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Imperativeness of institutionalising work as a fundamental right in Nigeria: Lessons from Belarus and India

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Summary: *The Constitution of the Federal Republic of Nigeria, 1999 guarantees various rights, which are regarded as non-justiciable and justiciable rights, under chapters 2 and 4. Work falls under the latter and may not be enforced by court action despite Nigeria's high level of unemployment. This is notwithstanding the fact that several international human rights instruments recognise work as a human right.*

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Through comparative analysis, this article examines the legal framework on the right to work in Nigeria, using the concept of interrelatedness, interdependence and indivisibility of human rights in advancing the imperativeness of institutionalising work as a justiciable right in Nigeria. The article found that most Nigerians live below the poverty line, and their economic conditions are exacerbated by an inability to earn an income that can meet their basic needs, thereby making the enjoyment of their justiciable rights impracticable. The article goes further to examine jurisprudential practices on the right to work in India and Belarus aimed at drawing lessons for Nigeria. It recommends that in order to address the high rate of unemployment in Nigeria aggravated by the COVID-19 pandemic, it becomes imperative to make the right to work a justiciable right to attain the United Nations Sustainable Development Goals 2 and 8.

Key words: *employment; human rights imperative; India; Nigeria; right to work; Sustainable Development Goals*

1 Introduction

The natural law theory postulates that from its origin, man is endowed with certain rights by his maker.[1] These rights are indissoluble, universal, inherent and avails every human irrespective of any distinguishing feature such as race, creed, sex, religion, political opinion, colour, opinion, tribe, and so forth. There are both domestic and international legal instruments that address these rights, which are not created by these instruments, but are simply acknowledged and given legal immutability in the instruments.[2] These rights – their existence and observance – are the hallmark of a civilised society. Hence, all governments the world over are encouraged to accord special recognition to the scrupulous observation of these rights.[3]

In Nigeria, the Constitution of the Federal Republic of Nigeria, 1999 (CFRN 1999) is the principal domestic Bill of Rights. It contains rights that are classified into two broad categories. One category is found in chapter 2 of the Constitution which contains rights under the umbrella of Fundamental Objectives and Directive Principles of

1 BO Nwanbueze 'The value of human rights and their challenge for Africa' Paper delivered at the Annual General Conference of the Nigerian Bar Association at Abuja, 27 August 1998 9.

2 See Constitution of the Federal Republic of Nigeria, 1999 Cap C23 Laws of the Federation of Nigeria, 2004; International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR).

3 *Kuti v AGF* [1985] 8 NWLR (Pt 6) 211 230.

State Policy (FODPSP), while chapter 4 contains a second category of rights under the head of Fundamental Human Rights. As a general rule arising from judicial interpretation, the rights contained in chapter 2 (such as the rights to education, work, food, employment, housing, and so forth) are regarded as non-justiciable, while those in chapter 4 are justiciable. The foregoing is to the effect that there is a dualist conception of fundamental rights in Nigeria. This notwithstanding, neither chapter 2 nor chapter 4 of CFRN 1999 is independent of or unrelated to the other. The optimal enjoyment of human rights requires mutuality of recognition and observance of both the chapters of the Constitution.

This article argues for the recognition of the right to work as a fundamental right in Nigeria. It does so by examining the state of the law under international legal instruments and some selected jurisdictions where the rights under consideration have been given both statutory and judicial recognition. At present, the unemployment and underemployment levels in Nigeria are astronomically high. The rise in precarious employment practices, particularly the casualisation of employment and other non-standard forms of employment, is a testament of this grave reality. It is a simple economic fact that an increase in demand will lead to a hike in prices. Thus, the ever-increasing number of job seekers with the quagmire of limited or non-existing jobs has naturally given the employer an undue advantage in employment relations. Hence, at present in Nigeria, the employer can pick and choose whom to employ and on what terms and conditions without mutual bargaining between the parties, as ordinarily expected. Several international legal instruments have recognised work as a human right. In fact, the right to work seems to be the first gift to man by his Creator as contained in the Christian Holy Writ.[4] The right to work is intrinsic to man so that the enjoyment of all other rights is contingent upon it. In pursuit of its objective, this article adopts a doctrinal and comparative method, relying on both primary and secondary data such as CFRN 1999; the Labour Act of Nigeria 2004; the United Nations (UN) Universal Declaration of Human Rights, 1948 (Universal Declaration); the African Charter on Human and Peoples' Rights (African Charter); the International Convention on Economic, Social and Cultural Rights, 1976 (ICESCR); the International Labour Organisation Employment Policy Convention 122, 1964; the Constitution of the Republic of Belarus, 1994; case law; textbooks; and online materials. The data was subjected to rigorous content and jurisprudential analysis.

4 Genesis ch 2:15 King James version.

2 Domestic and international legal frameworks on the right to work in Nigeria

Sections 17(3)(a), (b), (c) and (e) of the CFRN 1999, which are provisions in the FODPSP and are generally regarded as non-justiciable, enjoin government at all levels to formulate policies geared at guaranteeing that all citizens, irrespective of any distinction or differences, have access to adequate and suitable means of livelihood, as well as the chance to secure appropriate employment. Furthermore, governments are to guarantee that working conditions are benevolent and fair through the provision of, or by making available, facilities that promote relaxation, aid workers' practice of their religions, safeguard their health, promote social well-being, safety and general welfare of all persons that are employed in some undertaking or the other. The government is to ensure that its policies or that of private employers are implemented in a way and manner that encourages the observation of equal pay for equal work without discrimination on the basis of sex, or on any other distinguishing factor whatsoever. While the aforementioned provisions of CFRN 1999 are non-justiciable *per se,* they are nevertheless not to be treated with careless abandon by government at all levels in Nigeria, as the sanctity of gainful work by the citizenry of any country cannot be overemphasised. Interestingly, the Supreme Court of Nigeria (SCN)[5] in *Ukpo v Imoke*[6] has held that all organs of the Nigerian government are constitutionally obliged to ensure the attainment of the lofty aspirations in chapter 2 of CFRN 1999 pursuant to section 13 thereof. The SCN, with specific reference to section 17(3) of theCFRN 1999, and in reference to the right to work, has recently held in *Lafia Local Government v Governor of Nasarawa State & Another*[7] that the Nigerian state has an obligation to ensure that its citizens have the opportunity to access suitable and freely chosen employment without any form of discrimination whatsoever. In this case, the SCN, on the ground of unconstitutionality, set aside the Edict of the Nasarawa State Government which directed indigenes to return to their respective local government area (LGA) to continue work instead of the subsisting arrangement of working wherever anyone finds themselves within the state irrespective of their LGA. The wealth and well-being of any nation is directly proportionate to the number of its gainfully employed citizens. Being gainfully employed reduces various vices in society that are bred by unemployment. Despite this declared obligation by the SCN of the Nigerian state, Eyongndi

5 Supreme Court of Nigeria is simply referred to as SCN.
6 [2009] 1 NWLR (Pt 1121) 90.
7 [2012] 17 NWLR (Pt 1328) 94.

and Onu[8] have noted that non-standard forms of employment, especially casualisation of employment, is increasing in Nigeria with its attendant unpalatable outcomes on labour relations.

