

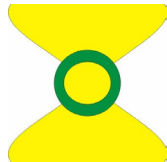
**A GUIDE TO
WORKERS' RIGHTS
IN NIGERIA**

REUTERS / Temilade Adelaja





A GUIDE TO
WORKERS' RIGHTS
IN NIGERIA





ABOUT

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Children and Young People Living for Peace (CYPLP) is a non-profit organisation that is youth-focused and co-designs, co-creates and co-executes innovative homegrown solutions to local challenges driven by locales in vulnerable communities. We work to address inequitable access to justice and promote human rights through legal aid for the most vulnerable.

THE INTERNATIONAL SOCIETY FOR PEACE AND SAFETY

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Original Publication: July 31, 2023

Updated: December 14, 2023







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INTRODUCTION

Children and Young People Living for Peace (CYPLP) and the International Society for Peace and Safety (ISOPS) jointly asked pro bono lawyers to prepare a summary of: (1) the legal framework governing workers' rights in Nigeria, including national, regional and international laws, as applicable; (2) the specific rights that apply to different categories of workers; (3) employer penalties for labour-related misconduct; (4) the complaint and other enforcement mechanisms available under the applicable laws; (5) compensation and entitlements for individuals whose rights have been violated; and (6) the legal responsibilities of employers to prevent and address labour rights violations.

In preparing this research guide, CYPLP and ISOPS educated the authors about the socio-economic context underpinning workers' rights in Nigeria and their goals for the research. Workers in Nigeria experience high rates of poverty, unemployment, and underemployment. Employers routinely decline to provide contracts to their workers or provide contracts that classify workers as contract workers rather than permanent employees to avoid financial and other obligations that attach to formal employment relationships. Many workers are unaware of their rights and entitlements under Nigerian law, regional and international human rights laws, and international labour laws. Even when employees are aware of their rights, they may decide not to claim them for fear of losing work and falling deeper into poverty. Employers generally have the upper-hand and set the terms of engagement, even when such terms do not comport with the law.

CYPLP and ISOPS believe that it is incumbent on the government to enforce existing laws and, where necessary, pass new laws to ensure the basic rights of workers in Nigeria. At minimum, the government should ensure that employers declare workers, give workers contracts, and follow all applicable laws including those relating to nondiscrimination and workplace health and safety. The government should take action to provide informal sector workers and people who are unemployed access to public assistance programs and the ability to participate in retirement and health insurance schemes. CYPLP and ISOPS hope this guide helps educate workers about their rights and empowers them to engage in positive advocacy with business and government leaders to achieve the full realization of their rights.



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1. LEGAL FRAMEWORK GOVERNING WORKERS' RIGHTS IN NIGERIA

Workers' rights in Nigeria are governed by the Constitution of the Federal Republic of Nigeria 1999 (the "Constitution"), national labour laws, human rights laws (both international and regional), and international labour laws. States and localities may also have laws governing labour rights within their jurisdictions. An analysis of state and local labour laws is beyond the scope of this research guide; however, the application of these laws should be considered when analyzing a possible labour violation. This review also does not address issues of child labour, forced labour, or labour trafficking laws.

Various labour laws apply to different categories of labourers. The Constitution, international and regional human rights laws, and international labour laws generally have broad application and do not exclude informal or casual workers. For example, the prohibition against wage discrimination based on an employee's sex is enshrined in these laws and applies equally to permanent workers and casual workers.

In contrast, most Nigerian statutes apply more narrowly to "employees" or "workers" as defined in the particular statute. Statutory definitions are sometimes ambiguous regarding what type of labourer the statute applies to. Hiring parties that seek to avoid obligations toward hired parties may seek to casualize workers by failing to provide them a written contract (even after many months of work), terminating and then rehiring workers to avoid the appearance of permanence, or engaging in other tactics.¹ Nigerian courts have demonstrated a willingness to look beyond how the hiring party characterizes the work relationship and to consider the economic reality—*i.e.*, factors that tend to demonstrate whether or not a formal employment relationship actually exists—in adjudicating cases involving workers' rights.² Some common law factors that courts have considered include length of the work relationship, worker expectations, extent to which services rendered are an integral part of the hiring party's business, whether the hiring party is responsible for the costs of the operation (*e.g.*, the hiring party provides equipment and supplies), mutuality of obligation (*i.e.*, hiring party is obliged to provide work and hired party is obliged to accept work), whether the hiring party has the right to assign additional projects to the hired party, and the method of payment (*e.g.*, wages versus commission).

It has been reported that the Nigerian legislature recently considered a bill to amend the Labour Act³ to prohibit and criminalize the casualization of workers and mandate employers to regularize employees after six months of employment. We understand that the bill was not adopted.⁴ This may be an area that CYPLP and ISOPS could consider directing advocacy efforts.

¹ For a thorough discussion of the legal vulnerabilities of casual workers under Nigerian law, see *Chineze Sophia Ibekwe, Legal Implications of Employment Casualisation: A Cross-National Comparison*, Nnamdi Azikiwe Univ. J. of Int'l L. & Juris (2016).

² See, *e.g.*, *Owena Mass Transp. Co. Ltd. v. Lucky Okonogbo* (2018), LPELR-45221 (C.A.) (noting that "legally, a casual employee is seen as a worker engaged for a period of less than six months and who is paid at the end of each day," typically someone engaged in "piece work, short-term construction work" or seasonal work," but that "sadly, the trend now is that casual workers work for many years without promotion and necessary entitlements, and sometimes they do what normal employees should do."). Our ability to conduct an extensive review of case law was inhibited by the lack of freely accessible electronic Nigerian case law databases.

³ Undefined terms are defined below.

⁴ See Leke Baiyewu, *Reps to Criminalise Workers' Casualisation*, Punch (Feb. 18, 2020), <https://punchng.com/reps-to-criminalise-workers-casualisation>.



NATIONAL LAWS

Listed below are key sources of Nigerian labour law, together with a brief summary of each law and its application.

- ▶ **The Constitution.** Section 17 of the [Constitution](#), as amended, requires “equal pay for equal work” and prohibits discrimination in employment “on account of sex, or on any other ground.” Section 17 of the Constitution also requires “conditions of work” that are “just and humane.” Section 40 of the Constitution guarantees the right to freedom of association to all citizens in Nigeria. The Constitution applies to all workers without distinction. Arguably, Section 17’s prohibition against employment discrimination “on any other ground” would prohibit discrimination against workers based on arbitrary employment classifications.
- ▶ **The Labour Act.** [The Labour Act](#), Chapter L1, Laws of the Federation of Nigeria, 1990 (“Labour Act”), is the principal law governing labour relations and entitlements for “workers” in Nigeria. Section 91 of the Labour Act defines “workers” to include “any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written.” Section 91 of the Labour Act also excludes from most provisions of the law certain categories of labourers including, among others, “persons exercising administrative, executive, technical or professional functions as public officers or otherwise” and an employer’s family members. This section essentially covers cleaners, labourers, typists, receptionists (depending on the nature of the organization) but excludes persons rendering administrative, executive, technical or professional functions like engineers, IT specialists, doctors, nurses, lawyers, bankers, managers, and lecturers. The relationship between an employer and an employee who is not a “worker” is primarily regulated by the relevant contract of employment and the principles of Nigerian case law. “Casual worker” is not defined in the Labour Act.
- ▶ **Trade Unions Act.** [The Trade Unions Act](#), Cap. T14, Laws of the Federation of Nigeria, 2004 (“Trade Unions Act”) as amended, enshrines the right of every worker to form a trade union or join an already existing trade union. The Trade Unions Act applies to “any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers.” The statute applies to all workers without distinction based on employment classification.
- ▶ **National Minimum Wage Act.** [The National Minimum Wage Act, 2019](#) (“National Minimum Wage Act”) requires every employer having 25 or more employees to pay a minimum wage of no less than 30,000.00 per month to every “worker.” The law excludes from the national minimum wage (i) workers employed on a part-time basis, (ii) workers employed on a “commission or piece-rate” basis, (iii) seasonal workers such as agricultural workers, and (iv) persons employed in a vessel or aircraft (to which other laws apply). The law therefore does not cover casual employees whose employment is of a part-time or temporary nature.
- ▶ **Employee Compensation Act.** [The Employee Compensation Act, 2010](#) (“Employee Compensation Act”) applies to all public and private sector employers. It establishes a compensation scheme for employees who suffer work-related injuries or death. It requires employers to deduct one percent from the monthly salary of its employees to finance the Employee Compensation Fund, which makes payments to employees and their families in the event of death, injury, disease, or disability of the employee arising in course of employment. The law includes formulas for determining the amount of remuneration paid to an employee or employee’s family in the above-described circumstances. The statute defines “employee” to mean “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.” The Employee Compensation Act is one of the few Nigerian labour laws that expressly applies to all categories of workers.

