of regulatory institutions to enforce the provisions. A related issue is whether the state has the will to protect the weaker partner in the employment relationship. Apart from legislation, the formalized employment relationship is regulated and mediated by a number of structures and institutions which are located within the framework of the labour administration system. Article 1 of the ILO Convention, defines labour administration as "public administration activities in the field of national labour policy (incorporating labour, employment and vocational training) while the system of labour administration covers all public administration bodies responsible for and, or, engaged in labour administration whether they are ministerial departments or public agencies, including parastatal and regional or local agencies or any form of decentralized administration and any institutional framework for the coordination of activities of such bodies and for consultation with and participation by employers' and workers' organizations ILO,1978. This is the institutional framework for ensuring compliance with laws and standards as well as protecting workers' rights.

Keywords: Legal and Institutional Framework, Promotion and Protection, Workers Rights

1. Introduction

It is the essential duty of labour administration to enforce labour legislation and to offer solutions to the various and complex problems that arise in the world of work. In Nigeria, the inspectorate Department is the focal department of the Federal Ministry of Labour and Productivity charged with "the responsibility to ensure compliance with all national and international labour legislations(sic) connected with terms and conditions of employment", among others FMELP[1]. The Department carries out its functions, through "enforcement of relevant labour laws, particularly Labour Act, Cap 198, Factories Act, Cap 126 and the Workmen's Compensation Act, cap 470". There is no doubt that the Ministry of labour lacks the capacity to carry out its mandate. There is shortage of personnel to carry out inspection services nation-wide. This development has, in turn, reduced the capacity of the system to deliver even when there is the will. The Ministry is short staffed, even in very critical areas.

Of course this disposition should not be surprising if the government is more interested in protecting the interests of the propertied class. This bias has been clearly manifested in the emerging global economic order in which the interests of international finance capital determine the fate or treatment meted out to workers. Governments in developing/dependent countries such as Nigeria easily capitulate to the arm-twisting tactics of foreign investors who virtually insists on lowering labour standards (euphemistically referred to as labour market flexibility) as one of the pre-conditions for investing locally Plant, 1994. The telecommunication and oil and gas sectors are notorious for this. Infact, they dare not try the employment practices they implement in Nigeria in their countries of origin.

In fact, a closer look at the economic literature reveals a tendency to regard labour standards and legislation as constituting part of the "rigidities" and "distortions" that impede the

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[1] FMELP (2009) Ministerial Press Briefing 2009 Text Speech, Abuja: FMELP.

smooth functioning of the labour market.[2] As such, existing body of labour legislation guaranteeing some rights and protection for workers are considered obsolete. In Nigeria labour laws are mostly observed in the breach. A good case is the use of casual and contract labour which has been grossly abused especially by expatriate firms as well as the refusal of employers to allow their employees to freely join trade unions of their choice. A few examples suffice here.

The flagrant disregard of employers for the right of workers to form or join unions of their choice is a good case in point. It took a lot of efforts, including picketing and industrial actions for the unions in banking and oil and gas to reach the present level of unionization. The oil workers had to resort to organizing casual and contract employees in the industry.

The refusal of employers to honour agreements reached with the unions is equally treated with levity. On many occasions when employers refuse to honour agreements signed with workers and the unions, instead of compelling them to honour the terms of agreement, the Ministry would rather persuade the unions to consider a re-negotiation of the agreements.

In essence, the problem we are faced here with, is the lack of capacity which is further aggravated by the lack of political will on the part of government to protect its worker-citizen.

2. Legal Framework

2.1. Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Constitution of Nigeria is the principal law of Nigeria. The Constitution is a contract between all Nigerians; this could be inferred from the preamble of the Constitution which provides "We the people of the Federal Republic of Nigeria, having firmly and solemnly resolved, to live in unity and harmony as one indivisible and indissoluble sovereign nation under God, dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding and to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people, do hereby make, enact and give to ourselves the following Constitution". The Constitution is also a contract between the Nigerian government and the people of Nigeria. Chapter two of the Constitution provides for the obligations of the state to the people. This chapter is evidence of the social contract that exists between the Nigerian government and the Nigerian people.

Chapter four of the Constitution deals with fundamental human rights. Section 42 provides1) a citizen of Nigeria of a particular community, ethnic group, place of origin, sex; religion or political opinion shall not, by reason only that he is such a person:

a. Be subjected either expressly by or in practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other ethnic groups, places of origin, sex, religion or political opinions are not made subject; or

[2] G Scherrrer & T Greven, (2001). Global Rules for Trade. Codes of conduct, Social Labelling, Workers Rights Clauses. Munster: West talisches Dampt boot; and R Plant, (1994). Structural Adjustment and Labour Standards Geneva International Labour Office; K Panford, (1994). African Labour Relations and Workers Rights. Assessing the Role of the International Labour Organization. Connecticut & London: Greenwood Press

b. Be accorded expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinion[3].

Section 16 (2) of Nigeria Constitution provides that the economic system will not be operated on such manner as to permit the concentration of wealth or means of production and exchange in the hands of few individuals or of a group. Section[4] 17, provides, that the state social order is founded on ideals of freedom, equality and justice. Subsection (3) of some section provides that the state shall direct its policy towards ensuring that all citizens without discrimination of any group whatever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment. Very vital to these provisions is section 17(3) (e), which provides that there is equal pay for equal work without discrimination an account of sex or no other ground whatsoever? This has been enacted into law in the Nigerian Labour Act.

It is a known fact that when a provision (s) under fundamental objectives and directive principles of state policy have correlative or incidental provisions in the chapter four (fundamental Human Rights) of the Nigerian Constitution[5], the question of justifiability (Legal Term Meaning whether a person can approach Court for redress) is settled[6]. It is clear that sections 15, 16 and 17 cited fall under chapter II of the Nigerian Constitution which is classified by virtue of section 6 (6) (c) of the same constitution as non-justifiable rights. Thus, the provision of section 42 under chapter IV is enough to cover all these anti-discriminatory provisions.

Worthy of note is the development, in some jurisdictions which include India[7], Tanzania and Philippines where non-justiciable rights have been made justiciable with their nexus and correlation with the justiciable rights. Thus, employment seekers and workers who have been discriminated against in employment related cases can approach the Courts for redress.