The African Charter on Human and Peoples' Rights (African Charter),[9] which is a regional human rights legal instrument, recognises the right to work. Interestingly, pursuant to its dualist posture, contingent on its section 12, CFRN 1999 requires that intentional treaties between Nigeria and other sovereign states must be domesticated in order to acquire the force of law. Pursuant to section 12 of CFRN 1999, the African Charter has been domesticated in Nigeria since 1983.[10] The implication of this is that from the date it was domesticated, the African Charter has become part and parcel of the *corpus juris Nigeriana* and is enforced like any other law made by the National Assembly as opined by Eyongndi and Okongwu.[11]

In fact, in *Abacha v Fawehinmi*[12] the SCN authoritatively held that the African Charter forms part of the laws of Nigeria, with the result that Nigerian citizens are entitled to the rights guaranteed thereunder. The Fundamental Rights (Enforcement Procedure) Rules (of Nigeria) 2009 made by the chief justice of Nigeria pursuant to section 46(2) of CFRN 1999 to effectuate the provisions of chapter IV of CFRN 1999 recognised the fact that its applicability regulates proceedings covering the provisions of chapter IV of CFRN 1999 and that of the African Charter.

Article 9 of the African Charter recognises every individual's right to work when it provides that 'every person shall have the right to work under fair and reasonable conditions, and shall receive equal pay for equal work'. By this provision, the right to work is not only guaranteed, but such work must be performed under reasonable and suitable conditions. It would be safe to reason that what article 9 of the African Charter guarantees, is not creation of an absolute obligation on the government to provide work, but where a person is employed, such employment must be aligned with the conditions mentioned therein. Hence, working under precarious or inhumane conditions that disregard basic employment rights of

8 DT Eyongndi & KON Onu 'A comparative legal appraisal of "triangular employment" practice: Some lessons for Nigeria' (2022) 9 *Indonesian Journal of International and Comparative Law* 181-207.
9 African Charter on Human and Peoples' Rights, 1981.
10 African Charter on Human and Peoples' Rights (Ratification) and Enforcement Act, Cap A9 LFN 2004.
11 DT Eyongndi & C Okongwu 'Interrogating the national industrial court strides towards attaining safe workplace for Nigeria's female worker' (2021) 6 *Bangladesh Institute of Legal Development Law Journal* 122-146.
12 [2000] 6 NWLR (Pt 660) 228.

employees, such as bullying and victimisation by the employer or senior staff; absence of leave with benefits; no or irregular payment of salary; unilateral amendment of the terms and conditions of employment by the employer; unjustifiable delay in promotion; denial of the right of freedom of association and collective bargaining, and so forth, runs afoul of this provision. It is apposite to note that the right to work as encapsulated under the African Charter requires that there is no discriminatory wage regime as there should be equal pay for equal work done by all employees without gender-based discrimination. Thus, the practice of casualisation of employment with its characteristic nature of wage discrimination between casual workers and their permanent/standard counterparts within the same employ is a contradiction.[13] Article 29 of the African Charter imposes a duty on every individual to 'work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of society'. This implies that the African Charter recognises the inherent ability of man to work and the dignity in work, thereby imposing a duty on man to work and contribute to the well-being of society through the payment of taxes that would be used to provide basic public amenities.

In actual fact, the conceptualisation of work under the African Charter is in consonance with the African idea of work wherein idlers and lazy persons are abhorred and often colloquially warned of 'no food for a lazy man', meaning that there is a natural expectation that every able-bodied person should engage in work as there is dignity in labour. The African Commission on Human and Peoples' Rights (African Commission) has elucidated on the notion, scope and philosophical underpinning of the right to work under the African Charter. The right to work, according to the Commission, is for the realisation of other socio-economic and cultural rights, extending to civil and political rights, which is crucial for both survival and human development.[14] The nuances of the right to work under the African Charter has at least three components. States' minimum core obligations are to prohibit slavery, forced or coerced labour, guarantee the right to freedom of association and its appurtenances, the protection of safety nets against arbitrary termination of employment and security of tenure/employment. Also, the obligation is on member states to adopt programmes and strategies that will promote the rights of citizens to voluntarily access suitable

13 DT Eyongndi 'An analysis of casualisation of labour in Nigeria' (2016) 7 *Gravitas Review of Business and Property Law Journal* 102-116.

14 AE Akintayo 'The right to work in the legal profession: An analysis of *Senator Bello Sarakin & Anor v Senator Atiku Bagudu & Ors*' (2016) 3 *UNILAG Journal of Public Law* 239.

and freely chosen work with equitable working conditions and fair remuneration. Also deducible is the obligation on member states to ensure equality and non-discrimination in employment and labour-related matters, especially in relation to vulnerable persons. These notions have been amplified by some decisions given by the African Commission. For instance, in *Zimbabwe Lawyers Union for Human Rights and Associated Newspapers of Zimbabwe v Zimbabwe*[15] the defendant had closed down the workplace of the applicant, seized their tools and dispersed its workers leading to a loss of jobs. The African Commission held that the action of the respondent state was in violation of article 15 of the African Charter that guarantees the right to work. Also, in the matter of *Prince v South Africa*[16] the African Commission gave approval to everyone's right to occupational choice to access the labour market without any discrimination whatsoever.

At the international level, under which the Universal Declaration, in unambiguous terms, recognises the right to work. Article 23(1) provides that every person has the right to work, in particular, the right to choose the type of employment he or she wishes, which conditions and terms thereof shall be equitable and fair. It further requires that people should be protected from unemployment. It affirms the right of employees to be equally remunerated for the same work done without any distinction in terms of type of employment.[17] The import of this is that where an employer, for instance, has permanent and casual staff in its employ who perform the same job, they ought to be remunerated equally. Hence, where some are termed casuals while others are permanent but they perform the same work, their wages should be the same. The work they do should be the determinant of the wage they earn and not how their employment is described. Hence, every employee is entitled to just and complimentary remuneration to cater for their needs as well as that of their family, thereby giving them a dignified life which every human deserves. The attainment of this dignified life, which is expedient, should be facilitated through social protection by the government. Thus, it is an affront against this international legal instrument if and when some employers deny their employees from forming or joining trade unions to protect their interests as argued by Eyongndi and Ilesanmi.[18] The right to work as provided under the Universal Declaration is such that it is all-encompassing. Everyone

