

## **UNFAIR LABOUR PRACTICES IN LABOUR RELATIONS IN NIGERIA**

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### **ABSTRACT**

*The economic reality has made it impracticable for government and private investors/businessmen to carry on business alone as sole practitioner without employment of labour(s) to support in carrying out their business activities and this gives rise to master/servant relationship or employer/employee relationship. However, because of the superior position occupied by the employer in this kind of relationship and high supply of labour over demand, the employer often time engaged in trade practices that are unfair and unjust to the employee.*

*Consequently, there have been practices by employers over decades that actually deny employees some basic rights at various levels of labour and industrial relations. On the other side of the coin, because of the freedom of association given to the employee to form and join trade union to collectively chart their course, the employees exploit the employer by engaging in certain acts that are unfair to the employer and maybe unfair to their fellow employee. Therefore, it is safe to conclude that whatever constitutes unfair labour practices can emanate from both an employer and employee but in reality, the bulk is from an employer.*

*An expository design is employed. The paper takes into consideration the laws available and also judicial decisions on the development of unfair labour practices are examined.*

*This paper examines unfair labour practice with particular focus on Nigeria, concludes that there exists unfair labour practices although no law in the country has expressly defined what constitutes this practice. The paper also makes recommendations on how to check the trend of unfair labour practices.*

### **1.0 INTRODUCTION.**

There are customs and practices in various industries which relate to labour practice. These customs and practices which do not contradict legislations, express term of contract

of employment and public order are accepted as source of labour law and thus part of the legal framework of labour and industrial relations.<sup>1</sup>

Unfair Trade Practice in Labour relations is any of various acts by an employer or labour organization that violate a right or protection under applicable labour laws<sup>2</sup>. The unfair labour practices includes; interference, restraint, or coercion of employees in the exercise of their rights by an employer, domination of a labour organization by an employer, encouragement or discouragement of union membership by discrimination in hiring or conditions of employment by an employer, discrimination against an employee for filing charges of or testifying regarding an unfair labour practice by an employer, refusal of an employer to bargain with the collective bargaining agent, restraint or coercion of employers or employees by a labour organization; coercion of an employer by a labour organization to discriminate against an employee, refusal of a labour organization to bargain collectively with an employer, engaging in illegal strikes or boycotts by a labour organization, excessive or discriminatory initiation fees for a labour organization, coercion of an employer by a labour organization to pay for work not done, picketing by a labour organization to force an employer to recognize or employees to select another collective bargaining agent when there has already been an election<sup>3</sup>.

No legislation in Nigeria defines unfair labour practice, However, Nigerian Labour Organizations have at various time moved against various acts which they stated to be unfair labour practices.<sup>4</sup>

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<sup>1</sup>Dr. A.B. Ahmed, Abubakar Aminu Ahmad and Nuhu Musa Idris. "Emerging Trends in Labour Law and Industrial Relations in Nigeria". 2014

<sup>2</sup>Merriamwebster Dictionary @ [http://www.labourprotect.co.za/Unfair\\_Labour\\_Practices.html](http://www.labourprotect.co.za/Unfair_Labour_Practices.html). Last accessed 23rd July, 2018.

<sup>3</sup> ibid

<sup>4</sup> See Daily Trust Newspaper of Aug 17 2015 :wherein Labour moves against unfair labour practices in Energy Commission. Also NUPENG task government to deal with unfair Labour Practice in Nigerian Oil and Gas Sector. Published in Leadership Newspaper of 21<sup>st</sup> June, 2018 available @ <http://leadership.ng/2018/06/21/govt-has-to-deal-with-unfair-labour-practice-in-oil-and-gas-sector->

This paper examines the meaning of unfair labour Practice, what constitute unfair labour Practice and its Justifiability in Nigeria.

### **1.1MEANING OF UNFAIR LABOUR PRACTICE.**

As stated earlier, Under Nigerian law, there is no statutory definitions of the term Unfair Labour Practices and there is no detailed legislation codifying the subject as obtains in other jurisdictions, save for the inferences that may be made from the Labour Act, which applies to low cadre employees such as unskilled and clerical employees.