- ▶ **Pension Reform Act.** [The Pension Reform Act, 2014](#) (“Pension Reform Act”) governs the establishment, administration, and payment of retirement benefits to employees. Pension contributions are mandatory for private sector employers having 15 or more employees. Employees of organizations with fewer than three employees, and self-employed persons, are entitled to voluntarily participate in pension contribution schemes. Section 4(5) of the Pension Reform Act imposes an obligation on employers to obtain life insurance to cover all their employees. The insurance must have a value that is at least three times the total annual emoluments of the employee. The statute defines “employer” as a business that employs three or more employees, and “employee” as “any person employed in . . . a private company or organization or firm.” The statute neither expressly includes nor excludes temporary and casual workers.
- ▶ **National Health Insurance Authority Act.** [The National Health Insurance Authority Act, 2021](#) (“National Health Insurance Authority Act”) requires employers with five or more employees to make contributions to and participate in Health Insurance Schemes regulated by the government. Contributions made by employers and employees are deductible from income tax. The statute defines “employee” as person who is ordinarily resident in Nigeria and is employed in the public service or private service or an apprenticeship with an employer whether the contract is expressed or implied, oral or in writing. The statute defines “employer” as “an employer with five or more employees . . . with whom an employee has entered into a contract of service or apprenticeship and who is responsible for the payment of the wages or salaries of the employee.” The statute neither expressly includes nor excludes temporary and casual workers.
- ▶ **National Industrial Court Act.** The [National Industrial Court Act, 2006](#) establishes the National Industrial Court as the court of exclusive jurisdiction in civil cases relating to labour matters in Nigeria.
- ▶ **Anti-Discrimination Act.** [The HIV and AIDS \(Anti-Discrimination\) Act, 2014](#) (the “Anti-Discrimination Act”) prohibits employers from discriminating directly or indirectly against workers based on their HIV status or HIV-related illness. The law also prohibits any employer, individual or organization from requiring a person to take an HIV test as a precondition for employment or access to services. The law requires employers to make reasonable accommodations to support people living with or affected by HIV. The statute defines “employee” as “any person, other than an independent contractor who . . . works for another person . . . and who receives, or is entitled to receive any remuneration; and has entered into or works under a contract (whether express, implied, oral or written) with an employer, whether the contract is for manual labour, clerical work or for the discharge of administrative, executive, technical or professional functions . . . and whether such contract is a contract of service or a contract personally to execute any work or labour.” The statute appears broad enough to cover casual workers, excluding independent contractors.
- ▶ **Discrimination Against Persons with Disabilities Act.** [The Discrimination Against Persons with Disabilities \(Prohibition\) Act, 2018](#) provides that persons with disabilities have the right to work on an equal basis with others and prohibits employers from discriminating against workers on the basis of disability. Section 28 of the law imposes monetary penalties on employers who engage in such discrimination.
- ▶ **Industrial Training Fund Act.** [The Industrial Training Fund Act of 2004](#), as [amended in 2011](#), requires employers to provide training for Nigerian staff to improve their job-related skills. The law also requires employers having five or more employees, or revenue exceeding 50 million each year, to contribute one percent of the employer’s total annual payroll to the fund. The statute defines “employees” as “all persons whether or not they are Nigerian, employed in any establishment in return for a salary, wages or other consideration, and whether employed full-time or part-time... includ[ing] temporary employees who work

for periods of not less than three months in a year.” The law therefore covers casual workers who work at least three months in a year.

► **Industry-specific laws and regulations.** Various laws and regulations establish occupational health, safety, licensing, and regulatory oversight standards for specific Nigerian industries. These laws are discussed in more detail later in this guide. Some of these laws and regulations are:

- [The Factories Act](#)
- [The Private Guard Companies Act](#) and [Private Guard Companies Regulations](#)
- [The Nigerian Minerals and Mining Act](#) and [Minerals Oils \(Safety\) Regulations](#)



INTERNATIONAL HUMAN RIGHTS LAWS

International human rights legal standards that bind the Government of Nigeria (or the “Government”) can be categorized into “hard law” and “soft law.” Hard law includes international and regional multilateral human rights treaties ratified by the Government. The basic definition of a multilateral treaty is a legally binding agreement entered into by many countries. Human rights treaties can be called, among other designations, “conventions,” “covenants,” or “charters.” States show their approval of a treaty by signing it. However, the treaty does not become legally binding until the state ratifies or accedes to it, or submits a formal written agreement indicating its intent to be bound by the treaty.⁵ From the moment of ratification, a state is duty-bound to implement a treaty, and cannot use its internal laws as an excuse for failing to perform its obligations under the treaty.⁶ Pursuant to Section 12 of the Constitution, in Nigeria, international human rights treaties are non-self-executing, meaning that the legislature must enact a treaty into national law in order to give a treaty full effect. The legislature has not uniformly domesticated international human rights laws into the national legal regime.

Soft law is comprised of declarations collectively adopted by world leaders at forums such as U.N. world summit conferences and meetings of the U.N. General Assembly.⁷ Strictly speaking, soft law declarations are not legally binding. However, they represent broadly recognized standards that carry great normative force and over time can crystallize into legally binding customary law or become codified by treaty law.⁸ Soft law also includes the jurisprudence of human rights treaty committees.⁹ Each human rights treaty creates a body of experts, known as a treaty committee, to facilitate the treaty’s implementation. Governments are required to submit periodic reports to each treaty committee on steps taken and challenges encountered in realizing the treaty’s human rights provisions.¹⁰ After a treaty committee reviews a government’s progress report, it issues recommendations, called “Concluding Observations,” to guide the country in further improving its human rights situation. These Concluding

⁵ See generally *Definitions*, United Nations Treaty Collection, http://treaties.un.org/Pages/Overview.aspx?path=overview/definition/page1_en.xml (last visited Aug. 28, 2023).

⁶ Vienna Convention on the Law of Treaties, arts. 26 & 27, May 23, 1969, 1155 U.N.T.S. 331.

⁷ Guide to International Human Rights Practice 7 (Hurst Hannum, ed., 4th ed. 2004) [hereinafter Guide to International Human Rights Practice].

⁸ *Id.*

⁹ *Id.*

¹⁰ See, e.g., International Covenant on Economic, Social and Cultural Rights, art. 16, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR] (“States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.”). The wording is substantively similar to the equivalent provisions of other international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, art. 9, Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter CERD]; International Covenant on Civil and Political Rights, art. 40, Dec. 16, 1966, 999 U.N.T.S. 172 [hereinafter ICCPR]; Convention on the Elimination of All Forms of Discrimination Against Women, art. 18, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]; Convention on the Rights of the Child, art. 44, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]. Under these treaties, progress reports must be submitted every four years.