The right to work is contained in section 17(3) (a) of Chapter II of the Nigerian Constitution. The sub- section provides that "The State direct its policy towards ensuring that-all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment." According to this provision, the Nigerian state has a constitutionally imposed obligation to ensure access of all citizens of Nigeria to suitable employment opportunities that will ensure to them adequate means of livelihood without discrimination of any kind. It has been opined elsewhere that although the socio-economic rights in Chapter II of the Nigerian Constitution are not couched in the traditional language of rights, nevertheless, a good number of the provisions are in substance socio-economic rights the guarantees, realisation or enforcement of which are made contingent

[3] 1999 Constitution, FRN. See section 15 (2) of the same Constitution which provides that "National Integration shall be effectively encouraged whilst discrimination on grounds of place of origin, sex and religion, states, ethnic or linguistic association or ties shall be prohibited.

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[5] See provisions of Chapter IV of the 1999 Constitution FRN; Sectors 33-46

[6] *AG Ondo v AG Federation* (2002) 9 NWLR (Pt 772) 22, *Okogie v Lagos State Government* (198) 1 NCLR 281, *UPSE v Hari Shaker*, AIR 979 Sc. 65

[7] See *Koolwal v Rajas, Menasha v Union of India* (1987 A.R.R 1086), *Rural Litigation v Utah Pradesh* (1966) A.I.R SC 1057, Article 32 of India Constitution empowers their supreme Court to enforce the rights

upon the happening of another event which may be availability of resources, executive or legislative action.[8]

It is however a notorious fact that the provisions of Chapter II of the Nigerian Constitution are not justiciable pursuant to section 6(6) of the Nigerian Constitution which ousted the jurisdiction of Nigerian courts from entertaining any question or issues as to whether any act or omission of any person authority is in conformity with the provisions of Chapter II of the constitution. This section of the Nigerian Constitution has been given judicial sanction by the Nigerian courts. [9] The implication of the foregoing is that the right to work is not directly enforceable under the Nigerian Constitution.

However, the Supreme Court of Nigeria has, in the recent case of *Ukpo v Imoke*[10] held that all organs of the Nigerian Government are constitutionally obliged to ensure the attainment of the lofty objectives of Chapter II of the Nigerian Constitution pursuant to section 13 thereof.[11] The Supreme Court has also still more recently, held that with specific reference to section 17(3) (a) right to work provisions of the Nigerian Constitution in *Lafia Local Government v The Executive Governor, Nasarawa State and Others*[12] that the Nigerian state has an obligation to ensure that the citizens have adequate opportunity and access to suitable and freely chosen employment without discrimination. What is more important, the court on this ground set aside an Edict of the Nasarawa State Governor which directed all local government staff in the state to return to their local government council of origin in order to continue their work as a violation of the constitutional provision on the right to freely chosen work without discrimination, among others.[13]

A global examination and analysis of the Nigerian Constitution provisions on the right to work therefore reveals that there is a constitutional obligation on the Nigerian state to guarantee access to suitable employment without discrimination; job security; right to freely chosen work and freedom of workers to associate for the promotion and protection of their work related interest; the latter component of the right being guaranteed via the fundamental rights provisions of freedom of association and assembly in Chapter IV of the Nigerian Constitution.

2.2. Labour Act

This is the principal law that governs labour relations in Nigeria. This Act has been called the workers charter because of the greater protection it provides for workers as against what was obtainable under the common law.[14] The first legislation to deal with labour relations in Nigeria was called the Master and Servant Ordinance of 1877; also known as Ordinance No 16 of the Gold Coast.[15]

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[8] AE Akintayo "Planning law versus the right of the poor to adequate housing: A progressive assessment of the Lagos State of Nigeria's Urban and Regional Planning and Development Law of 2010" *African Human Rights Law Journal* (2014) 14 *553 at 562-563*

[9] For a more detailed discussion of the scope and extent of this constitutional ouster of courts' jurisdiction in respect of the provisions of Chapter II of the Constitution see, for instance, ST Ebobrah 'The future of economic, social and cultural rights in Nigeria') CALS: Review of Nigerian Law and Practice' (2007) 1 (2 108.

[10] (2009) 1 NWLR (Pt. 1121 90.

[11] Section 13 of the Nigerian Constitution provides that: 'It shall be the duty and responsibility of all organs of government, and of al authourities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution'.

[12] (2012) 17 NWLR (Pt. 1328) 94 (Sc.)

[13] Ibid.

[14] Section 29 (4) (a) and (b) of the 1999 Constitution

[15] Cap 198 Laws of the Federation of Nigeria, 1990

The Labour Act is divided into four parts. Part one deals with wages, contracts of employment and conditions of employment; part two regulates recruitment generally; part three covers special classes of workers and special provisions and part four deals with supplementary issues which includes settlement of disputes, administration, records and returns.

Section 23 to 25 provides for the need for recruiters to be licensed or to have an employers' permit. The recruitment provisions of the Labour Act are basically an off shoot of the colonialism that Nigeria was previously under. The Labour Act has no provisions for equal employment opportunities for all Nigerians irrespective of any diversity for example sex, ethnicity etc.; neither does it deal with retention at work. The only provision in this Act that relates to women is in respect of maternity leave, there is no provision that seeks to protect the interest of women during recruitment and upon assumption of employment. Issues that make the workplace mentally and emotionally hostile to the minority are not provided for in the Act.

There is no provision in the Labour Act that protects persons living with disabilities, despite the significant proportion of such persons.[16] As earlier mentioned, roughly 10 per cent of the population of Nigeria live with one form of disability or the other. [17] This figure shows that quite a substantial number of Nigerians are persons with disability. According to the International Labour Organisation, persons with disabilities make up 15 per cent of the total population of the world making them the highest number of minorities in the world.[18] Thus, it is really unfortunate that Nigeria has no law dealing with the needs of persons with disabilities in relation to employment.