An unfair labour practice means any unfair act or omission that arises between an employer and an employee, involving the unfair conduct of the employer relating to the promotion, demotion or training of an employee or relating to the provision of benefits to an employee, the unfair suspension of an employee or any other disciplinary action short of dismissal in respect of an employee<sup>5</sup>. This definition of unfair labour practice seems to be one sided in favour of the employee.

However, Merriam webster Online Dictionary provides an all-inclusive and broad meaning of unfair trade practice. According to the Dictionary, Unfair Trade Practice in labour relations is any of various acts by an employer or labor organization that violate a right or protection under applicable labour laws<sup>6</sup>.The unfair labour practices includes; interference, restraint, or coercion of employees in the exercise of their rights by an employer, domination of a labor organization by an employer, encouragement or discouragement of union membership by discrimination in hiring or conditions of employment by an employer, discrimination against an employee for filing charges of or testifying regarding an unfair labor practice by an employer, refusal of an employer to bargain with the collective bargaining agent, restraint or coercion of employers or employees by a labor organization; coercion of an employer by a labor organization to

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<sup>5</sup>[http://www.labourprotect.co.za/Unfair\\_Labour\\_practice.html](http://www.labourprotect.co.za/Unfair_Labour_practice.html)

<sup>6</sup>Merriamwebster Dictionary @ [http://www.labourprotect.co.za/Unfair\\_Labour\\_Practices.html](http://www.labourprotect.co.za/Unfair_Labour_Practices.html). Last assesed 23rd July,2018.

discriminate against an employee, refusal of a labor organization to bargain collectively with an employer, engaging in illegal strikes or boycotts by a labor organization, excessive or discriminatory initiation fees for a labor organization, coercion of an employer by a labor organization to pay for work not done, picketing by a labor organization to force an employer to recognize or employees to select another collective bargaining agent when there has already been an election<sup>7</sup>.

From the definition above, it is safe to say unfair labour practices can emanate from both the employers and the employees or unions which employees belong to. Unfair labour practices affecting the employer includes, bargaining without the employees' authority, violating another trade union's bargaining authority, interfering with employers' organizations, organizing on employer's premises and encouraging illegal work stoppages<sup>8</sup>.

South African labour law clearly defines the term “Unfair labour practice” to mean any act or omission that arises between an employer and an employee<sup>9</sup>. The Act went further to state what constitute unfair labour practice in Section 186 (2) (a-d) to include;

- a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee
- b) unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;
- c) a failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement; and
- d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), on account of the employee having made a protected disclosure defined in that Act.

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<sup>7</sup> ibid

<sup>8</sup> Alberta Labour Relation Board *Unfair Labour Practices by Trade Unions*

<sup>9</sup> See Sec. 186(2) Labour Relation Act 66 of 1995

Similarly, in America, unfair labour practices are certain action taken by employers or unions that violates the National Labour Relation Act<sup>10</sup>. The Act also established the National Labour Relation Board to investigate and remedy unfair labour practice defined in the Act.

## **2.0 UNFAIR LABOUR PRACTICE IN NIGERIA.**

Unfair trade practice is not a strange occurrence in Nigeria. Workers as well as labour unions in Nigeria have at different time lampooned difference organizations and bodies for engaging in unfair trade practice. Recently, the Nigerian Labour Union (NLC) Pickets MTN Nigeria over unfair labour practice<sup>11</sup>. Also Nigerian Union of Petroleum and Natural Gas Workers dragged Major International Oil Companies before the 107<sup>th</sup> Session of International Labour Organisation (ILO) over unfair labour Practices<sup>12</sup>.

Chief among unfair trade practices in Nigeria is refusal of employees to form or join union. Often time employers in Nigeria refrain their employees from joining labour union. The chairman of Jigawa branch of NLC while addressing journalist on the union's picketing of MTN facilities in Nigeria stated that the action was sequel to anti-union posturing of the company by not allowing workers in its employment to belong to labour unions<sup>13</sup>.

Anti-union activities of employers is another form of unfair labour practice in Nigeria. Many companies in Nigeria especially Multi-national companies engage in repressive anti-labour/union activities<sup>14</sup>.