Observations, coupled with “General Comments” occasionally made by treaty committees to give additional content to human rights standards, are considered soft law and function as authoritative guidance on the interpretation of human rights treaties.¹¹ Some treaty committees are empowered to receive individual complaints. Nigeria, by adopting the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, allows individuals to lodge complaints against the Government with the Committee on the Elimination of Discrimination Against Women.¹² Decisions by treaty committees in response to individual complaints also contribute to the development of international human rights law jurisprudence.¹³

The foundational document of modern human rights law is the Universal Declaration of Human Rights (UDHR), a soft law declaration adopted by the U.N. General Assembly in 1948, which has been accepted by all U.N. Member States.¹⁴ The 30 articles of the UDHR span a wide range of civil, political, economic, social and cultural rights, and prohibit discrimination based on any protected status such as sex, race, ethnicity, nationality, or political opinion. The UDHR gave birth to nine legally binding treaties that form the “core” of human rights hard law, all of which have been adopted by the Government of Nigeria. They are: (i) International Covenant for Civil and Political Rights (ICCPR), acceded to in 1991; (ii) International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified in 1993; (iii) Convention on the Elimination of All Forms of Racial Discrimination (CERD), acceded to in 1967; (iv) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, acceded to in 2009;¹⁵ (v) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified in 1985;¹⁶ (vi) Convention on the Rights of the Child (CRC), ratified in 1991;¹⁷ (vii) International Convention on Protection of All Migrant Workers and Members of Their Families acceded to in 2009;¹⁸ (viii) Convention on the Rights of Persons with Disabilities, ratified in 2010;¹⁹ and (ix) International Convention for the Protection of All Persons from Enforced Disappearance, acceded to in 2009.²⁰

The UDHR, ICCPR, and ICESCR comprise the “International Bill of Rights,” which is the cornerstone of international human rights law.²¹ In summary, the ICCPR protects the rights of physical integrity; procedural fairness; equal protection; and freedoms of belief, speech, association, assembly, information, and political participation.²² The ICESCR protects rights necessary to live in dignity and freedom from want, such as the right to an adequate standard of living, including adequate food, clothing, housing, and the continuous improvement of one’s living conditions; the right to work and to just conditions of work; the right to social security including social insurance; the right to the highest attainable standard of physical and mental health; the right to improvement of all aspects of the environment and industrial hygiene; and the right to education, including compulsory free basic education.²³

At a high level, the international human rights regime protects the following labour-related rights:

¹¹ Guide to International Human Rights Practice at 7.

¹² *Id.*

¹³ *Id.*

¹⁴ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

¹⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT].

¹⁶ CEDAW.

¹⁷ CRC.

¹⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Dec. 18, 1990, 2220 U.N.T.S. 3.

¹⁹ Convention on the Rights of Persons with Disabilities, Dec. 12, 2006, 2515 U.N.T.S. 3.

²⁰ International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 23, 2010, 2716 U.N.T.S. 3.

²¹ Off. of the High Comm’r for Hum. Rts., International Human Rights Law, United Nations, <http://www2.ohchr.org/english/law> (last visited Aug. 28, 2023).

²² *See generally* ICCPR.

²³ *See generally* ICESCR.

- Freedom from discrimination in the workplace on any basis.
- The right to have a fair opportunity to gain employment.
- The right to join and freely participate in a trade union.
- The right to be treated fairly and reasonably by your employer, including the right to a salary that allows a person's family to live with dignity.
- The right to be free from forced or coerced labour.
- The abolition of forced child labour and child exploitation that interferes with children's education, health, or development.
- The right to a safe workplace.

Specific labour-related human rights protections are reproduced below:

▶ **UDHR ARTICLE 23:**

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
1. Everyone, without any discrimination, has the right to equal pay for equal work.
1. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
1. Everyone has the right to form and to join trade unions for the protection of his interests.

▶ **ICCPR ARTICLE 8.3:**

- (a) No one shall be required to perform forced or compulsory labour[.]

▶ **ICCPR ARTICLE 22:**

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

▶ **ICESCR ARTICLE 6:**

1. The States Parties to the [ICESCR] recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
1. The steps to be taken by a State Party to the [ICESCR] to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

▶ **ICESCR ARTICLE 7:**

The States Parties to the [ICESCR] recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a)** Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b)** Safe and healthy working conditions;
- (c)** Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d)** Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

▶ **ICESCR ARTICLE 8:**

1. The States Parties to the [ICESCR] undertake to ensure:

- (a)** The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (b)** The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade union organizations;
- (c)** The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (d)** The right to strike, provided that it is exercised in conformity with the laws of the particular country.

▶ **ICESCR ARTICLE 9:**

The States Parties to the [ICESCR] recognize the right of everyone to social security, including social insurance.

▶ **ICESCR ARTICLE 10:**

The States Parties to the [ICESCR] recognize that:

[...]

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
1. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

▶ **CERD ARTICLE 5(E):**

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration[.]

▶ **CEDAW ARTICLE 11:**

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
 - (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
 - (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
 - (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; and
 - (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

► **CRC ARTICLE 32:**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age . . . for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Nature of States' Obligations under Human Rights Law. Human rights treaties create definite legal obligations on the part of the government. Some obligations apply to the realization of all human rights (civil, political, economic, social and cultural). Other obligations apply specifically to the realization of economic, social, and cultural rights. General Comments made by treaty committees give content to the practical nature of state obligations.²⁴ Understanding the legal aspects of states' duties is necessary to determine whether these duties have been violated by the state or private actors under the state's control. The following section summarizes some of the most important features of the government's legal obligations under human rights law.

All human rights involve four specific duties: the duty to respect, the duty to protect, the duty to promote, and the duty to fulfill.²⁵

²⁴ The work of the African Commission on Human and Peoples' Rights is guided by the jurisprudence of international human rights treaty committees. See Afr. Comm'n on Hum. & Peoples' Rts., Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights 6–7 (2010), available at https://archives.au.int/bitstream/handle/123456789/2063/Nairobi%20Reporting%20Guidelines%20on%20ECOSOC_E.pdf?sequence=1&isAllowed=y [hereinafter Implementation of ESCR].

²⁵ Implementation of ESCR, ¶¶ 4–12.

Duty to Respect. The government may not interfere directly or indirectly with exercise of a right.²⁶ For example, the government may not unduly restrict the ability of the media to impart information to the public in contravention of ICCPR Article 25. The government may not set a minimum wage lower than the level that a worker needs to meet their own and their family's basic needs.

Duty to Protect. The government must prevent third parties, such as business entities, from violating human rights.²⁷ The government fulfills its duty to protect primarily through effective regulation of third-party activities, and the effective provision of remedies for human rights violations. The obligation may be summarized as the duty to “prevent, investigate, punish and redress” violations by third parties.²⁸ For example, the government must prevent private businesses from discriminating against women in hiring practices, which would violate ICESCR Article 7²⁹ and CEDAW Article 11.³⁰ To provide two other illustrations, the government must prevent mining companies from illegally dumping waste into public waters in violation of the right to water under ICESCR Article 12³¹ and must ensure that employers comply with their minimum wage obligations under ICESCR Article 7 and national minimum wage laws.

Duty to Fulfill. The government must take necessary measures—for example through its laws, administrative agencies, courts and budget policies—to progressively achieve the full realization of all human rights.³² The government must facilitate access for the enjoyment of rights through providing an enabling environment for those rights, as well as provide rights directly to those who for reasons beyond their willingness or capacity cannot realize the rights for themselves.³³ Under this obligation, for instance, the government must adopt a healthcare policy and devote sufficient resources to providing basic healthcare for all, as required by ICESCR Article 12.³⁴

Duty Not to Discriminate. All core human rights treaties include a prohibition against discrimination in relation to human rights.³⁵ For example, ICESCR Article 2(2) obliges States Parties to guarantee each individual's enjoyment of economic, social and cultural rights (“ESC rights”) “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”³⁶ The list of prohibited grounds of discrimination is not exhaustive; the U.N. Committee on Economic, Social and Cultural Rights (“Committee on ESCR”) has stated that distinctions based on any other status such as disability, health status, or geographical origin, which impair the enjoyment of ESC rights, would require strict scrutiny under the treaty.³⁷ To comply with its duty not to discriminate, the government must desist from discriminatory behavior, prevent third parties from discriminatory practices, and ensure judicial and other types of recourse.³⁸ Implicit in this duty is

26 See Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights, para. 6 (22-26 January 1997), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G00/447/04/PDF/G0044704.pdf?OpenElement> [hereinafter Maastricht Guidelines].

27 *Id.*

28 See Off. of the High Comm'r for Hum. Rts., *Guiding Principles on Business and Human Rights*, United Nations, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (last visited Aug. 28, 2023).