15 (2009) AHRLR 235 (ACHPR 2009) para 179.
16 (2004) AHRLR 105 (ACHPR 2004) paras 45-46.
17 Art 23(2) Universal Declaration 1984.
18 DT Eyongndi & SI Ilesanmi 'Territorial jurisdiction of the national industrial court of Nigeria (NICN) and the requirement of endorsing originating processes under the sheriffs and civil process act (SCPA) determined' (2022) 9 *Journal of Comparative Law in Africa* 162-177.

willing and capable to work must be protected against unemployment and must work under favourable employment conditions, and should not simply be working. The right seems to proscribe a case of 'half a bread is better than none' or assertions that it is better to be doing something than nothing. The wage paid must be equal for all employees in the same category who perform the same work, and discriminatory wage is forbidden. The 'take home' of an employee must be able to take them home in truth and, indeed, it should be capable of offering basic comforts and not necessarily luxury to the employee and their family. It can be argued that aside from ensuring that people are gainfully employed, the government is duty bound, through social welfare packages, where necessary, to supplement the earnings of an employee for a befitting livelihood. Inherent in the right to work is an employee's right to form or join a trade union in order to protect their interests. This right must be accorded to all categories of employees, status notwithstanding. Article 24 bestows on every employee the right to leisure and rest, including reasonable limitation of working hours and periodic holiday with remuneration.

Articles 6 and 7 of the International Convention on Economic, Social and Cultural Rights (ICESCR) recognise the right to work by providing that parties to the Covenant shall give recognition to the right to work and create enabling opportunities for gainful employment. State parties are obligated to take necessary actions through policies and training to ensure the realisation of this right. In engendering the realisation of this right, state parties are to ensure that safety of employment, including unionising, is encouraged and not directly or indirectly inhibited.

Nigeria ratified the ICESCR on 29 July 1993. By February 2021, 171 states had done the same, establishing it as a widely accepted global legal framework and signaling broad international recognition of the right to work. Having ratified this Covenant, Nigeria is deemed to have tacitly recognised the right to work and is duty bound to create gainful employment opportunities for its citizens. In fact, from the tenor of the above quoted articles, it can be safely argued that the enjoyment of civil and political rights is contingent on the recognition of economic, social and cultural rights and the citizens' access to these rights. Without the availability of the latter, the exploitation of the former will be minimal and of no effect whatsoever, if not practically impossible.

The International Labour Organisation (ILO) as the vanguard of decent work agenda and standard-setting organisation, since its creation to date, has adopted several conventions and recommendations that have recognised the right to work and has

enjoined member states to give effect to this right. Article 1 (2) of the ILO Employment Policy Convention 122, 1964 provides that each member state shall take steps geared towards the advancement of a standard of living, the eradication of unemployment as well as the improvement of the living standard of its citizens. Hence, they must formulate and implement policies that guarantee decent and gainful work for their teeming working population, devoid of any form of discrimination whether on the basis of sex, colour or creed. Technical and vocational training opportunities are to be facilitated for persons who are desirous of acquiring such skills through which they can secure a favourable and dignified livelihood. Situations where people are constrained to take up employment, owing to mass unemployment or unavailability of desired work, must be prevented by member states.

It is crystal clear that the ILO enjoins all member states to promote and provide suitable work for its citizenry. It is apposite to note that the ILO does not only advocate that work is a human right, but that persons are entitled to not just work, but to do decent work which, in itself, is a basic human right.

3 Interrelatedness, interdependence and indivisibility of human rights

Various philosophical foundations have emerged in an attempt to ascribe a meaning to the concept of law, and human rights is amenable to the same vicissitude since it is an offspring of law. Of course, a product is necessarily affected by the process. The natural school is based on the claim that there are neutral moral values that depend upon the nature of the universe and which can be discovered by reason.[19] What this means is that this is grounded on the belief that the rules of human conduct are inferences from the nature of man as they reveal themselves in reason and these rules are independent of any man-made enactment.[20] This theory draws inspiration from nature and is founded upon the well-grounded supposition that there is a law in nature according to which all things, including man, ought to behave. Nature is identical in all human beings and does not vary. The precepts of nature have universal and unassailable legitimacy notwithstanding the diversity of individual conditions, geographical environment, historical development and civilisations, culture or any other distinguishing feature present and

19 MDA Freeman *Lloyd's introduction to jurisprudence* (2001) 90.
20 ON Ogbu *Human rights law and practice in Nigeria* (2013) 6.

these precepts are of great antiquity as nature itself.[21] In fact, some scholars would rather have natural law called natural right, thereby foregrounding the nexus between natural law and nature (precepts of nature).[22] Thus, the natural school will consider human rights as inherent, inalienable, imprescriptible, inviolable rights bequeathed by nature to all humans regardless of any distinguishing feature such as race, creed, religion, political persuasion, gender, nationality, colour, language, ethnicity, and so forth, and these rights rank equal in importance notwithstanding their recognition. Once the humanity of any human being is not in doubt, the person has human rights.[23] To the natural school, dichotomising human rights to demonstrate importance is needless because all the rights are jointly and equally important.[24] Their optimal enjoyment and utilisation is interdependent and interrelated, meaning that none of the rights is an island; therefore, dichotomising them for whatever purposes is not only needless but should be avoided.

The positive school of thought, on the other hand, views law as the prescription of the sovereign backed up by sanctions, hence, only what the sovereign has prescribed as law is law. This approach to the understanding of law has caused the positive school to disregard international law as law, although modern realities are challenging this proposition. Based on this, the positivists regard human rights are those rights so declared by the sovereign and not mere bequeaths of nature as declared by the natural law school. To this school, unless and until the sovereign (that is, a person or body that has law-making powers) recognises anything as a human right whereupon it becomes legally enforceable, same cannot be regarded as a human right.[25] They are of the view that human rights are only a prescription of positive law comprised in enacted laws (statutes, codes, regulations) that can be enforced by the courts.[26] Thus, human rights denote a set of rights guaranteed under a given legal system contained in legal documents that is activated either when there is a threat to or actual infraction by any person or authority who has a duty to forebear or perform towards the person seeking their enforcement. The positive school has the inclination that human rights are relative and not universal since there is no universal idea of human rights; what is regarded as a human right differs from society to society.[27] The development of human rights

21 E Bodenheimer *Jurisprudence* (1967) 13.
22 FE Dowrick *Human rights – Problems, perspective and texts* (1979) 11.
23 EA Udu *Human rights in Africa* (2011) 10.
24 IG Shivji *The concept of human rights in Africa* (1989) 16-17.
25 Ogbu (n 20) 23.
26 RWM Dias *Jurisprudence* (1985) 331.
27 Udu (n 23) 8.

has seen the rights being categorised into first, second, third and even fourth generation rights as well as civil and political rights, economic, social and cultural rights.[28] It would seem that there is no end in sight to the categorisation as civilisation evolves, there is bound to be terminological progression and categorisation of human rights.