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<sup>10</sup> See Sec. 8, 151 and 152 National Labour Relation Act 1935

<sup>11</sup> Premium Times published 11<sup>th</sup> July, 2018 retrieved at

<https://www.premiumtimesng.com/regional/nwest/275790-workers-flee-as-nlc-pickets-mtn-office-in-jigawa.html>

<sup>12</sup> Reported in Vanguard Newspaper published 8<sup>th</sup> June, 2018. (<https://www.vanguardngr.com/2018/06/labour-drags-iocs--ilo-alleges-unfair-labour-practices/>)

<sup>13</sup> Premium Times published 11<sup>th</sup> July, 2018 retrieved at

<https://www.premiumtimesng.com/regional/nwest/275790-workers-flee-as-nlc-pickets-mtn-office-in-jigawa.html>

<sup>14</sup> Diana JungueraCuriel of IndustrialAll Global Union stated that the anti-labour activities of International Oil Companies had not allowed unionization and frustrate efforts to unionize workers. He stated further that the status of NUPENG as trade Union had been adversely affected by repressive anti-labour/union activities of Multinational oil Companies. (Vanguard Newspaper published 8<sup>th</sup>

A form of unfair trade practice which is gradually becoming popular in Nigeria is casualization of workers. Many organizations and companies in Nigeria now employ contract or casual staff instead of a regular full-fledged employee. This mode of employment makes it difficult for workers to have collective bargaining agreement as the term of their employment/service is as contained in their respective contracts which most times varies. The elopement of contract workers severance benefit is another issue<sup>15</sup>.

Other instances of unfair labour practices include: denial of annual leave to an employee, wage differentials, withholding salaries of bank employees to offset loans advanced to customers of the bank, inordinate working hours, etc.<sup>16</sup> and refusal of an employer to allow an employee to resume work after she took maternity leave in terms of any law, collective agreement or her contract of employment; or was absent from work for up to four weeks before the expected date, and up to eight weeks after the actual date, of the birth of her child.

Another form of unlawful labour practice is refusal/neglect of employer to give employee appointment letter or letter of contract upon appointment. This form of unfair labour practice is specific to the legal profession in Nigeria though sometimes of it can be found in other sectors also. In Nigeria, many law firms employ lawyers without giving them employment letter or any document stating the terms of their engagement. To make the matter worse, newly employed lawyers in law firm are not aware of their salary until they are paid after working for a month. The salary most time is less than the national minimum wage and the worker can be disengaged without prior notice. It may be argued that the reason for law firms' neglect or refusal to give employees contract of employment is to protect the firms from litigation by employee for the

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June,2018.@<https://www.vanguardngr.com/2018/06/labour-drags-iocs--ilo-alleges-unfair-labour-practices/>  
accesed 29<sup>th</sup> July, 2018.

<sup>15</sup> ibid

<sup>16</sup> Aluko and Oyebode, "The Justiciability Of Unfair Labour Practices/International Best Practices In The Employment/Labour Industry."

unfair practice of the firm. Ordinarily a worker is to be given a contract of employment within one month of appointment under the Labour Act<sup>17</sup>.

Also, employers evading employee's compensation. With regards to the Employee's Compensation Act (ECA) of 2010 and the Nigeria Social Insurance Trust Fund (NSITF) established seeks to put in place a transparent and fair system of guaranteed and adequate compensation for employees or their dependants in the event of death, injury, disease or disability arising out of, or in the course of employment. Currently, the effective implementation of the scheme is being threatened by the refusal of some state governments and private sector employers to comply with the ECA. As of 2012, only 804 private sector employers have registered with the NSITF, one year after the take-off of the scheme. Of greater concern is the fact that large number that registered with the scheme is not complying fully with the provisions of the ECA. Also some state governments are yet to key into the scheme. Further investigation revealed that over 60 per cent of employers in the construction and manufacturing sector, where the highest level of workplace accidents occur, are not complying with the ECA in terms of remitting their contributions to the fund. Rather, employers are limiting the definition of "total payroll" to the basic salary, housing allowance and transport allowance, and have also set certain conditions which the NSITF must meet for them to key into the scheme.<sup>18</sup>

Issues pertaining to collective bargaining and collective agreements can also fall under unfair labour practices. The enforceability of collective agreement has been a debatable matter for decades. Collective bargaining has been recognized by law as a means of negotiation between an employer or group of employers on the one hand and one or more trade unions on the other, designed to produce collective agreements which may have a number of functions. These functions include prevention of industrial conflicts and their resolution where they occur and promotion of industrial peace and harmony. Collective agreement has proved to be a very