29 ICESCR, art. 7. Article 7(c) enshrines the right to “equal opportunity for everyone to be promoted in his [or her] employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.” *Id.*

30 CEDAW, art. 11. Under Article 11, “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women.”

31 See ICESCR, art. 12. Article 12(2)(b) requires States Parties to take steps to improve “all aspects of environmental and industrial hygiene.” *Id.*

32 Maastricht Guidelines at 6.

33 Implementation of ESCR, ¶¶ 10-12.

34 See ICESCR, art. 12. Article 12(1) mandates that States Parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. *Id.*

35 Implementation of ESCR, ¶ 19.

36 ICESCR, art. 2(2).

37 See United Nations Comm. on Econ., Soc. & Cultural Rts., General Comment 20, Non-discrimination in Economic, Social and Cultural Rights, ¶¶ 27-35, U.N. Doc. E/C.12/GC/20 (Jul. 2, 2009).

38 See generally Maastricht Guidelines, especially paragraphs 18 and 22.

the requirement that the government take positive measures to remediate past discrimination against disadvantaged groups. For example, Article 4(1) of CEDAW endorses “temporary special measures aimed at accelerating de facto equality between men and women,”³⁹ while Articles 1(d) and 9 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the “Maputo Protocol”), discussed below, requires positive measures to remediate past discrimination against women.⁴⁰

The above-mentioned duties include obligations of conduct and obligations of result.⁴¹ The obligation of conduct “requires action reasonably calculated to realize the enjoyment of a particular right.” Reasonably calculated actions may include the adoption and implementation of human rights-relevant legislation, policies, and plans of action.⁴² The obligation of result “requires states to achieve specific targets to satisfy a detailed substantive standard,” the substantive standard being supplied by human rights legal instruments and authoritative interpretations such as General Comments, world summit declarations, and other comparable hard and soft law standards.⁴³ In sum, the government is required to adopt and implement plans to achieve various human rights standards, and to ensure through monitoring that these plans measure up to targets identified in human rights law.

ICESCR Article 2(1) provides that “[e]ach State Party to the [ICESCR] undertakes to take steps individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”⁴⁴ The ICESCR’s notion of progressive realization is an acknowledgement by the Covenant’s framers that “full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time.”⁴⁵ Nonetheless, within the context of progressive realization, states have a number of immediate, overlapping duties, which are summarized below.

Duty to Take Steps. According to the Committee on ESCR, States Parties must take “deliberate, concrete and targeted” steps to fulfill their human rights obligations.⁴⁶ Under this obligation, a change of circumstances alone (such as an economic downturn) does not justify the state’s failure to protect a given right. The government must show that it could not have reasonably prevented the negative impact on the right.⁴⁷ Deliberately retrogressive measures, or backward steps, “require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”⁴⁸

Duty to Maximize Available Resources. Related to the duty to take steps is the government’s duty to maximize its resources to fulfill its economic and social rights obligations.⁴⁹ A country cannot use resource scarcity to justify non-fulfillment of at least minimum subsistence rights for everyone.⁵⁰ As

39 CEDAW, art. 4(1).

40 Org. of African Unity, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, arts. 1(d), 9, July 11, 2003, OAU Doc. CAB/LEG/66.6 [hereinafter Maputo Protocol].

41 Maastricht Guidelines, ¶ 7.

42 *Id.*

43 *Id.*

44 ICESCR, art. 2(1).

45 Off. of the High Comm’r for Hum. Rts., United Nations Committee on Economic, Social and Cultural Rights, General Comment 3: The Nature of States Parties Obligations ¶ 9, Dec. 14, 1990, 14 Dec. 1990) [hereinafter Committee on ESCR General Comment 3].

46 *Id.* ¶ 2.

47 *Id.* ¶¶ 11–12.

48 *Id.* ¶ 9.

49 *See* Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, 9 Hum. Rts. Q. 122, 126 (1987) [hereinafter Limburg Principles].

50 *Id.*



part of this duty, the government must collect sufficient revenue and expend sufficient resources to secure ESC rights. Furthermore, “available resources” refers “both to resources within a state and those available from the international community through international cooperation and assistance.”⁵¹

Duty to Fulfill Minimum Essential Levels of Each Economic and Social Right. Each state has “minimum core obligation” to ensure the enjoyment of minimum core levels of each ESC right, defined as the minimum essential level of each right.⁵² This duty exists regardless of the government’s available resources. According to the Committee on ESCR, “a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant.”⁵³ Other General Comments define the minimum core level of each right, which the government is duty-bound to provide.

Duty to Prioritize the Most Vulnerable. The government has the duty to prioritize the most vulnerable members of society in the fulfillment of ESC rights. Under this duty, the government should actively reach out to marginalized and excluded people, who face the greatest barriers in realizing their rights, and they should be prioritized when allocating resources. The Committee on ESCR has stated, “even in times of severe resources constraints . . . vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted [programs].”⁵⁴

Duty to Monitor the Realization of ESC Rights: The obligation to “monitor the extent of realization, or more especially of the non-realization, of economic, social and cultural rights” is an immediate obligation that exists regardless of the government’s resource scarcity.⁵⁵ Indeed, the progressive nature of ESC rights makes it critical for states to design and adequately finance methodologically sound tools to monitor the realization of ESC rights at regular, predictable intervals.

⁵¹ *Id.* at 126–27.

⁵² Committee on ESCR General Comment 3 ¶10.

⁵³ *Id.*

⁵⁴ Committee on ESCR General Comment 3 ¶ 12.

⁵⁵ Committee on ESCR General Comment 3 ¶ 11.



The Committee on ESCR provides additional content to the human right to work in its [General Comment 18 on the Right to Work](#).⁵⁶ With regard to workers in the informal economy, the Committee specifically notes:

High unemployment and the lack of secure employment are causes that induce workers to seek employment in the informal sector of the economy. States Parties must take the requisite measures, legislative or otherwise, to reduce to the fullest extent possible the number of workers outside the formal economy, workers who as a result of that situation have no protection. These measures would compel employers to respect labour legislation and declare their employees, thus enabling the latter to enjoy all the rights of workers, in particular those provided for in articles 6, 7 and 8 of the [ICESCR]. These measures must reflect the fact that people living in an informal economy do so for the most part because of the need to survive, rather than as a matter of choice. Moreover, domestic and agricultural work must be properly regulated by national legislation so that domestic and agricultural workers enjoy the same level of protection as other workers.⁵⁷

The Committee describes the minimum core obligations of the state with respect to protecting the right to work as (1) ensuring the right of access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity; (2) avoiding any measure that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups or in weakening mechanisms for the protection of such individuals and groups; and (c) adopting and implementing a national employment strategy and plan of action based on and addressing the concerns of all workers on the basis of a participatory and transparent process that includes employers' and workers' organizations.⁵⁸ Such an employment strategy and plan of action should target disadvantaged and marginalized individuals and groups in particular and include indicators and benchmarks by which progress in relation to the right to work can be measured and periodically reviewed.

⁵⁶ U.N. Econ. & Soc. Council, Comm. On Econ., Soc. & Cultural Rts., General Comment No. 18, The Right to Work, Article 6 of the International Covenant on Economic, Social and Cultural Rights, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006).

⁵⁷ *Id.* ¶ 10.

⁵⁸ *Id.* ¶ 31.

REGIONAL HUMAN RIGHTS LAWS

▶ AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

Nigeria ratified the [African Charter on Human and Peoples' Rights](#) ("ACHPR") in 1981 and fully domesticated the treaty into national law through the [African Charter on Human and Peoples' Rights \(Ratification and Enforcement\) Act](#).

Article 10 of the ACHPR protects freedom of association. Article 15 provides that "every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work."