These philosophical conceptualisations of human rights have led to two fundamental arguments that are germane to this work. The first is the argument that human rights are interdependent, interrelated and indivisible, and the second is that of the universality versus the cultural relativism of human rights.[29] It is apposite to note that the essence of this article is not to engage in an in-depth interrogation of these arguments but to comment on them while using them to buttress the point that the right to work should be regarded as a fundamental right in Nigeria and not a mere socio-economic or political aspiration, which it is at present under chapter 2 of CFRN 1999. Work in this context is not merely having a place to go for the purposes of earning an income or being engaged *per se*, but decent work in which the terms and conditions of employment are not only fair and just, but humane. This is a situation where the physical conditions of work, particularly the right to equality, equal pay for equal work done, non-discrimination, formation or joining of trade unions, security of tenure or employment, gender equality and equity, are present and promoted. The observance of basic employment rights and the promotion of a healthy work-life balance is inclusive.

It must also be noted that the conceptual foundation of this work is founded on two complementary components: the right to work and rights in work.[30] These components promote the idea that the government has an obligation to adopt policies, programmes, strategies and initiatives that will promote full employment. It also encompasses the recognition of the rights of workers to form or join trade unions of their choice for the purpose of advancing their interests, the elimination of exploitative child labour, the prohibition of forced or coerced labour, and the right not to be discriminated against in all labour and employment-related matters. It also includes an obligation on the part of the government to create a conducive and enabling environment where jobs could be created.

28 Ogbu (n 20) 25-27.
29 CC Nweze 'The evolution of the concept of socio-economic rights in human rights jurisprudence: International and national perspectives' in CC Nweze (ed) *Justice in the judicial process: Essays in honour of Honourable Justice Eugne Ubaezonu JCA* (2002) 525.
30 Akintayo (n 13) 239.

The drafting of the Universal Declaration triggered the emergence of two main covenants, namely, the International Covenant on Civil and Political Rights (ICCPR) and ICESCR.[31] The first Covenant contains rights aimed at guaranteeing individual freedoms, the promotion of political participation by citizens and access to justice. The second Covenant seeks to engender social welfare by obligating the state to ensure that its policies are geared towards realising it for the betterment of the citizenry.[32] The idea of indivisibility, interrelatedness and interdependence of human rights originated within the UN circle in the early 1940s and 1950s.[33] This concept suggests that irrespective of their classification according to their evolution (that is, first generation or civil and political rights, second generation or economic, social and cultural rights, or third generation or developmental rights), in actual fact, the optimal enjoyment of these rights cannot be disjunctive.[34] The notion of interdependence of human rights connotes that despite their distinctiveness, the optimal realisation or enjoyment of a certain right is contingent upon the availability and accessibility of another right(s), which may or may not fall into the same category as the primary right for which enjoyment is being sought.[35] For example, freedom of movement (a civil right) is a necessary precondition for the exercise of other civil rights (such as freedom of assembly), political rights (for instance, the right to vote), economic rights (the right to work, for example) and so forth.[36] The idea of 'interrelatedness' of human rights means that they are brought into a situation of mutual relationship or connectedness. It argues in favour of the permeability between categories of rights.[37] The indivisibility of human rights is comparable to the triune nature of the Holy Trinity in Christian religious doctrine – God the Father, the Son and the Holy Spirit, despite their independent personality and manifestation. It suggests that irrespective of the classification of human rights into civil and political rights, on the one hand, and economic, social and cultural rights, on the other, in practical terms they are one and the same thing. As such, dividing the rights robs them of their potency. The idea of indivisibility, interdependence

31 N Priscila, GI Martins & L Heller 'Human rights' interdependence and indivisibility: A glance over the human rights to water and sanitation' BMC International Health and Human Rights 8 March 2019 10.
32 As above.
33 DJ Whelan 'Untangling the indivisibility, interdependency, and interrelatedness of human rights' (2008) 7 *University of Connecticut, Human Rights Institute Economic Rights Working Papers* 1-30.
34 L Minkler & SE Sweeney 'On the indivisibility and interdependence of basic rights in developing countries' (2011) 33 *Human Rights Quarterly* 351-396.
35 Whelan (n 33) 2.
36 As above.
37 S Craig 'The interdependence and permeability of human rights norms: Towards a partial fusion of the international covenants on human rights' (1989) 27 *Osgoode Hall Law Journal* 769-875.

and interrelatedness of human rights is inherent in the Universal Declaration which had no categorisation of human rights but recognised all rights (that is, civil and political and economic, social and cultural rights) as human rights.

The utilitarian value of this concept is seen when the exploitation of human rights is examined. For instance, the right to life, dignity of the human person and ownership of property fall under what is designated as civil and political rights. On the other hand, education, work, shelter, food and clothing may be regarded as economic, social and cultural rights, which under CFRN 1999 are non-justiciable.[38] The issue arising is how a person who has no education (especially basic formal education), shelter, food and clothing and work, can be said to be enjoying the right to life, dignity of their human person or ownership of property. How can a citizen actively and productively participate in the political life of their society without the requisite education?[39] It is obvious that the existence and implementation of the rights regarded as economic, social and cultural rights is a prerequisite for the optimal enjoyment of civil and political rights.[40] The right to life, for instance, does not merely concern a person being able to breathe, but the quality of life, and even the air the person lives in and breathes, are equally, if not more, important than life itself. It is ironic to assert that a destitute person who has no shelter, clothing, food or work has the right to life or dignity of the human person because the things that would ordinarily dignify them (for instance, shelter, food, clothing, employment, and so forth) are absent.[41]

Applying this to the theme of this article, which is the need to elevate work to the status of the rights in chapter 4 of CFRN,1999, it can safely be argued that central to the enjoyment of the civil and political rights enshrined in chapter 4 of CFRN 1999 is the presence of the 'rights' contained in chapter 2, especially the right to work. In fact, the dignity of the human person of any Nigerian is not so much tied to freedom from inhumane and degrading treatment by the government or any private person as is ordinarily thought.[42] Being

38 K Olaniyan 'Hierarchies of human rights in Nigeria' *Newsverge.com* 20 August 2017, https://newsverge.com/2017/08/20/rethinking-hierarchies-human-rights-nigeria/ (accessed 7 September 2023).