Disability is closely linked to poverty thereby increasing the likelihood of persons with disability being impoverished. It has become imperative that a form of legislation be enacted in Nigeria to ensure that persons with disabilities being part of the vulnerable groups are not left to the whims and caprices of the intolerant Nigerian society. In the words of the former Director-General of the International Labour Organisation, Juan Somavia speaking on the International Day of Persons with Disabilities "promoting opportunities for decent work for people with disabilities is intrinsic to achieving a new era of social justice".[19]

Moreover, the Labour Act does not contain any provision on discrimination based on religion, ethnicity and age. This fact makes the non- amendment of the Labour Act in more than three decades unacceptable.

The law is silent on the normative framework of employment and recruitment policies. The labour law does not define these policies neither does it provide for the procedure for the policies. This vacuum in the legislation has made employment practices to be at the whims of employers leaving out the principles of affirmative action.

2.3. Federal Character Commission (Establishment) Decree No 34 1996

The Federal Character Commission was established by the Federal Character Commission (Establishment) Decree No. 34 1996.[20] This commission has guiding principles,[21] amongst which are:

a) Equitable representation of states in national institutions, public V enterprises and organisations.

[16] Ibid
[17] Ibid
[18] Mont op cit (fn 87)
[19] Smith op cit (fn 89)
[20] Ibid. This quota system was reviewed in 1967 and used in filling up vacancies in federal organisations and for admission in federal schools
[21] Ibid

b) Only suitably qualified people are recruited to fill up positions meant for states in public organisations.
c) Once a person is qualified he is entitled to fill up the positions meant for his individual state.
d) Each state is to produce 2.75 per cent of the workforce in any federal organisation and the federal capital territory is to produce 1 per cent of the workforce.

The commission has among its functions the responsibility of ensuring that the guiding principles of the commission are fulfilled in recruitment. In addition, the commission must ensure the equitable distribution of all public socioeconomic amenities and infrastructural facilities. Furthermore, the commission has the duty of publishing reports to show statistic on man-power in public organisations.

The second chapter of the Constitution of Nigeria which is entitled fundamental objectives and directive principles of state policy deals with this principle of federal character.[22] Section 14 provides thus

> The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few State or from a few ethnic or other sectional groups in that Government or in any of its agencies.

This principle of federal character is to be applied in all facets of the Nigerian economy. Federal character principle as seen in practice is applicable only at the federal level, despite the provision in section 14 (4) that says that state and local government should conduct their affairs in such a way as to promote the principle of federal character. Despite this provision, there is no mechanism provided for states and local government to promote the spirit of federal character, thus this has made this sub-section to be mostly redundant. According to policy brief 15, the federal character principle does not provide for mechanisms to ensure equity by states between local governments and also for local governments to ensure equity between wards.[23] This means that employment opportunities at the state and local government level won't reflect multi-ethnicity.

The Federal Character Commission (Establishment) Act principally deals with recruitment from the angle of ethnicity without considering other factors that might cause marginalization. Such factors include sex, religion, age and disability. The foundational principle of federal character is the equality of states as provided under the guiding principles and formulae of the Act.[24] This has been applied in public organisations. The last published report of the federal character commission shows that despite the federal character principle there still exist gross inequalities in the distribution of federal jobs.[25] According to the report[26] Ogun state[27] has 7.5 per cent representation rather than the 2.5 per cent the state is entitled to under the Act. Meanwhile,

[22] Ibid
[23] Ibid
[24] 1999 Constitution as amended in 2011
[25] Affirmative Action Nigeria' (February 2006) Policy Brief 15 Inter-regional inequality facility sharing ideas and policies across Africa, Asia and Latin America. Available at http://www.odi.org.uk/ accessed on the 1st of August 2013
[26] Part 1 of the Act provides for this.
[27] Uvieghara (n 29)

Yobe State has 0.9 per cent representation public organisation which is lower than its entitled percentage.[28]

2.4. Nigerians with Disabilities Act

This Act was initially promulgated as a decree in 1993 under the military rule but became an Act when the civil dispensation started in 1999. This Act appears to be highly unpopular as Nigerian Legal jurists have not really reckoned with it.[29] This is possibly because it is not found in the current laws of the federation. However as long as a military decree is not expressly repealed, it remains binding. The Supreme Court in *AG Federation v AG Abia State*[30] held that the fact that a law has been omitted from the Laws of the Federation does not render such law obsolete or spent. Another factor that makes this law unpopular is the fact that disability is not a ground for discrimination in the Constitution. This is likely an oversight On the part of the legislative house.

This Act does not define disability but defines a disabled person. Section 3 defines a disabled person as:

> a person who has received preliminary or permanent certificate of disability to have a condition which is expected to continue permanently or for a considerable length of time which can reasonably be expected to limit the person's functional ability substantially, but not limited to seeing, hearing, thinking, ambulating, climbing, descending, lifting, grasping, rising, any related function or any limitation due to weakness or significantly decreased endurance so that he cannot perform his everyday routine, living and working without significantly increased hardship and vulnerability to everyday obstacles and hazards". This definition is restrictive.

A certificate of disability is prerequisite for someone to be classified as a disabled person and get the benefits under this Act. According to section 4 of this Act, this certificate of disability can only be obtained if the disability is suspected in the course of medical treatment. It is the duty of health institutions to submit this certificate to the National Commission for People with Disability. This bureaucratic measure is a hindrance to persons with disability as it has placed a heavy burden upon them. This means that if a person doesn't have a certificate of disability, the person is not disabled. This definition is in itself discriminatory and contravenes the definition of disability under the Disabilities convention of the International Labour Organisation.

Section 6 provides for employment and vocational rehabilitation for disabled people. Subsection 2 and 3 of the Act provides that 10 per cent of positions in the workforce and 10 per cent of funds for training of staff should be reserved for persons with disability. This provision applies to all employers of labour including the private sector. In addition, an incentive of 15 per cent tax deduction was included for private employers. Unfortunately, this is not enforced in Nigeria. Persons with disability are still being discriminated against even in public sector jobs. This leads to the issue of lack of enforcement of the provisions of the Act.

A major challenge in the enforcement of this Act is the lack of awareness of the existence of this law by Nigerians. In the course of this paper, it was discovered that organizations dealing

[28] Uvieghara (n 29)

[29] Discrimination (Employment & Occupation) Convention 1958 No. 111.