The Maputo Protocol gives additional content to the right to work as it pertains to women:

Article 13 of the [Maputo Protocol](#) requires States Parties to "adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities," specifically to:

- (a) Promote equality of access to employment;
- (b) Promote the right to equal remuneration for jobs of equal value for women and men;
- (c) Ensure transparency in recruitment, promotion and dismissal of women and combat and punish sexual harassment in the workplace;
- (d) Guarantee women the freedom to choose their occupation, and protect them from exploitation by their employers violating and exploiting their fundamental rights as recognized and guaranteed by conventions, laws and regulations in force;
- (e) Create conditions to promote and support the occupations and economic activities of women, in particular, within the informal sector;
- (f) Establish a system of protection and social insurance for women working in the informal sector and sensitize them to adhere to it;
- (g) Introduce a minimum age for work and prohibit the employment of children below that age, and prohibit, combat and punish all forms of exploitation of children, especially the girl-child;
- (h) Take the necessary measures to recognize the economic value of the work of women in the home;
- (i) Guarantee adequate and paid pre- and post-natal maternity leave in both the private and public sectors;
- (j) Ensure the equal application of taxation laws to women and men;
- (k) Recognize and enforce the right of salaried women to the same allowances and entitlements as those granted to salaried men for their spouses and children;
- (l) Recognize that both parents bear the primary responsibility for the upbringing and development of children and that this is a social function for which the state and the private sector have secondary responsibility; and
- (m) Take effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography.

▶ ECOWAS TREATY

The [Treaty Establishing the Economic Community of West African States](#) (the “ECOWAS Treaty”), which has been ratified by Nigeria, further underscores the incorporation of human rights legal principles into Nigerian law. The ECOWAS Treaty guarantees “[t]he recognition, promotion, and protection of human and people’s rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights.” The Community Court of Justice noted in *Socio-Economic Rights and Accountability Project (SERAP) v. Nigeria* (2009), Suit No. ECW/CCJ/APP/0808, that “[i]t is well established that the rights guaranteed by the African Charter are justiciable before this Court.” The Court determined that Article 9(4) of the Supplementary Protocol granted the Court jurisdiction to determine cases of violations of human rights in ECOWAS Member States, while Article 4(g) of the ECOWAS Treaty incorporated the African Charter on Human and Peoples’ Rights into that treaty.

INTERNATIONAL LABOUR LAWS

▶ THE INTERNATIONAL LABOUR ORGANIZATION

The International Labour Organization (“ILO”) is a specialized body of the U.N. whose particular function is the setting of labour rights and standards. These standards have largely been promulgated as recommendations or conventions for application internationally. They are adopted at the ILO’s annual labour conferences by member governments.

Nigeria is a member of the ILO and has ratified [44 ILO Conventions](#). Section 2 of the International Declaration on Fundamental Principles and Right at Work states that “all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution [of the ILO], the principles concerning the fundamental rights which are the subject of those Conventions,” namely:

- freedom of association and the effective recognition of the right to collective bargaining;
- elimination of all forms of forced or compulsory labour;
- effective abolition of child labour;
- elimination of discrimination in respect of employment and occupation; and
- a safe and healthy working environment.

The ILO has developed a system for supervising compliance with its Conventions by the states that have ratified them. It also has a reporting system. In addition, it receives complaints from various governments concerning its conventions, and makes inquiry and direct contact with government representatives. The ILO system does not permit individuals or nongovernmental organizations to submit complaints directly to the agency.

The ILO lacks machinery for ensuring compliance by countries that have ratified its Conventions. The ILO may express concern for a state’s violation of labour rights and human rights, but it does not have a mechanism to exact compliance with the conventions the country in question has ratified.



2. SPECIFIC RIGHTS APPLICABLE TO DIFFERENT CATEGORIES OF WORKERS

This section considers statutory rights under Nigerian laws that apply to different categories of workers (i.e., casual versus permanent workers and employees of small employers versus larger employers). The reader should keep in mind that international and regional human rights laws and international labour laws currently in force in Nigeria do not distinguish among categories of workers and protect all workers without distinction.

A. RIGHT TO WRITTEN CONTRACT AND REQUIRED CONTRACT TERMS.

A written contract of employment is required for workers to whom the Labour Act applies (which, as noted above, includes employees who perform manual labour or clerical work).

Section 7 of the Labour Act requires every employer to issue a written contract to the employee within three months of the commencement of the employment relationship.

The contract must state (among other things):

- The nature of employment.
- The rates and method of calculating wages.
- The manner and period of payment.
- The hours of work.
- Entitlement to holidays.
- The notice period for termination of the contract.

Some of the implied terms in contracts of employment include the employer's duty to:

- Pay wages.
- Provide a safe place of work.

Pursuant to Section 11 of the Labour Act, employers are entitled to terminate a contract of employment at any time and without citing any reasons for doing so, if either:

- Appropriate notice of the termination is given to the employee.
- The employee is paid salary in lieu of such notice.

An employer need not give reason for terminating a contract of employment; the employer only needs to comply with the procedure for termination in the contract of employment. *See Ben Chukwuma v. SPDC* (1993), 4 NWLR 512; *Obanye v. Union Bank of Nigeria Plc* (2018), LPELR-44702 (S.C.). Nevertheless, the National Industrial Court has indicated that best practice, in accordance with international standards, is for the employer to inform the employee of the reason(s) for terminating the contract.

Pregnant women are a protected class under Nigerian law, and employers are prohibited from terminating the contract of any female worker who is absent due to maternity leave or who remains absent from work for a longer period as a result of illness arising out of pregnancy which renders her unfit for work.

▶ **B. WAGES AND HOURS.**

The current monthly minimum wage prescribed by Section 3 of the National Minimum Wage Act is 30,000.00 per month. The law has many exclusions. It does not apply to establishments that employ fewer than 25 persons. It also excludes part-time workers, workers employed on a “commission or piece-rate” basis, and seasonal workers (among others). Nor does it apply to persons occupying executive, administrative, technical or professional positions such as engineers, engineering technologists, engineering technicians, engineering craftspersons, and project managers.

There is no statutory limit on the number of hours an employee can work in a day. The Labour Act provides that normal work hours are to be fixed by mutual agreement, collective bargaining, or by an industrial wages board. The working hours of all other employees are governed by their respective contracts of employment. In practice, an eight to nine-hour working day is the norm. While the Labour Act does not prescribe the hours in a normal work week, it does provide that an employer must pay an employee an overtime rate for any work done beyond the normal working hours. The overtime rate is usually 1.5 times the employee’s normal hourly rate.

▶ **C. UNIONIZATION.**

The Trade Unions Act defines a trade union as “any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers.” Section 40 of the Constitution guarantees the right to freedom of association to all citizens in Nigeria. Together, these laws support the principle that all workers (whether permanent or casual) have the freedom to belong to, join, and constitute any trade union of their choice in accordance with the laws. In *Patovilki Industrial Planners Limited v. National Union of Hotels and Personal Services Workers* (2006), Suit No. NIC/12/89, Digest of Judgments of Nat’l Indus. Ct., 288–89, the National Industrial Court upheld the right of both permanent and casual workers to form a trade union and specifically found that a trade union can unionize workers who are casual daily paid workers.

In its [2021 Human Rights Report for Nigeria](#), the U.S. Department of State noted that while the law of Nigeria prohibits anti-union discrimination, the law lacks adequate enforcement mechanisms to protect freedom of association and collective bargaining. For example, unions require prior authorization or approval by the government to form. The process involves a lengthy notice period, and it is reported that the government often delays the deliberation and approval process which may dissuade workers from exercising their rights. Moreover, the law places limits on collective bargaining and requires collective agreements on wages to be registered with the National Salaries, Income, and Wages Commission, which has final say on whether the agreement becomes binding. Finally, the law places restrictions on the right to strike by requiring a majority vote of all registered union members to call a strike and limits the right to strike to certain types of labour disputes.

As noted above, the right of workers to organize and bargain collectively is recognized as a fundamental human right and is central to the ILO regime. ILO Convention Number 87 guarantees employees the right to establish and join organizations of their choosing and to conduct their affairs without influence from their governments. ILO Convention Number 98 mandates the independence of worker and employer

organizations and protects the right to organize and bargain collectively. Specific worker protections enumerated in these Conventions include:

- The right to join a union without prior authorization from the state.
- Protection against retaliation, dismissal, or any sort of discrimination resulting from a worker's membership in a union.
- The right to collectively bargain, which includes a worker's right to negotiate and enter into collective agreements with their employer, without being subject to discrimination by the employer.