39 MO Imasogie 'Human rights, women rights: So long a journey' 3rd Bowen University Inaugural Lecture (2017) 4.

40 As above.

41 As above.

42 P Ifeoma 'Appraising the justiciability question of chapter II of the 1999 Constitution of Nigeria' *dnllegalandstyle.com* 18 December 2022, https://dnllegalandstyle.com/2021/appraising-the-justiciability-question-of-chapter-ii-of-the-1999-constitution-of-nigeria/ (accessed 6 August 2023).

without decent and gainful work can be adjudged as the worse way of infracting the dignity of the human person as it transcends physical to psychological hurt. Through work, one does not only find fulfilment, but needs are met in a legitimate way, justifying the aphorism that there is dignity in labour. Since it is abundantly clear that work is an indispensable requirement for the enjoyment of other rights and that when it comes to implementation, there cannot be division, and given the high level of unemployment in Nigeria, which has been exacerbated by the outbreak of COVID-19, it is imperative for work or employment to be elevated to the status of the rights in chapter 4 of CFRN 1999.

4 The right to work in selected jurisdictions

In the preceding part, it has been established that there is a robust international legal framework on the right to work and decent work. Some jurisdictions have gone a step further to make the right to work a fundamental right. This part of the article examines selected jurisdictions in which work is regarded as a human right either through legislative action or judicial activism. Belarus and India are selected because India is a Commonwealth nation like Nigeria, and the statutory and judicial practice in these jurisdictions on the issue is advanced and would serve as a good pointer for Nigeria to emulate.

4.1 Belarus

Belarus became a signatory to ICESCR on 9 March 1968 and ratified same on 12 November 1973 as the Belorussian Soviet Socialist Republic.[43] Article 21 of the 1994 Belarus Constitution provides the primary aim of government which is safeguarding the rights and freedoms of citizens of the Republic of Belarus which is the equivalent of section 14 of the 1999 CFRN. The right to work is recognised under both domestic and international legal regimes that the government has ratified. The Constitution of Belarus recognises the right to work in clear and unambiguous terms in sections 41 and 42, but particularly in section 41 of its Constitution which guarantees Belarusians the right to work.[44] Hence, the state is obligated to create conditions that necessitates the employment of its population. In fact, where a person is unable to secure decent employment due to a lack of qualifications, the state has the responsibility to ensure that they

43 Wikipedia 'International Covenant on Economic, Social and Cultural Rights', https://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights (accessed 24 December 2023).
44 Constitution of the Republic of Belarus, 1994.

acquire necessary skills or the enhancement of their qualifications, geared towards securing gainful employment and, while this is being done, to give some social benefit stimulus in accordance with the law.

Section 11 of the Belarus Labour Code contains similar provisions as the one above, laying credence to the resolve of the country to provide or create an enabling environment for access to gainful employment by its citizens. Under this section, the state of Belarus is obligated not only to provide work, but to create conditions necessary for the full employment of its population. Where a person is unemployed owing to conditions beyond their control, it is the government's responsibility to guarantee training in a new specialisation and the upgrading of their qualification having regard to social needs, and unemployment benefits in accordance with the law. Citizens also have the right to the protection of their economic and social interests and to have equal pay for equal work performed irrespective of sex or age.

To fulfil its obligations arising from article 21 (requiring the government to take steps to protect the provisions of the Constitution), sections 41 and 42 above as well as article 6 of ICESCR, which provides that everyone has the right to work, and article 2(1) requiring the state party to take steps to the maximum of its available resources to achieve progressively the full realisation of the rights in this treaty, the Republic of Belarus established a Ministry of Labour and Social Protection in 2003. The Ministry and its regional offices have employment vacancy information on its portal and provision for the uploading of *curricula vitae* by persons seeking employment or a change of jobs. This is done to enhance ease of obtaining employment by bringing both employers and prospective employees together. In its efforts to aid skill acquisition, the government established a national working group on skill acquisition comprising the Ministries of Education, Economy, expert organisations and businesses. Through this effort, since 1999 Belarus has had a commendable decline in its unemployment rate. From 1999 to 2016, the unemployment rate dropped from 12,8 to 5,8 per cent.[45] By 2018 the unemployment rate has dropped to 5,71 per cent.[46] The UN General Assembly, during its twenty-fifth anniversary, acknowledged Belarus's reduction of its poverty rate, particularly

45 Tradingeconomics.com, https://tradingeconomics.com/belarus/unemployment-rate (accessed 24 May 2023).

46 Macrotrends.net 'Belarus unemployment rate 1991-2020', https://www.macrotrends.net/countries/BLR/belarus/unemployment-rate (accessed 24 December 2023).

from 2016, beyond what has been done by many countries in Europe and Asia.[47] Its poverty headcount has also reduced from 60 per cent in 2000 to less than 1 per cent in 2013.[48] This impressive decline in unemployment and poverty headcount in Belarus was made possible by its recognition of work as a human right, which led to the institution of various initiatives to realise same.

4.2 India

India can be regarded as a progressive jurisdiction as far as fundamental human rights are concerned. Under the leadership of Mahatma Gandhi, India was instrumental in the adoption of the Universal Declaration in 1948.[49] India ratified the Universal Declaration, being one of the pioneers in its drafting, as well as ICESCR on 10 April 1979. Just like the Nigerian Constitution, which is made up of fundamental objectives and directive principles of state policy and the fundamental human rights provisions, the Indian Constitution is also dichotomised. Under its dichotomised framework, the right to work is not regarded as a fundamental right. The right to work is contained in article 41, which falls in Part II of the Indian Constitution containing the fundamental objectives. Thus, one can rightly argue that there is no right to work under the Indian Constitution.

Notwithstanding the foregoing, through purposive judicial interpretation of the Constitution, Indian courts have given recognition to the right to work, concretising it as a fundamental right. The courts, while espousing on the province of the right to life as a fundamental human right, have countenanced the fact that the right to work cannot be divorced from the right to life. The decision in *Olga Tellis & Others v Bombay Municipal Corporation & Others*[50] explicates the foregoing position. In this case the petition was filed by the petitioners under article 32 of the Indian Constitution before the Supreme Court, challenging the decision of the respondents to demolish pavement dwellings and slums in which they lived and fended from. The petitioners contended that the destruction amounted to an infraction of their right to livelihood, which is traceable and discoverable from article 21 of the Constitution, which is integrated into their right to life. The petitioners further

47 World Bank.org ‘Poverty reduction in Belarus’ *World Bank.Org* 17 October 2017, https://www.worldbank.org/en/news/feature/2017/10/17/poverty-reduction-in-belarus (accessed 24 December 2023).
48 As above.
49 M Kothari ‘India’s contribution to the Universal Declaration of Human Rights’ *The Wire.in* 20 June 2019, https://thewire.in/rights/indias-important-contributions-to-the-universal-declaration-of-human-rights (accessed 30 November 2023).
50 AIR 1986 SC 18.

argued that their act of encroaching on the pavement was foisted on them by economic exigencies and, thus, calling them trespassers would be diametrically opposed to the intention of the Constitution. In response, the respondents argued that the petitioners were committing a criminal offence by converting a public residence into private use, which is prohibited under section 441 of the Indian Penal Code, tagging it a 'criminal trespass', and urged the Court to dismiss the petition.