[30] (2002) Federation weekly Law Report part 102. *Chukwuma v Shell Petroleum Development of Nigeria Limited* (1993) NWLR (Pt. 289) 512.

with persons with disability are canvassing for a disability law while there is one in existence. This shows the level of ignorance. There is thus a need for this law to be popularized; this would in the long run ensure that the benefits of this law are harnessed.

The Disabilities Act provides for the establishment of a commission to ensure that the rights of persons with disabilities are enforced.[31] This commission is called National Commission for People with Disabilities. Unfortunately, since the promulgation of this act till date, this commission has not been set up. It is imperative that this commission is speedily set up as the welfare of persons with disability is at stake.

2.5. The National Industrial Court Act

The National Industrial Court of Nigeria's jurisdiction over unfair labour practice, and international best practices in labour, employment and industrial relations. The Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 constitutes a watershed in the history of the National Industrial Court of Nigeria in that the regime ushered in a number of radical innovations on the structure, power, status and jurisdiction of the Court. One of these innovative provisions is Section 254(c) (1) (f) which confers on the Court, jurisdiction over matters "relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relations".

The expression "unfair labour practice" has generally been defined to mean practices that do not conform with best practice in labour circles as may be enjoined by local and international experience.[32] [33] [34] Examples of unfair labour practices at workplace are legion and these include denial of employees the right to join trade unions, gender and racial discrimination, and discrimination on account of marital status, pregnancy and religious beliefs. Unfair labour practices are actionable wrong at the NICN and for which employees may be awarded damages in proven and deserving cases. For instance, in *Akinfemiwa Akinyinka v More Time C02 Gas Plant Ltd*,[35] the National Industrial Court held that denial of annual leave to an employee is an unfair labour practice. Similarly, in *Maiya v Incorporated Trustees of Clinton Health Access Initiative*[36] the NICN held that termination of employment of a female staff on account of pregnancy is an unfair labour practice.

Closely connected to this is the constitutional mandate of the court to apply international best practices in arriving at its decisions, including its powers to invoke and apply International Labour treaties to which Nigeria is a signatory. Of particular interest is the argument of the author that Section 254 (c) (2) of the 1999 Constitution has rendered impotent and inoperative, as far as International Labour treaties are concerned, the provisions of Section 12(1) of the 1999 Constitution which provides that a treaty provision may only be enforced in Nigeria upon being domesticated by an Act of the National Assembly. The said Section 254(C) (2) provides that "Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected herewith" (underlining mine).

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[31] Agomo (n 26) p 100

[32] See *Mix & Bake v NUFBTE* (2004) 1 NLLR (Pt. 2) 247,

[33] *MPWUN v ALZICO Ltd* (2010) 18 N.L.L.R (Pt. 49) 69

[34] *Aluminium Manufacturing Co. Nig. Ltd. v Volkswagen Nig. Ltd*. (2010) 21 N.L.L.R (Pt. 60) 428.s

[35] (2011) 4 LLER 2

[36] (2012) 27 NLLR (Pt. 72) 100

The argument is that since the word "notwithstanding" has been interpreted in several cases to mean a term of exclusion, then the expression "Notwithstanding anything to the contrary in this Constitution" is meant by the legislature to exclude any 'impinging or impeding' effect of any other provision of the Constitution so that the said Section may fulfil itself.[37] [38]

This argument seems to be correct as the NICN took the same view in Aero Contractors v NAAPE.[39] And if this interpretation is taken to be correct, then judicial authorities such as M.H.W.U.N v Minister of Labour & Productivity[40] will no longer be a good law as far as application of international labour treaties is concerned.

The last decade has witnessed a lot of changes and developments in the Nigerian labour and employment laws, and with implications for human resources practice. Among all the sources of the Nigerian labour laws, case laws and International Conventions ratified by Nigeria are fast redefining employment law and the law of labour relations in Nigeria. Recent Developments in Nigerian Labour and Employment Law attempts a chronological presentation and appraisal of some of these changes and developments, this paper provides an insight into some of the revolutionary changes and developments in the Nigerian labour and employment law in the last decade. It also deals with the changing face of the law as it relates to termination of employment.

2.6 African Charter on Human and People's Rights

The African Charter on Human and People's Rights (ACHPR) also known as the Banjul Charter is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in Africa.[41] It emanated under the aegis of the organization of African Unity (Now African Union) which was adopted at the 1979 Assembly of Heads of state and government as a resolution calling for the creation of a committee of experts to draft a continent-wide human rights instrument, similar to those already existing in Europe (European Convention on Human Rights) and the Americas (American Convention on Human Rights). This committee was duly set up, and it produced a draft that was unanimously approved at this OAU'S Assembly in 1981.

The African Charter came into effect on 21st October, 1986, to celebrate "African Human Rights Day". Although the need for the Charter has been questioned in light of the already universal application of United Nations instruments for upholding human rights, its creation follows in footsteps of other regional bodies in the creation of their own unique regional human rights systems, notably, the European Convention on Human Rights (ECHR). Since its creation, the Charter has had significant normative impact on the status of human rights on the African continent.

The Charter is a result of the uniqueness of some of the human rights issues of Africa from the rest of the world. The peculiarities inserted into the charter are meant to provide a legal and political framework for opposing abusive powers by the State, they also provide the normative framework to defy oppression.[42]

[37] *Kotoye v Saraki* (1994) 7 NWLR (Pt. 357) 414, *Olatunbosun v NISER* (1988) 3 NWLR (Pt. 80) 5.

[38] *NDIC v Okem Ent. Ltd* (2004) 10 NWLR (Pt. 880) 107.

[39] (2014) 42 NLLR (Pt. 13) 664

[40] (2005) 17 NWLR (Pt. 953) 120

[41] http://en.wikipedia.org/wiki/African charter on Human and People's Rights: cite note 1.accessed on 21/01/2017

[42] Y Dankofa, The African Charter on Human and People's Rights: An Exposition of its peculiarities and Dynamism. A.B.U Human Journal. Vol. II No. 2 pp 459-460

The Charter presents the real opportunity for African countries to exploit human rights objectives to ensure sustainable developments. The Charter emphasis on human and people's rights has been applauded throughout the world. In spite of these commendations, the Charter is still challenged by some problems.