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<sup>17</sup>Sec. 2 Labour Act

<sup>18</sup>Junaidu Bello Marshall, Mu'azuAbdullahiSaua. EMPLOYEE'S COMPENSATION ACT 2010: AN OVERVIEW

flexible and veritable source of regulation of labour practice in the legal framework of industrial relations in Nigeria.<sup>19</sup>

As it was stated earlier, unlike other jurisdictions where definition of unfair labour practice as well as acts or omissions constituting unfair labour practice can be found in a statute or legal document, Nigerian labour laws fail in this regard. Although references are made to the term in extant labour laws, none of them defines it. However, looking at the provision of Labour Act and Trade Union Act, the following acts may be said to constitute unfair labour practice in Nigeria;

- a) Payment other than in Legal tender<sup>20</sup>
- b) Failure of employer to give to a worker a contract of employment within one month of appointment<sup>21</sup>
- c) Compelling a worker to join or refrain from joining or relinquish his membership of a Labour Organisation<sup>22</sup>
- d) Dismissal or prejudice of worker by reason of trade union membership or because of trade union activates outside working hour or within working hour with the consent of the employer<sup>23</sup>
- e) Coercion of worker to relinquish rights<sup>24</sup>
- f) Neglect of employer to fulfill contract<sup>25</sup>
- g) Victimization of employee by trade union on ground of refusal to join trade union<sup>26</sup>
- h) Failure to fulfill terms of collective agreement or failure of employer to negotiate collectively on behalf of employees or vice versa<sup>27</sup>.

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<sup>19</sup>Dr. A.B. Ahmed, AbubakarAminu Ahmad and Nuhu Musa Idris.op. cit.

<sup>20</sup>Section 1 of Labour Act, Cap L1,LFN 2004

<sup>21</sup>Section 2 ibid

<sup>22</sup>Section 9( 6)(a) ibid

<sup>23</sup>Sec. 9(6) ibid

<sup>24</sup>Sec. 10 ibid

<sup>25</sup>Sec.81(a) ibid

<sup>26</sup>Sec. 12 (4) Trade Union Act

<sup>27</sup>Sec.25 ibid

i) Violent/Unlawful Picketing<sup>28</sup>

Interestingly, section 254C (1) (f) of the Constitution empower the National Industrial Court of Nigeria to adjudicate on dispute relating to or connected with unfair labour practice or International best practices in labour, employment and industrial relation matters. The implication of this provision is that the court can declare an act or omission as unfair labour practice even if the unfairness of such act or omission cannot be traced to any existing law in Nigeria so far such act or omission is short of international best practice. Similarly, National Industrial Court Act 2006<sup>29</sup> enables the Court to award damages as a relief for the unfair labour practice.

### **3.0 LEGAL FRAMEWORK FOR PROTECTION AGAINST UNFAIR LABOUR PRACTICE IN NIGERIA**

- 1) CONSTITUTION: The 1999 Constitution of the Federal Republic of Nigeria (As Amended) provides for freedom of association<sup>30</sup>. This provision empowers individual to freely form or join an existing association that is not contrary to law. This is the foundation of rights of workers to form or join trade union. In a similar vein, the constitution established the National Industrial Court of Nigeria to adjudicate on labour and industrial related matters<sup>31</sup>. The constitution also empowers the National Industrial Court to adjudicate on matters relating to or connected with unfair labour practice or international best practices in labour and employment<sup>32</sup>.
- 2) LABOUR ACT<sup>33</sup>: This is the primary statute regulating labour activities in Nigeria. The Act recognizes certain acts which violation may be said to be unfair trade practice

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<sup>28</sup> Sec.43 ibid

<sup>29</sup> Section 254D [2] of the 1999 Constitution [as altered] and Sections 14 and 19 [d] of the National Industrial Court Act, 2006.