The Court approved the contention of the petitioners that the right to life is interwoven with the right to a livelihood, and that the two are inseparable, interrelated and interdependent. Accordingly, the right to life encompasses the right to a livelihood. Hence, the demolition was an infraction of the right to life of the petitioners and, by extension, their right to work (livelihood). The Court further noted that the economic conditions of the people living in the slum was what caused their living in the slums. This was primarily to preserve their work, which was their only means of economic survival and an adequate standard of living. Thus, if these persons had to move out of the slums, they would have lost their jobs. The Court further noted that for anyone to live a meaningful life, there has to be an adequate means of livelihood. What this means is that not regarding access to a livelihood as fundamental is the surest way in which to divest a person of their right to life. This would be to deny the person the opportunity of earning a living (that is, work). The Court noted that the provision of both fundamental objectives and fundamental rights in the Constitution by the drafters was deliberate as the two are complementary, supplementary and not disjunctive. Going by the above, it is trite that since the right to a livelihood is intrinsic in the right to life, anything that is capable of affecting one's life to a livelihood can be challenged just as in the case of the right to life.

The above decision was followed in *State of Uttar Pradesh v Charan Singh.*[51] In this case, the petitioner's employment was arbitrarily terminated and he petitioned the industrial tribunal, which held that the termination was illegal since it was arbitrarily perpetuated, and ordered for the reinstatement of the petitioner. The respondent appealed both the decision of the industrial tribunal and the High Court of Allahabad. On appeal to the Supreme Court, the Court reiterated its position in *Olga Tellis & Others v Bombay Municipal Corporation & Others*[52] and decided that the indiscriminate termination of the employment of the petitioner by the respondent

51 (2011) 3 UPLBEC 2151.
52 AIR 1986 SC 18.

was in violation of his right to a livelihood, which cannot be disintegrated from his right to life. The position taken by the Indian Court is laudable and resonates with the immortal proposition of the Nigerian Supreme Court judge, Kayode Eso JSC, in the case of *Trans Bridge Trading Co Ltd v Survey International Limited*[53] to the effect that judges must espouse the law and expand it within permissible limits so as to meet the prevailing needs of society and not be limited by technicalities.

It is apposite to note that article 6 of ICESCR provides that everyone has the right to work. Article 2(1) provides that each state party must take steps to the maximum of its available resources to progressively achieve the full realisation of the rights in this treaty.[54] While India as a signatory to ICESCR, it has taken legislative progressive steps towards realising the aspiration of article 2(2). Indian courts have done so and are likely to persist therein. For instance, the Employment Assurance Scheme Food for Work Programme (EASFWP), 2004 and the enactment of the National Rural Employment Guarantee Act, 2005 are obvious testaments of India's laudable implementation actions. The EASFWP scheme was originally launched in February 2006 in 200 districts.[55] The scheme is also known as the Mahatma Gandhi National Rural Employment Guarantee Act. It undertakes to provide for every rural household in India 100 days of employment annually on public work projects for those who demand work.[56] This is an unrestricted entitlement with no eligibility requirements.[57] The scheme has availed essential income support to some of India's deprived and most relegated people who mainly are the class of persons that social protection programmes find difficult to reach. As of March 2012, the scheme was being implemented in 593 districts.[58] The scheme requires that people who do not obtain employment under 15 days will be provided with daily wages by the government of India, particularly the state government.[59] The scheme has employed 10,6 million households in the period from 2007 to 2008, which surged to above 53,47 million by the years 2010 to 2011.[60]

53 (1996) 4 NWLR (Part 37) 596-597.
54 http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module10.htm (accessed 12 May 2023).
55 As above.
56 A Pankaj 'Employment guarantee scheme in India social inclusion and poverty reduction through MGNREGS' Expert and Inter-Agency Meeting on Implementation of the Second United Nations Decade for the Eradication of Poverty (2008-2017) Addis Ababa, Ethiopia, 27-29 May 2015, https://www.un.org/esa/socdev/egms/docs/2015/Pankaj.pdf (accessed 11 August 2023).
57 As above.
58 R Jenkins 'A grassroots revolution', https://www.thehindubusinessline.com/opinion/a-grassroots-revolution/article8300813.ece# (accessed 29 October 2023).
59 Ministry of Rural Development, 2008.
60 Jenkins (n 58).

Although the scheme is targeted at India's rural community plagued by high unemployment rates, it is mostly utilised by women who have suffered severe prolonged employment discrimination. In the period from 2012 to 2013, the scheme has helped to drastically reduce unemployment in India, particularly in Punjab where it has been reported that approximately 9 779 007 employment cards were issued and the unemployment rate there has been reduced to 26,76 per cent.[61] This has helped to reduce the high rate of suicide and depression associated with the locality. Generally, the unemployment rate in India has drastically reduced. It has one of the lowest unemployment rates among other developing countries, with an unemployment rate of 2,55 per cent as of 2017. Although the National Rural Employment Guarantee Scheme still lacks a level of implementation and has faced several problems concerning corruption among certain rural community leaders, it is unarguable that significant progress has been made. The impact of this scheme can be easily observed: The UN Development Programme released its 2019 Multidimensional Poverty Index where India had an impressive decline in its poverty rate, from 365,55 million in 2005 to 2006 to lifting 271 million people out of poverty in 2016 to 2017.[62]

From the foregoing analysis, it is clear that Belarus and India, through statutory and judicial activism, have recognised work as a justiciable right and have set up institutional frameworks to implement the same. The Indian courts have engaged in a purposive interpretation of the Indian Constitution, thereby elevating rights that ordinarily are non-justiciable to justiciable rights.

5 Right to work: Charting a new course for Nigeria

From the preceding parts, the point has been underscored that human rights, irrespective of the morphological or legal classification given to the rights – whether civil and political, economic, social and cultural or developmental rights – there is a golden thread that runs through them. This is that they are intrinsically interwoven to the extent that they are inseparable, interrelated, interdependent and indissoluble as far as their optimal exploitation is concerned. Also, it has been underscored that work from an ethno-religious

61 M Azam 'The impact of Indian job guarantee scheme on labour market outcomes: Evidence from a natural experiment', http://ftp.iza.org/dp6548.pdf (accessed 19 November 2023).