The African Charter is an Afrocentric human rights instrument.[43] In furtherance of the Afrocentric understanding of and standpoint of the Charter, it conceived work as both a right and a duty. A combined reading of articles 15 and 29 of the Charter evidences this fact.[44] According to article 15 of the African Charter, "[e]very individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work." And by virtue of article 29 (2) and (3) of the Charter every individual is obliged to serve his community by placing his physical and intellectual abilities at its disposal and work to the best of his abilities and competence in furtherance of the interests of the society. This standpoint of the African Charter on the right to work is consistent with the African notion of work and society where idlers and the lazy are abhorred and work is seen as an obligation incumbent upon every able bodied individual. This notion is aptly captured by Nyerere thus: "The work done by different people was different, but no one was exempt. Every member of the family, and every guest who shared in the right to eat and have shelter, took it for granted that he had to join in whatever work had to be done"[45]

The African Commission on Human and Peoples Rights (the African Commission)[46] has helpfully thrown light on the meaning, content and scope of the right to work in the African Charter.[47] According to the Commission, the right to work is essential for the realization of other socio-economic and cultural rights and is critical to both survival and human development.[48] The Commission also states that "[t]he right to work should not be understood as an absolute and unconditional right to obtain employment."[49] The right rather obliges state parties to facilitate employment through the creation of an enabling environment for the full employment of individuals consistently with human dignity.[50] The right to work is also said to include the right to freely and voluntarily chosen work.[51]

In addition, the African Commission identifies three principal obligations imposed by the right to work in the African Charter on state parties:[52] First, the minimum core obligation to prohibit slavery, forced labour and all forms of coerced work; to guarantee the right to freedom

[43] A look at the Preamble and other provisions of the Charter evidence this fact. For instance, according to one of the Preambles to the Charter, the Charter takes into consideration ... the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights'. Another one of the Preambles also states that the African Charter takes into account the importance traditionally attached to the rights and freedoms contained in the Charter in Africa.

[44] A point also advanced by Ndombana. See N J Udombana "Social rights are human rights: Actualizing the right to work and social security in Africa" *Cornell International Law Journal* (2000) 39 181 at 187 et seq.

[45] J K Nyerere Ujamaa: Essays in socialism (1968) 108.

[46] The African Commission is the quasi-judicial body established under the African Charter for the elaboration and enforcement of the Charter.

[47] The African Commission on Fumai and Peoples' *Rights Principles and Guidelines on the implementation 01 Economic, Social and (itliaral J?iç'hls in the .t)rican Gharter an Human and Peoples' Rights* (African Commission Principles and Guidelines) available at http :I/www. ach pr. org/files/instruments/economic -social cultural/achpr_instr_ guide draft esc rights eng.pdf (accessed on 30 December 2015).

[48] Id at para 57

[49] Id at para 58.

[50] Ibid.

[51] Ibid

[52] Id at para 59.

of association, collective bargaining and other trade union rights; provision of adequate protection against unfair, unjustified and arbitrary dismissal, among others.[53] Second, the principal obligation to adopt national employment strategy and plan to realize the right of everyone to voluntary and freely chosen work and the right to equitable working conditions and fair remuneration.[54] Third, the obligation to ensure equality and non-discrimination in all work related matters for vulnerable groups and disadvantaged individuals in the society and the criminalization and prevention of the worst forms of child labour,[55]

The case law of the African Commission appears to support some of the above elucidated aspects of the right to work in the African Charter: In *Mauritania.' Malawi African Association and Others v Mauritania,*[56] for instance, the African Commission held that slavery, coerced and unremunerated work and domination of one section of the community by the other in work related relationships is a violation of international human rights norms and the provisions of the African Charter.[57] Also, in *South Africa.' Prince v South Africa,*[58] the African Commission recognized the right of everyone to occupational choice. The Commission therefore opined that the purpose of the provision of the Charter on the right to work was to ensure that state parties respect and protect the right of every individual to access the labour market without discrimination. The Commission however held in that particular case that the prohibition on the use of cannabis and the consequent disqualification of the complainant from legal practice because of his avowed intention to continue the use of the prohibited substance is a legitimate exception to the right to work under the African Charter.

2.7. Pension Scheme (Pension Reform) Act 2004.

A pension can be defined as "a regular payment made to someone, usually by a former employer, who because of disability, old age or illness can no longer earn a living by working or has reached a pre-set pensionable age."[59]. By law this definition apparently views pension in terms of defined benefit pension scheme where payment of pension is entirely the responsibility of the employer. The employee is not required to contribute on a regular basis during his working life. The contribution is considered as the earned income of the contributor from which he will usually receive a regular payment after a prescribed time.[60] The arrangement may cover employees and other categories of the working class (self-employed) in the labour market.

Pension system in Nigeria had experienced enactments of various legislations since the enactment of the early legislations namely, The Pension Ordinance, 1951 and National Provident Fund Act, 1961 for the public and private sectors respectively. This culminated with the enactment of the Pension Reform Act 2004 (the PRA, or the Act). The PRA was fashioned on the Chilean model and has introduced some radical and unprecedented reforms in the Nigerian pension industry. It has for the first time established a contributory pension scheme applicable to both public and private sectors and in all industries and as well unified the administration and

[53] Id para 59(a)-(c).

[54] Id para 59 (d)-(h).

[55] Id at para 59 (i)-(p).

[56] (2000) A1-IRLR 149 at paras 132 136.

[57] Emphasis supplied.

[58] (2004) AHRLR 105 at paras 45-46.

[59] OO Moloborin, "Pensions, Savings and Social by Year 2010: A capital Market Perspective" 3 No.4 MODUS International Law & Business Quarterly 65 (Dec., 1998).

[60] Odia and Okoye Infra p. 2

management of pension in the sectors and industries. It has stemmed and addressed pension liability problem experienced especially in the public sector. It seeks to guarantee prompt payment of retirees, eliminate the hardships they suffer in the process of collecting their pensions and improve their standard of living.

PRA provides for the establishment of contributory pension scheme and the extent of the application of the scheme as follows[61]:

(1) There shall be established for any employment in the Federal Republic of Nigeria, a contributory Pension Scheme (in this Act referred to as "the Scheme") for the payment of retirement benefits of employees to whom the Scheme applies under this Act.