▶ **D. NONDISCRIMINATION.**

Section 17(3) of the Constitution requires equal pay for equal work and prohibits discrimination on account of sex or any other ground. Our research revealed no other national law prohibiting employment discrimination, other than the Anti-Discrimination Act, which makes it illegal for employers to discriminate against people based on their HIV status, and the Discrimination Against Persons with Disabilities (Prohibition) Act, 2018, which makes it illegal for employers to discriminate against persons with disabilities.

Order 14(2) of the National Industrial Court Civil Procedure Rules 2017 provides that if in an action before the court, a claimant alleges workplace discrimination, such claimant must state whether the alleged workplace discrimination is based on any of the following grounds: gender, marital status, ethnic origin, health, or pregnancy, among other grounds.

Despite the constitutional prohibition against discrimination, it has been reported that discrimination against women in the workplace is endemic. The U.S. Department of State's [2021 Human Rights Report for Nigeria](#) reported that women are overrepresented in the informal sector, and some women reported a de facto "get pregnant, get fired" workplace policy. Women are legally barred from particular fields of employment, such as mining, and often experience discrimination due to traditional and religious practices.

In addition, we understand that it is common for employers to make arbitrary employment distinctions between workers who do the same jobs, classifying some as permanent employees with full benefits and others as casual contract workers with fewer benefits. We understand that it is not uncommon for employers to casualize workers after years of employment to reduce the employer's financial and other obligations toward such workers. Such arbitrary treatment appears to contravene the constitutional prohibition against discrimination on any ground.

▶ **D. SEXUAL HARASSMENT.**

Our research revealed no Nigerian civil law specifically addressing sexual harassment. However, we understand that in practice it is common for sophisticated employers to issue guidelines that prohibit workplace harassment impose penalties for the breach of such guidelines.

Nigerian criminal law addresses harassment that rises to the level of assault (*i.e.*, harassment that involves unwanted touching, physical intimidation or other forms of extreme coercion). The rules of the National Industrial Court contemplate that the court's jurisdiction extends to claims relating to sexual harassment. Specifically:

- Section 360 of the Nigerian Criminal Code states that any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanor and may be liable for imprisonment for two years.
- Section 353 of the Nigerian Criminal Code states that any person who unlawfully and indecently assaults any male person is guilty of a felony and may be liable for imprisonment for three years. The offender cannot be arrested without a warrant.
- Order 14 of the National Industrial Court Civil Procedure Rules of 2017 provides that, where in an action before the court, a claimant alleges sexual harassment at the workplace, the claimant or his or her counsel may indicate whether the sexual harassment is: (a) physical conduct of a sexual nature, such as unwanted physical contact ranging from touching to sexual assault and rape, strip search by or in the presence of the opposite sex, gestures that constitutes the alleged sexual harassment; and/or (b) a verbal form of sexual harassment such as unwelcome innuendos, suggestions and hints, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments about a person's body, unwelcome and inappropriate inquiries about a person's sex life and unwelcome whistling at a person or a group or persons, any document, material, or exhibit in further support of claim; and/or (c) a non-verbal form of sexual harassment which includes unwelcome gestures, indecent exposures and unwelcome display of sexually explicit pictures or objects; and/or (d) quid pro quo harassment where an owner, employer, supervisor, member of management or co-employment undertakes or attempts to influence or influences the process of employment, promotion, training, discipline, dismissal, salary increments or other benefits of an employer or job applicant in exchange for sexual favors.

The ILO Committee has urged the government of Nigeria to prohibit sexual harassment of women in the workplace and to adopt policies that advance equality in the workplace.

▶ F. BENEFITS AND ENTITLEMENTS.

Nigerian law provides various benefits and entitlement to different categories of workers, as briefly summarized below:

Retirement. The Pension Reform Act requires larger employers to contribute to a pension scheme on behalf of their employees. This law does not distinguish between permanent and casual worker. Contributions are mandatory for private sector employers with 15 or more employees.

Life Insurance. The Pension Reform Act imposes an obligation on employers to obtain life insurance for all their workers. The insurance must have a value that is at least three times the total annual emoluments of all the employees.

Health Insurance. The National Health Insurance Scheme Act requires larger employers to provide health insurance for their employees. The law also requires all employers with at least 10 employees to participate in the National Health Insurance Scheme.

Vacation Leave. Pursuant to Section 18 of the Labour Act, clerical and manual workers are entitled to at least six working days of annual leave with full pay after completing 12 months of continuous service. This entitlement increases one day for every subsequent month of service up to a maximum of 12 working days per year.

Sick Leave. Pursuant to Section 16 of the Labour Act, clerical and manual workers are entitled to a

maximum of 12 days of sick leave with full pay in a year if certified by a registered medical practitioner.

Maternity Leave. Pursuant to Section 54 of the Labour Act, women are entitled to at least 12 weeks maternity leave and protection from dismissal on account of their pregnancy. Female employees who were continuously employed for a period of six months or more prior to their leave are entitled to at least 50 percent pay during their leave.

▶ G. WORKER SAFETY

Various laws and regulations govern workplace health and safety. Below is a summary of a selection of such laws. A full review is beyond the scope of this research guide.

General. Section 17(3) of the Nigerian Constitution requires the state to establish policies to safeguard the health, safety, and welfare of all persons in employment and guarantees workers' rights to just and humane work conditions.

The Factories Act applies broadly to "factory workers" as well as a "wider spectrum of workers and other professionals exposed to occupational hazards, but for whom no adequate provisions had been formerly made." The Factories Act includes the following provisions:

- Machinery operation safety standards with which employers must comply.
- Requirement that employers routinely update facilities and provide worker safety training.
- Requirement that employers provide effective means for detecting and extinguishing fire and train personnel on how to fight fires.
- Requirement that employers provide facilities for drinking water, water for washing up, and a stocked first aid area.
- Requirement that employers notify the factory inspector of the district if an accident occurs that disables a person for more than three days. An employer that fails to report an accident may be subject to a civil fine.

The National Industrial Safety Council of Nigeria is empowered to take steps to prevent industrial accidents and hazards and promote occupational health and welfare in industrial establishments.

Compensation for Occupational Injuries. The Employees' Compensation Act provides for compensation for occupational injuries or diseases arising out of or in the course of employment. The statute defines "employee" expansively to mean "a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis." The law includes domestic servants who are not members of the family of the employer and also includes individuals employed in the federal, state and local governments.

Private Security Guard Industry. The Private Guard Companies Act regulates and provides for the licensing of private guard companies, which must be wholly owned by Nigerians. Section 1(1) of The Private Guard Companies Act prohibits any organization that provides security service and crime prevention from operating unless (1) the organization is registered; (2) has applied for and has been granted license by the Minister of Internal Affairs; and (3) is wholly owned by Nigerians in accordance with the Nigerian Enterprises Promotion Act. Section 36 defines an "employee" as a "person employed by a private guard company under the provisions of [S]ection 7 of [the] Act." In practice, we understand that labour abuses are rampant in the private security guard industry, despite it being a heavily-regulated

industry. Many private security guard companies do not comply with the minimum wage laws and pay security guards only a fraction (*e.g.*, 30 percent) of what the private security guard companies are paid by the businesses whose properties the guards are hired to protect. We understand that workers have tried to form unions, but that private security guard industry employers have threatened them with unemployment.⁵⁹

Mining Industry. The Minerals Oil (Safety) Regulation stipulates that employers in the oil and gas industries must provide workers with adequate safety training and protective equipment. The law imposes civil and criminal penalties for noncompliance. The Nigerian Minerals and Mining Act requires the government to prescribe measures for the general welfare and safety of workers engaged in mineral resources operations. The law empowers the Mines Inspectorate Department to supervise and enforce compliance by mineral title holders with all mine health and safety regulations prescribed under the law. Mining lease holders are required to maintain mining lease areas and mining operations in a safe manner in compliance with applicable mine health and safety regulations.

⁵⁹ *The Untold Nightmares of Private Security Companies' Workers*, Socialist Workers League (July 20, 2020), <https://socialistworkerleague.org/2020/07/20/the-untold-nightmares-of-private-security-companies-workers/>.