62 N McCarthy 'Report: India lifted 271 million people out of poverty in a decade', https://www.google.com/amp/s/www.forbes.com/sites/niallmccarthy/2019/07/12/report-india-lifted-271-million-people-out-of-poverty-in-a-decade-infographic/amp/ (accessed 19 November 2023).

perspective is a bequeath of the Creator to man as the Holy Writ made it abundantly clear that he who does not work, should not eat. The advent of the COVID-19 pandemic led to a widespread loss of jobs and a reduction of employment opportunities in Nigeria.[63] It is apposite to note that, prior to the outbreak of COVID-19, Nigeria was grappling with an unprecedented high rate of unemployment and underemployment with no feasible plan on how to confront same save through ameliorative palliative programmes. The unemployment rate among the youth (that is, the employment of persons between 15 and 24 years of age) in Nigeria was 17,69 per cent.[64] The World Bank reported that a total of 42 per cent of people surveyed in Nigeria lost their jobs during the COVID-10 pandemic, while 79 per cent reported a loss in income.[65]

In May 2019, the Minister of Labour, Employment and Productivity of Nigeria hinted that the federal government estimated an unemployment rate of 33,5 per cent by 2020.[66] In 2019 the World Poverty Clock (WPC) rated Nigeria as the poverty capital of the world with an estimated 89,1 million people out of a population of 196 million living in abject poverty.[67] Due to the debilitating effect of the COVID-19 outbreak, which hampered several businesses with concomitant job losses, this figure is bound to increase. In June 2018, the Brookings Institution in the United States had presaged that Nigeria has unsurprisingly overtaken India as the world's headquarters of poverty by having an estimated 87,9 million people living in chronic poverty against India's 74 million. Since that June, India, with a population of 1,2 billion, has lifted 24 million people out of poverty.[68] The figure presented by the WPC as the sum of Nigerians living in abject poverty does not include those living below poverty line, surviving on $1,9 per day.[69] Statistics from the African Development Bank (AfDB) indicates that 80 per cent of Nigerians live beneath the poverty line.[70] In mid-June 2020, the World Food Programme of the UN warned that COVID-19 may lead to the loss

63 Peacefmonline 'COVID-19 causes "huge job losses" in Nigeria', https://www.peacefmonline.com/pages/business/news/202008/423531.php (accessed 30 August 2023).
64 As above.
65 As above.
66 A Okunola 'How COVID-19 is hitting employment in Nigeria and pushing people into poverty', https://www.globalcitizen.org/en/content/how-covid-19-hitting-employment-nigeria-poverty/ (accessed 30 August 2023).
67 K Panchal 'The poverty capital of the world: Nigeria' (2020) *Borgen Magazine*, https://www.borgenmagazine.com/the-poverty-capital-of-the-world-nigeria/ (accessed 20 June 2023).
68 J Uwah 'World poverty clock report on Nigeria', https://independent.ng/world-poverty-clock-report-on-nigeria/ (accessed 30 August 2023).
69 As above.
70 As above.

of 13 million jobs in Nigeria.[71] This figure paled into insignificance when the former Vice-President Yemi Osinbanjo-led Economic Sustainability Plan Committee, at the peak of the pandemic, informed the nation that the COVID-19 pandemic had caused an astronomic 33,6 per cent rise in unemployment, indicating that 39,4 million people would be unemployed by the end of 2020 if proactive steps are not taken to arrest the situation. As at the third quarter of 2023, the unemployment rate in Nigeria stood at 26,5 per cent.

The sharp drop in the price of oil on the world market has further exacerbated the situation. As from 2021, the unemployment rate in Nigeria is projected at a depressing 32,5 per cent. There is no guarantee that this number will not increase as most businesses are still grappling with the debilitating effects of COVID-19 and more persons are being rendered jobless, while atypical forms of employment, including casualisation of the labour, is on the increase with the youth unemployment rate at 53,4 per cent.[72] All this points to the irresistible conclusion that finding and keeping a job in Nigeria is becoming increasingly difficult as several Nigerian graduates from various tertiary institutions roam the streets seeking employment with little or no hope of securing any. In fact, it can be safely argued that the hope of an average Nigerian job seeker securing decent employment is becoming a mirage except for a few privileged persons in society that have access to the corridors of power or by providential interposition.

Interestingly, COVID-19 has radically led to a redefinition of who an employee is, which is a total shift from the traditional conceptualisation. Traditionally, an employee under labour law[73] was regarded as someone hired to work or render service to an employer, who in turn is remunerated for the work done or service rendered and who is under the control of the employer with regard to the performance of the work or rendering of the service.[74] Over the years, the control element has proved inadequate in identifying who an employee is due to sophistication and modernisation in certain

71 E Omeihe 'COVID-19 and job loss', https://thenationonlineng.net/covid-19-and-job-loss/ (accessed 1 January 2023).

72 Take-Profit.org 'Employment rate and unemployment data in Nigeria', https://take-profit.org/en/statistics/unemployment-rate/nigeria/ (accessed 20 August 2023).

73 See sec 91(1) of the Labour Act, Cap L1 Laws of the Federation of Nigeria (LFN) 2004; sec 73 of the Employees Compensation Act, 2010; sec 53 of the National Industrial Court Act, 2006; sec 48 of the Trade Disputes Act Cap T8 LFN, 2004; sec 52 of the Trade Unions Act, T4 LFN 2004; *National Association of Local Government Officers v Bolton Corporation* (1943) AC 166.

74 DT Eyongndi & SI Ilesanmi 'Employee suspension and the contract of employment under Nigerian labour law: Matters arising' (2019) 10 *Ebonyi State University Law Journal* 107.

employment relationships, thereby making it practically impossible for the employer to determine how and when an employee can perform their work. For instance, a hospital can employ a doctor, but the hospital management cannot give the doctor instructions on how to carry out an operation. In the same way, a law firm can employ a lawyer but cannot determine the style the lawyer will adopt in arguing a case in court in the course of effectuating the employment relationship, as that aspect of the work is left to the absolute discretion of the doctor or lawyer based on their exposure, skill and knowledge over which the employer may have insignificant or no control.[75] This challenge led the courts to develop a series of tests aside the control or superintendence test enunciated by Bramwell LJ in *Yewen v Nokes*[76] and given judicial approval by the Nigerian Court in *Dola v John*[77] before Streatfiel J in identifying who an employee is from an independent contractor.[78]

Other tests that have been propounded due to the inherent inadequacies of the control test are the organisation (integration), multiple and modern reality approach tests.[79] The organisational or integration test countenances the fact that with increased skilled labour and technological advancement, the employer may not be well-placed –even where he provides the tools and implements that the employee uses to work with – to determine or control how the employee actually carries out the work due to its sophistication or required skill or technology deployment, Thus, the employee, under this test, is afforded a reasonable latitude of freedom from the employer's control to determine how best to perform the work or deliver the service to the employer.[80] The fact that the employee enjoys freedom from the direct control of the employer in the performance of their duties does not detract from the fact that the employee is into a contract of service.[81] With regard to this test, the employee is employed as an integral part of an establishment and renders his services as an essential part of the business concern.[82] The employee is employed and works as part and parcel of the organisation, as was stated in *Ready Mixed Concrete (South East)*

75 EA Oji & OD Amucheazi *Employment and labour law in Nigeria* (2015) 19.
76 (1880) 6 QBD 530.
77 (1973) 1NMLR 58. See also *Gould v Minister of National Insurance* (1951) 1 KB 731; *Atedoghu v Alade* (1957) WNLR 185 where the Court held that the 'absence of control and the casual nature of the employment … point to the conclusion that there was no relationship of master servant'.
78 *Gibbs v United Steel Co Ltd* (1957) 1 WLR 668 670.
79 Oji & Amucheazi (n 75) 19-26.
80 *Cassidy v Ministry of Health* (1951) KB 343.
81 CK Agomo *Nigerian employment and labour relations law and practice* (2011) 63-64.
82 *Stevenson, Jordan and Harrison Ltd v Macdonald Evans* (1952) 1 TLR 101.