(2) Subject to Section 8 of this Act, the Scheme shall apply to all employees in the Public Service of the Federation, Federal Capital Territory and the Private Sector-

a) In the case of the Public Sector, who are in employment; and

b) In the case of the Private Section, who are in employment in an organization in which there are 5 or more employees."

2.8. Industrial Accidents Compensation Scheme (The Employee's Compensation) Act 2010.

The Workmen's Compensation Act (WCA) which came into force on the 12th June 1987 was the principal legislation containing the immediate past legal regime of compensation for industrial accidents in Nigeria. Over the years, WCA became obsolete and therefore suffered a lot of criticisms as its application is restrictive, leaving out and not covering certain categories of industrial accidents and employees. The phrase 'arising out of and in the course of the employment'[62] received restrictive interpretation by the courts for the purposes of claim under the WCA. The compensation prescribed in WCA proved grossly inadequate and claim under the Act was surrounded with uncertainties. The Employees Compensation Act, 2011 (ECA or the Act) was therefore passed to repeal and replace WCA. ECA seeks to put in place a transparent and fair system of guaranteed and adequate compensation for employees or their dependants in the event of death, injury, disease or disability arising out of, or in the course of, employment thereby expanding the scope of accidents that can ground claim under the Act. In addition, the Act does not only improve compensation system for employees who suffered industrial injuries, it also takes necessary measures to ensure prevention of workplace accidents and safe working conditions for employees.

In addressing the problem of restrictive definition of a worker under WCA, the Act changes the term worker as used in the defunct WCA to employee which is more encompassing and it defined it as "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 Governments, and any of the government agencies and in the formal and informal sectors of the economy."[63] Employer, on the other hand, is defined in the section to include "any individual, body corporate, Federal, State or Local Government or any of the government agencies who has entered into a contract of employment to employ any other person as an employee or apprentice".[64] The Act applies to all employers and employees in the public and

[61] S1, PRA, 2004
[62] S. 3(1) WCA, 1987.
[63] S. 73 ECA, 2011
[64] Ibid.

private sectors in the Federal Republic of Nigeria[65] except an employee who is a member of the armed forces of the Federal Republic of Nigeria other than a person employed in a civil capacity[66] and in the case of an insolvent employer.[67]

An important feature of the Act is the responsibility placed under it on the Nigeria Social Insurance Trust Fund Management Board (the Board) for the co-ordination and implementation of the provisions of the Act and managing the Employee's Compensation Fund ("the Fund") established under the Act.[68] The sources of financing the Fund are take-off grant from the Federal Government, mandatory contributions by employers, gifts and grants from national and international organizations, and proceeds derived from investment by the Board. The Act creates an Independent Investment Committee to serve in an advisory capacity to the Board.[69]

2.9. Industrial Actions (Trade Union (Amendment) Act, 2005

Employer and employee relations involve power relationship among the actors in the relations. The principal actors in industrial relations are workers, employers or their organizations and government or governmental agencies. The power relationship among the actors often results in conflict. Conflicts in employment may be resolved by negotiation between the parties concerned which leads to a consensus or by invq1vementf a third party through mediation, conciliation, arbitration or adjudication. Grievances in employment are manifested through industrial actions usually in the form of picketing, strikes and lockouts.[70] The Trade Unions Act 1974 (the Principal Act) regulates industrial actions. It has been amended by the Trade Unions (Amendment) Act 2005 (the 2005 Act). The 2005 Act was apparently passed in response to the successive general strikes by the Nigerian Labour Congress which preceded its enactment. The NLC embarked on the series of the strikes to challenge some socio-economic policies of the Federal Government particularly relating to fuel price increase. The 2005 Act, among others, amended sections 33 and 34 of the principal Act to derecognize Central Labour Organization and retain federation of trade unions. Thus, the NLC has ever since been deemed to exist as a federation of trade union. The NHRCN emphasis should be on the amendment of the principal Act that seeks to support industrial actions, thereby curtailing any form of employment discrimination.

3. Proper Adjudication of Cases of Discrimination of Workers (The National Industrial Court Act, 2006 and the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010.

The importance of a special court for the adjudication of discrimination in employment disputes cannot be over-emphasized. Conflicts arising from complaints impact significantly on socio-economic development, thus the search for an industrial dispute resolution mechanism or approach that would minimize the adverse effect of industrial unrest is important to every country.

Labour court was for the first time established in Nigeria with the establishment of the National Industrial Court under the Trade Disputes Act 1976.[71] The then operative constitution (the 1963 Constitution) was amended to accommodate the court among the constitutionally recognized

[65] Ibid. S. 2(1)
[66] Ibid. S.3
[67] Ibid. S.70.
[68] Ibid. Part V.
[69] Ibid. Part VIII
[70] For definition of strike and lockout see S. 47(1) of the Trade Disputes Act 1976 and see also *Tram Shipping Corporation v Greenwich Marine Incorporation* (1975) 2 All ER 898 at 1990 for definition of strike by Lord Denning.
[71] Then Decree No. 7 of 1976

courts. With the advent of the 1979 Constitution, there was a problem regarding the status, powers and jurisdiction of the court as it was neither included among the superior courts nor its power and jurisdiction defined in the constitution. The constitutionality of the status, powers and jurisdiction of the court was therefore subjected to challenge.[72] This anomaly was addressed with the promulgation of the Trade Disputes (Amendment) Decree 1992. The Decree conferred the NIC with the status of a superior court of record and the exclusive jurisdiction to entertain complaints or cases arising from labour related issues involving the employer and employee have the latter is discriminated against by the farmer include inter and intra union disputes. The situation remained without problem until after the restoration of constitutional government in 1999 when the constitutionality of the position became an issue. The enactment of National Industrial Court Act 2006 also conferring the status of a superior court of record on the court with exclusive jurisdiction to entertain industrial disputes and powers of a High Court could not help the situation. Decisions of the Court of Appeal[73] and finally of the Supreme Court[74] declared the provisions of the National Industrial Court Act 2006 on the status, powers and jurisdiction of NIC null and void in view of the provisions of the Constitution of the Federal Republic of Nigeria 1999.

The Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 was enacted to amend the relevant sections of the constitution and make adequate provision to lay to rest the controversies surrounding the establishment and composition of NIC, status of NIC and its judges, powers and jurisdiction of NIC etc. to enable it play its supposed role.

On the status of the court, section 6 of the CFRN 1999 was altered to include the NIC among the superior courts listed in subsection (5) of the section and consequentially other relevant sections of the constitution were altered to put the NIC and its judges on the same footing as the Federal High Court and its judges. The jurisdiction of the NIC is as provided for in the constitution and conferred by an Act of the National Assembly. The court has all the powers of a High Court in the exercise of its jurisdiction and the National Assembly may by law confer additional powers on the court to enable it to exercise its jurisdiction more effectively. The NIC is therefore legally empowered to play its supposed role in the employment and industrial relations practice in Nigeria. All the controversies brought by the provisions of the Trade Disputes (Amendment) Act 1992 and the National Industrial Court Act 2006 have now been resolved by the Third Alteration Act.

4. The National Human Rights Commission of Nigeria (NHRCN): Functions and Powers

Social inequality and the resultant discrimination undermine equality before the law. This has grave consequences on the overall wellbeing of the society or communities that made democratic claims and aspire to broaden democratic space. Employees have been subject of discrimination in their places of work throughout the world since the industrial revolution. The trend is being reversed worldwide especially in the developed countries such as Nigeria. The challenge for developing countries human rights commissions is that, they have relied over the years on the enactment of anti-discriminating laws to attempt in providing a broad outline as to how to tackle discrimination in employment against workers generally. Discrimination in employment in Nigeria is not too visible primary because given the level of illiteracy, ignorant and lack of skills among the workers, employment in the country is done one sided in a lot of areas of the economy, most especially

[72] See *Udoh v Orthopedic Hospitals Management Board & Ors*. (1993) 7 NWLR, Pt. 254 488

[73] See *Kalango v. Dokubo* (2003) 15 WRN 32; *Attorney General of Oyo State v. Nigeria Labour Congress, Oyo State Chapter* (2003) 13 8 NWLR 1 and *Bureau of Public Enterprises (BPE) v. National Union of Electricity Employees (NUEE)* (2003) 13 NWLR (pt. 837) 383

[74] See *National Union of Electricity Employees & Anor. v Bureau of Public Enterprises* (2010) 7 NWLR (pt. 1194) 538 SC.

when the take home pay is good, while the informal sector is made or left for the general public, creating an impression that discrimination in employment does exist in the country.

Nigeria has over the years relied on treaties[75], enacted laws[76] and institutional structures like the Federal Character Commission, Ombudsman and the Nigeria Human Rights commission to back up these laws based on their roles provided by the laws to improve promote and protect the rights of employees thereby containing discrimination in employment in the country. The doctrine of equality before the law is the pivot around which social interactions in a society that claims to be democratic and aspire to social justice and human rights revolve. In virtually all employment and work, employees are subject of inequality in laws and in fact, this situation is caused and exacerbated by socio-economic factors and cultural conditioning resulting in the existence of discrimination in the work place. While specific causes and consequences may vary, from employment to employment, discrimination against workers is widespread.

The concept of equality does not mean mechanical social equalization in order to treats all persons in the same way. True equality seeks the development of every worker alike without hindrances created by institutionalized prejudices and unequal access social structures and facilities that are means of self-actualization. This all-encompassing view of equality forms the basis of struggle for recognition and acceptance of the human rights in general and the right of employee in particular.

In recent years, increasing global unemployment has become the result of high level discrimination in employment caused by employers of labour, women most especially in developing countries suffer greater disadvantage in the labour market of countries where they make up a strikingly higher proportion of the labour force than in industrialized economics countries, for these same reasons women in developing countries are more likely to be employed when compared with their male counterparts. Everyday around the world and Nigeria in particular discrimination in employment is an unfortunate reality for hundreds of millions people.

The National Human Rights Commission has been given the power based on enacted legislations[77] that provides for its role and mandate to regulate discrimination against employees, reinforcing cultural and gender stereotypes in the workplace and in hiring practices; it is rather curious that employment, which is the means of livelihood of everybody, continued to be threatened as a way of career advancement of workers. As human kind attempts is grapple and resolve discrimination against various categories of employees the commission has been empowered by different legislations to promote integrated polices on employment, to urge employers of labour to create an enabling playing trend for job seekers as a matter of deliberate policy, encourage skill development through training, entrepreneurship development improved access to the labour market and equality of opportunity.

[75] Discrimination (Employment and occupation) Convention 1958 No. 111, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of Person with Disabilities 2006 etc.

[76] The Constitution of the Federal Republic of Nigeria 1999 as amended, Nigerians with Disabilities Act 1999 and the Labour Act Cap 198 Laws of the Federation of Nigeria 1990

[77] National Human Rights Commission Act and the Constitution of Federal Republic of Nigeria 1999 as amended

5. Workers' Rights as Guaranteed by Nigerian Labour Laws

To Bamiwola[78], there exists a nexus between human rights and employment opportunities; thus, rights to life, movement, peaceful assembly and association, privacy, and human dignity, liberty, property and other classes of human rights will only be functional per excellence when a person's source of livelihood is unhindered. From the foregoing, the significance and presence of work based rights is unquestionable. The practical implementation of these work-related rights are essential to reverse working conditions such as an unhealthy or dangerous working environment and conditions and poor terms of employment that maybe detrimental to workers, while also working to protect workers against unjustified mistreatment by employers. Most importantly, they play an essential part in preserving the link between human dignity, human job security and decent working conditions. Workers' rights abuses, infringements and non-implementation are both symptoms and causes of workplace conflicts. Work based rights are expected to encompass all issues concerned with the protection and respect of human life in the workplace and the right to work itself. Some components of workers' rights include the rights to job safety, good terms and conditions of work, participation /consultation especially on matters that affect them directly, Freedom of association, non-discrimination in employment, collective bargaining etc. With labour rights, come labour laws which are primarily meant to regulate, control and guide the activities of labour in the country. In doing these, they are expected to promote public interest, strengthen the rights of workplace parties, safeguard people at work from all forms of dangers etc, regulate tendencies that may be injurious to public good and promote the creation and distribution of wealth. In Nigeria, most work based rights are guaranteed by the Labour Act Cap 198 Laws of the Federation of Nigeria 1990 now Labour Act Cap L1 Laws of the Federation of Nigeria 2004