3. EMPLOYER PENALTIES FOR LABOUR-RELATED MISCONDUCT

As noted above, sexual harassment that rises to the level of assault is criminalized under Nigeria's laws.

An employer's failure to pay required withholding tax carries civil penalties and fines. In Nigeria, every person or company making payments for services rendered to suppliers, contractors, or employees must deduct a percentage of tax at the source of payment and remit such tax to the relevant tax authority. Nigeria's current withholding tax rate is ten percent for individuals and five percent for companies. Sections 81 and 82 of the Companies Income Tax Act (CITA) 2004 require companies to deduct tax from payments made to their suppliers and contractors, and remit such tax to the relevant tax authorities within 30 days of the payment. The penalty for nonpayment is ten percent of the amount of tax not deducted and remitted. Additionally, Section 7 of the Pay as You Earn regulations requires employers to deduct tax from the emoluments paid to employees, including salaries, bonuses, and allowances, and remit such tax to the relevant tax authority within ten days of the end of the month. Section 74 of the Personal Income Tax Act (PITA) 2004 establishes the penalty for nonpayment as the total sum of taxes due and ten percent of the amount of tax not deducted and remitted, plus an interest at the prevailing CBN lending rate.

The Pension Reform Act requires every employer with three or more employees to remit a percentage of the employees' salaries to a Retirement Savings Account (RSA) maintained by a Pension Fund Administrator (PFA) registered with the National Pension Commission (PenCom), which is the regulatory body responsible for enforcing the provisions of the Pension Reform Act. Employers with 15 or more employees are also required to make a corresponding contribution to the RSA of each employee. Sections 4 and 11 of the Pension Reform Act govern the remittance of pension contributions and provides that employers are required to deduct a certain percentage of the employee's salary, which is currently ten percent for the employer and eight percent for the employee, and remit the total contribution to the PFA of the employee within seven days of the end of each month. An employer that fails to remit the pension contributions within the stipulated time is subject to civil and criminal penalties and fines.

Certain violations of the Labour Act also carry civil and criminal penalties.



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4. COMPLAINT AND OTHER ENFORCEMENT MECHANISMS

Various mechanisms exist to enforce labour rights under national, regional, and international laws. Avenues under each legal regime are discussed in turn below.

NATIONAL

- ▶ **National Industrial Court.** As noted above, the [National Industrial Court](#) is the court of exclusive jurisdiction for labour and employment claims in Nigeria. We understand that the court is typically used by highly-paid workers in the formal sector and very rarely by lower-paid workers who work in the informal sector or are casually employed.

Recent jurisprudence of the National Industrial Court suggests that it may not apply a limitations period on employment matters before the court.⁶⁰ Potential claims should be reviewed with local counsel with reference to the court's most recent jurisprudence to understand if a claim will or will not likely be time-barred.

- ▶ **Mediation and Alternative Dispute Resolution:** Mediation is a tool for the resolution of conflict between employers and employees. Mediation can be very valuable at the start of a dispute to deescalate tension and find a mutually-agreeable solution. Parties do not necessarily need to go to court to resolve issues relating to workplace discrimination, workers' compensation claims, and wages and occupational safety disputes. Mediation may help resolve disputes and restore relationships, provided the employee and employer can overcome their differences.

With respect to alternative dispute resolution (ADR), the Nigerian Industrial Court facilitates resolutions through amicable settlements and has developed rules to encourage and facilitate ADR for litigants.

- ▶ **Public Complaints Commission.** An enforcement unit designed to address employment complaints has been established within the Public Complaints Commission in collaboration with the Nigerian judiciary. Individuals may lodge complaints against private businesses formed in Nigeria using a [simple online complaint form](#). The Public Complaints Commission's website features news on recent victories won on behalf of workers against companies. See, e.g., [Workman Gets Wages Following PCC Intervention](#). Our research revealed no statute of limitations relating to claims brought before the Public Complaints Commission.
- ▶ **National Human Rights Commission.** The National Human Rights Commission of Nigeria was established by the National Human Rights Commission Act of 1995, as amended, in line with Resolution 48/134 of the United Nations General Assembly. The Commission serves as an extra-judicial mechanism to promote the respect and enjoyment of human rights in Nigeria. The Commission also facilitates public education, research, and dialogue. One of the Human Rights Commission's focal points is [labour and workers' rights](#). Section 5(j) of the National Human Rights Commission (Amendment) Act 2010 empowers the Commission to "receive and investigate complaints concerning violations of human

⁶⁰ See *Lilian Nnenna Akumah v. First Bank of Nigeria Plc.* (2019), Suit No. NICN/LA/402/2018 (noting recent Supreme Court jurisprudence suggesting that claims involving contracts of service are not subject to automatic dismissal if brought by a litigant after the statute of limitations has run).

rights and make appropriate determinations as may be deemed necessary in each circumstance.” In 2021, the Commission reported receiving 1,701,519 complaints.⁶¹ A great number of the complaints related to labour and employment issues. While the determinations of the Human Rights Commission are non-binding, a favorable determination may aid in a litigant’s negotiation or resolution of a labour issue with an employer or draw attention to a labour abuse occurring on a widespread basis.

REGIONAL

- ▶ **African Commission and African Court.** The ACHPR establishes a Commission that accepts “communications” from individuals and NGOs related to Government’s failure to respect human rights obligations. Complaints must follow a certain format, which can be found on the [African Commission on Human and Peoples’ Rights website](#).

Once a complaint is filed, the government is given a chance to respond. The case can be dismissed, settled, or given a hearing by the African Commission, whose decisions take the form of non-binding recommendations directed at the government.

The protocol establishing the [African Court on Human and Peoples’ Rights](#) came into force in January 2005. While Nigeria ratified the treaty creating the African Court, it has not accepted the competence of the African Court on Human and Peoples’ Rights to receive cases [directly from individuals and nongovernmental organizations](#). For now, aggrieved individuals and the nongovernmental organizations that represent them must file complaints with the African Commission, which may then choose to refer a case to the African Court.

The shortfalls of submitting a complaint to the African Commission should be noted. First, it may be difficult to file a complaint without potentially expensive legal assistance. Moreover, the African Commission has been criticized for being inefficient due to lack of funds and staff, which has resulted in a long backlog of cases. Complainants should be prepared to wait months or even years for their case to be processed. Finally, state compliance with decisions of the African Commission is not guaranteed. This is not to discourage individuals and civil society organizations from filing cases with the African Commission and the African Court. Indeed, using regional mechanisms and lobbying governments to respect their decisions is an important way to strengthen them. A decision against a state by the Commission exerts significant political pressure, which can compel a government to end human rights abuses and bring its actions in line with the African Charter.

- ▶ **ECOWAS Court.** The [ECOWAS Community Court of Justice](#) is the judicial organ of ECOWAS and is charged with resolving disputes related to the ECOWAS treaty, protocols, and conventions. The ECOWAS Community Court of Justice has competence to hear individual complaints of alleged human rights violations. Importantly, a litigant is not required to exhaust domestic avenues of relief before lodging a complaint with the Court of Justice.

The Court of Justice was created pursuant to the [Revised Treaty of the Economic Community of West African States](#) of 1993 and is headquartered in Abuja, Nigeria. In addition to providing advisory opinions on the meaning of Community law, the Court has jurisdiction to examine cases involving human rights violations.

The Court of Justice has accepted the submission of individual complaints for human rights violations

⁶¹ 2021 Annual Report, Nat’l Hum. Rts. Comm’n, <https://www.nigeriarights.gov.ng/files/publications/Annual%20Report/2021-annual-report.pdf> (last visited Oct. 3, 2023).

since 2005. The court hears cases from Nigeria as well as Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Senegal, Sierra Leone, and Togo. The ECOWAS Treaty incorporates the rights enshrined in the ACHPR.⁶²

Cases may be brought before the Court by an application addressed to the Court Registry. The forum is designed to be accessible to litigants. The required contents of a submission are listed [here](#).

INTERNATIONAL

International human rights enforcement mechanisms may only be accessed after domestic avenues have been exhausted. There is no statute of limitations for the submission of complaints under international human rights law conventions whose jurisdiction a state has accepted.