Ltd v Ministry of Pension.[83] It is an improvement on the control test, which captures experts and professional employees who may not be susceptible to an employer's direct control.[84]

The multiple test, as the name connotes, envisages that more factors have to be considered alongside control and integration. This is due to the fact that in some organisations, deciphering the existence of an employment contract requires the consideration of multiple factors of which control is inclusive. In adopting this test, factors such as the provision of tools for work, instruction on when and where to work, payment of remuneration, grant of leave or holiday, discipline of the person working, payment of redundancy benefits, and so forth, are used as determinants of the subsistence of an employer-employee relationship between the parties. This test was enunciated in *Morren v Swinton and Pendlebury Borough Council.*[85] The modern reality test is hinged on the *dicta* of McKenna J in *Ready Mixed Concrete Ltd v Minister of Pensions and National Insurance*[86] where McKenna J enumerated the three conditions which, if present, are conclusive proof that an employer-employee relationship is in existence. These conditions include the payment of wages, an express or implied agreement to be under the control (total or qualified) of another while working, and the absence of any contrary provision that the contract is one of service.[87] Further fundamentals of this test were raised by Coker J in *Market Investigations Ltd v Minister of Social Society.*[88] The SCN in *Shena Security Company Ltd v Afro Pak (Nig) Ltd & 2 Ors*,[89] while countenancing the other test, adopted complementarily, the modern reality test in determining whether a person employed in a casual triangular employment relationship was an employee, and came to the conclusion that, for all intents and purposes, the relationship was one of contract of service.[90] In adopting this test, the Court scrutinised the affiliation between the parties in relation to the existing employment circumstances irrespective of how the parties may have described it.

The issue is, as plausible as these tests have been and over the years have acquired notoriety, automation of operation and the use of artificial intelligence (AI), the COVID-19 pandemic has introduced a novel phenomenon into employment relationship,

83 (1960) 2 QB 497.
84 *Westall Richardson Ltd v Roulson* (1954) 2 All ER 448.
85 (1965) 2 ALL ER 349.
86 (1960) 2 QB 497.
87 Oji & Amucheazi (n 75) 24.
88 (1968)3 All ER 732.
89 [2008] 18 NWLR (Pt 1118) 82.
90 Oji & Amucheazi (n 75) 25-26.

making the answer to the question of who an employee is more complicated than it has been before. The advent of COVID-19 and the non-pharmaceutical measures (especially lockdown) imposed by government saw the rise in machines performing work or delivering services. The issue arises as to whether these robots are deployed by employers as a replacement for human employees. Certainly, such machines will qualify as employees, and where a third party suffers damage due to its act or omission, the employer will be vicariously liable under appropriate circumstances.

6 Conclusion and recommendations

While there are a plethora of international and regional human rights legal frameworks recognising work as a human right, CFRN 1999 does not recognise it as such but as a mere political aspiration which should guide the formulation and implementation of government policies. This is because the right to work falls under chapter 2 of CFRN 1999, which is not justiciable. This situation persists despite the fact that the 'rights' enumerated in chapter 2 are necessary for the optimal enjoyment of those contained under chapter 4 because all rights, irrespective of classification, are universal, interdependent, interrelated and indivisible. Work is a legitimate means through which human needs are met, and the sanity of society is maintained. This is because a society of an army of unemployed persons is characterised by various evils. Nigeria's underemployment and unemployment rates continue to rise, which is further exacerbated by the outbreak of COVID-19 which has led to enormous job losses with no tangible government blue print to address the situation. The employment practice in Nigeria is tilted towards the unjustified favour of the employers culminating in a high rate of insecurity of employment, especially in the private sector master-servant employment. Several exploitative employment patterns have emerged, such as triangular employment[91] and casualisation of employment being used by employers to the chagrin of employees. Thus, it has become expedient for work to be elevated to the level of a human right to stem the evil tides blowing through its non-recognition.

91 Triangular employment, also known as disguised employment, is a situation where a contractor employer hires an employee for the use or service of an end-user employer wherein the contractor employer is paid from the remuneration of the employee and together with the end-user employer, exercises control and management over the employee. This employment arrangement typically mystifies who the employer is as between the contractor employer and end-user employer. In this arrangement, there are three parties as against the traditional two parties to an employment contract. It is an evolving trend that is gaining ground in Nigeria.

Countries such as Belarus and India have taken commendable legislative and judicial proactive steps in approving work as a human right, and have set in place various statutory and institutional frameworks to address unemployment, with laudable outcomes. The unemployment rate and poverty levels in these jurisdictions have positively declined to the admiration of international observers. This feat was made possible through the recognition of work as a human right.

Sequel to the aforementioned outcomes, it is recommended that CFRN 1999 should be amendable and the right to work should be introduced under chapter 4 in the same way as in the Belarus Constitution. Doing this will place both a moral and legal obligation on the government to initiate programmes to tackle the almost convoluted unemployment that has plagued Nigeria for decades.

The government should also take proactive steps, after the example of India and Belarus, to introduce employment programmes targeted at the unemployed, especially youths and women, to help reduce or eradicate unemployment among these vulnerable groups. The Ministry of Labour, Employment and Productivity, which is responsible for implementing job creation programmes, should be used for implementing such programmes.

Since 2010, after the enhancement of its jurisdiction by the 1999 CFRN (Third Alteration) Act 2010, the National Industrial Court of Nigeria has already developed an employees' protectionist jurisprudence which has helped to counterbalance the unequal power between capital and labour. Until this aforementioned stance (that is, employee protectionism) of the National Industrial Court of Nigeria is enacted into law by the legislature, thereby giving it statutory flavour, as in the Indian courts, the National Industrial Court of Nigeria should judicially legislate work as a fundamental right, pursuant to the notion of indivisibility, interdependence and interrelatedness of fundamental rights.