5.1. Implications for Workers Rights abuse in Nigeria.

Nigeria has signed most of the United Nations treaties, obligations, in addition to ratifying most of International Labour Organization conventions, recommendations. Majorities of these provisions have either been domesticated in our various laws, policies or enshrined in the Nigerian constitution. But the poignant questions are, have the socio-economic status of Nigerian workers, most especially women workers improved? What are the positive implications on or for workers and human rights in Nigeria? Are these provisions being practically implemented or observed? what are the measures, sanctions or enforcement mechanisms against non-implementation or infractions? The Current United Nations High Commissioner for Human Rights, Ms Navi Pillay[79] shed considerable light on the above while wrapping up a historic visit to Nigeria on March 14th, 2014 noting that "Since Nigeria's transition to democracy, much has been achieved on the human rights front, Nigeria has ratified all nine core international human rights treaties but "in order to have a real impact on the lives of ordinary people," said the High Commissioner, "international treaties must also be fully reflected in national legislation, and the national legislation must then be fully observed and implemented by the authorities at all levels.

[78] KH Bamiwola, (2011). Human Rights and Employment Discrimination: A Comparative Examination of Equal Job Opportunities, Paper presented at the 6th International Industrial Relations Association, African Regional Congress of Industrial Relations, Lagos, Nigeria, January 24-28.

[79] N Pillay, (2014). ''Opening Remarks at Press Conference by UN High Commissioner for Human Rights during her mission to Nigeria.'' Available online at http://reliefweb.int/report/nigeria/opening-remarks-unhigh- commissioner-human-rights- Navi-Pillay-press-conference-during*(accessed May 20, 2014)

5.2. Role of Non-Governmental Organization and the Promotion and Protection of Workers Rights in Nigeria

Globally the champions of human rights have most often been citizens, not government officials. In particular, non-governmental organizations (NGOs) have played a cardinal role in focusing the international community on human rights issues. For example, NGOs activities surrounding the 1995 United Nations Fourth World Conference on Women in Beijing, China, drew unprecedented attention to serious violations of the human rights of women. NGOs such as Amnesty International, the Antislavery Society, the International Commission of Jurists, the International Working Group on Indigenous Affairs and Human Rights Watch monitor the actions of government and pressure them to act according to human rights principles

6. Relationship between International Human Rights Instruments and the Domestic Law.

The relationship between the International human rights instruments and the domestic (municipal) law has given rise to two principal schools of thought, viz. Monism and Dualism. While the former asserts that international law and municipal law form part of a universal legal order, the latter holds that international law and municipal law are two distinct legal orders.[80]

In Nigeria, the theory of dualism holds sway. The focal point of the law forming the foundation upon which the status of international treaties (including human rights treaties) can be assessed within the Nigerian legal order is section 12 of the Constitution which provides that: "No treaty between the federation and any other country shall have force of law except to the extent to which any such treaty has been enacted into law by the National Assembly". The theory essentially states that international conventions or treaties are not directly enforceable in national legal systems unless provisions of such treaties are not directly enforceable enacted, by municipal legislative authority, into domestic law.

Simply, the implication of the above provision is that the efficacy of a treaty is dependent and predicated on its "domestication". The Supreme Court given judicial interpretation to the foregoing provision in the celebrated case of *General Sani Abacha v Gani Fawehinmi*[81]. In its construction and articulation of the implication of the provision of section 12, the Supreme Court held *inter alia* that: an international treaty to which Nigeria is a signatory does not ipso facto become a law enforceable as such in Nigeria. Such a treaty would have the force of law and therefore justiciable only if the same has been enacted into law by the National Assembly. On the issue of primacy between international law and domestic law, the court made a distinction between the status of the constitution on the one hand and other domestic legislation on the other hand with international instruments. It held that while the Constitution has primacy over treaties, treaties enjoy equality and parity of status with domestic legislation. However, specifically referring to the African Charter on Human and People's Right (Ratification and Enforcement) Act, the court declared that: "it is a statute with international flavour. Being so, if there is a conflict between it and another statute its provisions will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation…"

7. The National Action Plan (NAP) for the Promotion and Protection of Workers Rights in Nigeria.

The National Human Rights Commission has been the lead statutory body tasked with preparing the National Action Plan (NAP) for the promotion and protection of human rights in Nigeria. This

[80] MOU Gasiokwu, Human Rights-History ideology and Law, (2003) Fab Educational Books, Jos. Op.cit
[81] (2000) FWLR (pt. 4) 533 at 585-586

is in response to the recommendations of the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in Vienna Austria in 1993. The programme requested that: "Each state considers the desirability of drawing up a national action plan identi1'ing steps whereby the state would improve the protection and promotion of human rights" The government of Nigeria has fully associated itself with the Vienna Declaration and Programme of Action, both of which emphasize that all human rights are universal, indivisible, interdependent and interrelated; and that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.

It will also be used by the Government, organs of the Civil Society and the International Community to monitor and assess the observance of human rights, and to gauge the commitment of the Government to the promotion and protection of human rights in the Country.

8. Conclusion

An attempt to lay the background of the main work. It briefly traced the history of human rights and certain domestic efforts to secure legal protection for individuals against arbitrary excesses of state power. It also traced the recent history of human rights, from the birth of the United Nations to the promulgation of the United Nations Charter and the Universal Declaration of Human Rights which though not a binding document would, in the words of Eleanor Roosevelt be "a common standard of achievement for all peoples and all nations", the International Covenants and other human rights instruments were discussed. This is because Section 5 (a) of the NHRC Act embodies all these instruments and documents as a measure for its protection of human rights in Nigeria. However, it is evident from the above discussion that, since Nigeria subscribes to the dualist pattern with regards to the relationship between international treaty and domestic law, then theoretically speaking the Commission cannot discharge its mandate of protection as embodied in the treaties unless the National Assembly enacts domestic legislation incorporating these rights. It is thus a restriction on the mandate of the Commission.