Nigeria is among the minority of states that has not adopted the First Optional Protocol to the International Covenant on Civil and Political Rights, nor has it adopted the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. It has, however, adopted the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women and the Optional Protocol to the Convention on the Rights of Persons with Disabilities, both of which establish quasi-judicial committees to examine individual complaints against states for human rights violations relating to the subject matters covered by the treaties.

International human rights complaint procedures are designed to be straightforward and accessible for non-lawyers. While the specific requirements differ slightly for each treaty, the complainant is always required to give the following information: (1) a statement that his or her rights under the relevant treaty have been violated, (2) a chronological and detailed description of all relevant violations, (3) a detailed description of steps taken to exhaust local remedies, and (4) an explanation of which provisions of the relevant treaty have been violated. Information for submitting a complaint to an international human rights treaty monitoring committee can be found [here](#).

⁶² Treaty Establishing the Economic Community of West African States (ECOWAS) arts. 6(1)(e), 15(1), May 28, 1975, 35 I.L.M. 660 (revised June 3, 1993) (replacing the 1975 Treaty of Lagos and establishing the Economic Community of West African States). Article 4(g) of the ECOWAS Treaty guarantees "The recognition, promotion, and protection of human and people's rights in accordance with the provisions of the African Charter on Human and Peoples' Rights."



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5. COMPENSATION FOR RIGHTS VIOLATIONS

National courts typically award compensatory damages to successful litigants (e.g., back wages or benefits owed). In matters involving wrongful termination, courts may require reinstatement of the terminated employee. We understand anecdotally that it is rare for Nigerian courts to award punitive damages in employment cases. As noted above, we understand that casual workers rarely access the national courts.



REUTERS/ Seun Sanni



6. LEGAL RESPONSIBILITIES OF EMPLOYERS

A. DUTY TO ISSUE WRITTEN CONTRACTS TO WORKERS.

As explained in greater detail above, employers of workers (manual or clerical workers) must issue a contract within three months of the commencement of employment. Legislation was introduced in the previous legislative session to criminalize the casualization of workers and require written employment contracts more broadly.

B. DUTY TO CLASSIFY WORKERS CORRECTLY.

Employers have an implicit duty to categorize workers correctly and to not downgrade an employee's classification status to reduce costs. Courts consider the economic realities and indicia of an employer/employee relationship when determining employment status. However, as noted above, marginalized workers rarely avail themselves of the Nigerian Industrial Court. Civil society organizations may wish to consider supporting workers in vindicating their rights (including their right to be properly classified) before courts as well as more accessible forums, such as the Public Complaints Committee and/or the Human Rights Commission.

C. DUTY TO PROVIDE WORKERS' WAGES AND BENEFITS OWED.

Employers who are sued for back wages or benefits may be required to compensate misclassified employees. *See, e.g., Owena Mass Transp. Co. Ltd. v. Lucky Okonogbo* (2018), LPELR-45221 (C.A.).

D. DUTY TO PROTECT EMPLOYEE PRIVACY.

Pursuant to Article 37 of the Nigerian Constitution, all persons, which includes employees, have the right to privacy. The right to privacy is commonly understood to include freedom from unreasonable searches and seizures, as well as the right to keep personal information private. Employers must respect these rights and must not engage in any conduct that violates an employee's privacy.

Under the Nigerian Data Protection Regulation 2019, employers are required to protect the personal information of their employees from unauthorized access, disclosure, or use. Employers are also required to obtain consent from employees before collecting or processing their personal data.



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7. CONCLUSION AND RECOMMENDATIONS

In theory, the rights of Nigerian workers are protected by an interlocking system of national, regional, and international laws. In practice, labour laws are not uniformly observed by employers or enforced by the government. Workers and the civil society organizations that represent their interests may wish to consider invoking regional and international human rights and labour law principles when calling for the government to pass legislation and adopt policies to protect and promote the rights of the country's workers, especially the most vulnerable workers including those relegated to casual work and female workers.

CYPLP and ISOPS recommend that the government, employees, employers, and civil society organizations consider taking the following steps to create an environment conducive to the realization of the full range of workers' rights in Nigeria.

GOVERNMENT

- Require all employers who conduct business in Nigeria to respect the country's national employment laws and international and regional human and labour rights obligations.
- Prevent employers from violating the human rights of Nigerian people. Allocate sufficient resources and personnel to effectively regulate third party employment activities and provide remedies for labour and human rights violations.
- Take concrete steps to progressively achieve the human right to decent work for persons who can work and adequate and accessible social protection programs for persons who are unable to work.
- Promote employment creation opportunities that ensure equal opportunities for young men and women, with a special emphasis on vulnerable groups, in accordance with the Nigerian Youth Employment Action Plan 2021–2024.⁶³
- As called for by the Committee on ESCR in General Comment 18 to the ICESCR, adopt legislative measures to substantially reduce the number of workers outside the formal economy and require employers to declare their employees.
- Enact legislation to prohibit employers from casualizing workers, including demoting permanent employees to contract workers, consistent with the National Employment Policy goals of "enhancing the growth of the private sector and transforming the informal sector into the formal sector."⁶⁴
- Require employers to properly classify workers, and establish and adequately fund a regulatory regime to ensure the enforcement of worker classification laws and regulations.

⁶³ Nigerian Youth Employment Action Plan 2021–2024, Fed. Republic of Nigeria, Fed. Ministry of Youth & Sports Dev. (2021), https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---ilo-abuja/documents/publication/wcms_819111.pdf.

⁶⁴ National Employment Policy, Fed. Republic of Nigeria, Fed. Ministry of Labour & Emp. (2017), https://www.ilo.org/legacy/english/emplab/download/nep/nigeria/nigeria_national_employment_policy_2017.pdf.

- Cease activities that interfere with freedom to organize and join trade unions.
- Enforce laws that prohibit the termination of pregnant workers.
- Enforce minimum wage laws, particularly in sectors characterized by rampant wage violations such as the private security guard and construction industries.
- Enact legislation to establish a universal minimum wage and overtime for work beyond a 40-hour work week.
- Make formal social protection schemes, such as pensions, health insurance, and employment injury insurance, accessible to young workers. As noted in the Nigerian Youth Employment Action Plan 2021–2024, young people disproportionately benefit from such schemes given their high rate of participation in the informal economy and self-employment.

▶ EMPLOYEES

- Ask your employer for a written contract if you do not already have one.
- Ask your employer to clarify whether you are classified as a formal employee or casual/contract worker. If your classification does not match your job duties or seem logical, ask your employer to clarify the basis of your classification.
- Explore options to join or form a union.
- Learn about your rights, your legal remedies under the law, and the free and paid legal services available to help you claim your rights.
- Engage in other types of efforts to claim your rights, including media engagement and political advocacy.

▶ EMPLOYERS

- Learn about and adhere to existing labour laws.
- Provide written contracts to all workers.
- Declare employees, timely pay required employment taxes, and provide required benefits, including back wages and benefits that may be owed, as applicable.
- Do not terminate female workers on the basis of pregnancy.
- Adopt policies to prevent and punish workplace discrimination and harassment and to ensure worker health, welfare, safety, and privacy protection.

▶ CIVIL SOCIETY ORGANIZATIONS

- Educate workers (including informal sector workers, young workers, and female workers) about their rights at work and how they can claim their rights.
- Demand protections for informal sector workers, with a priority on women, people who are disabled, and other vulnerable groups.
- Monitor the government's progress toward achieving its commitments under the Nigerian Youth Employment Action Plan 2021–2024 and the National Employment Policy. Hold the

government accountable for shortcomings. Participate in formulating future iterations of the plan.

- Participate in treaty monitoring activities by preparing and submitting “shadow reports” to the regional and international treaty committees that periodically monitor Nigeria’s human rights progress.
- Provide pro bono legal assistance to support casual workers who wish to bring claims before national, regional, and international labour and human rights enforcement bodies.
- Consider supporting the proposed amendment to the Labour Act that would criminalize the casualization of workers and mandate employers to regularize employees.



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