<sup>30</sup> Sec.40 of 1999 Constitution of the Federal Republic of Nigeria (As Amended)

<sup>31</sup> Sec.254 CC ibid

<sup>32</sup> Sec.254 C(1)(f) ibid

<sup>33</sup> Labour Act, Cap L1,LFN 2004

thought the acts or omissions are not expressly refer to in the act to constitute unfair labour practices. Some of these acts include Payment other than in Legal tender<sup>34</sup>, Failure of employer to give to a worker a contract of employment within one month of appointment<sup>35</sup>, Compelling a worker to join or refrain from joining or relinquish his membership of a Labour Organization<sup>36</sup>, Dismissal or prejudice of worker by reason of trade union membership or because of trade union activities outside working hour or within working hour with the consent of the employer<sup>37</sup>, Coercion of worker to relinquish rights<sup>38</sup>, Neglect of employer to fulfill contract<sup>39</sup>, Victimization of employee by trade union on ground of refusal to join trade union<sup>40</sup>, Failure to fulfill terms of collective agreement or failure of employer to negotiate collectively on behalf of employees or vice versa<sup>41</sup>, Violent/Unlawful Picketing<sup>42</sup> inter-alia.

May we restate that the failure of this law to define or highlight acts or omissions which amount to unfair labour practice is a major lacuna which should be remedied as soon as possible to bring about certainty to the term. As it is now, workers and employees can only speculate on acts that can be described as unfair labour practice.

- 3) Trade Union Act: The Act provides for registration of trade union. It defines trade union means 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, whether the combination in question would or would not, apart from this Act, be an unlawful combination by reason of any of its purposes being in restraint of trade, and whether its purposes do or do not include the provision of benefits for its members<sup>43</sup>. The

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<sup>34</sup> Section 1 of Labour Act, Cap L1, LFN 2004

<sup>35</sup> Section 2 ibid

<sup>36</sup> Section 9( 6)(a) ibid

<sup>37</sup> Sec. 9(6) ibid

<sup>38</sup> Sec. 10 ibid

<sup>39</sup> Sec.81(a) ibid

<sup>40</sup> Sec. 12 (4) Trade Union Act

<sup>41</sup> Sec.25 ibid

<sup>42</sup> Sec.43 ibid

<sup>43</sup> Sec. 1 Trade Union Act

Act also states that membership of a trade union by employees shall be voluntary and no employee shall be forced to join any trade union or be victimized for refusing to join or remain a member<sup>44</sup>. Compelling of workers to join labour Union by any Trade Union amount to unfair labour practice.

- 4) Employee's Compensation Act 2010: The President of the Federal Republic of Nigeria signed the Employee's Compensation Bill into law in 2010. The Employee's Compensation Act (ECA) of 2010, which repeals the Workmen's Compensation Act(WCA) of 2004 and it is designed to provide an open and fair system of guaranteed and adequate compensation for employees or their dependents in the event of death, injury, disease or disability arising out of or in the course of employment. The ECA is also intended to provide safer working conditions for employees by ensuring that all relevant stakeholders contribute towards the prevention of workplace disabilities and other occupational hazards. ECA applies to all employees in both public and private sectors in Nigeria, which is an effort to bring Nigerian Labour law consistent and in conformity with International Best Governance Practices and relevant International Labour Organizations (ILO).<sup>45</sup>
- 5) National Industrial Court Act 2006: this Act provides for the establishment of the National Industrial Court and states the jurisdiction of the court in line with the constitutional provisions. It also empowers the President of the Court to make rules of practice for the proceeding of the court to promote speedy adjudication.
- 6) National Industrial Court of Nigeria (Civil Procedure) Rules 2017: this is the procedural rule with respect to any proceeding of the National Industrial Court on any labour related matter including matters on unfair labour practice.

#### **4.0 JUSTICIABILITY OF UNFAIR LABOUR PRACTICE IN NIGERIA**

Acts or omissions constituting unfair labour practice can be challenged in court. As a matter of fact, since our law does not state what constitutes unfair labour practice, the onus is on the court

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<sup>44</sup> Sec 12(4) ibid

<sup>45</sup> Junaidu Bello Marshall, Mu'azu Abdullahi Sua. Op. cit.

to describe as act or omission as unfair labour practice. The Constitution and the National Industrial Court Act confer jurisdiction on the National Industrial Court to hear and determine matters relating to labour and industrial dispute including unfair labour practice. The court is further empowered to consider if an act conform to international best practice or fall short of international labour standards<sup>46</sup> or international conventions/treaties on labour and employment which has been ratified in Nigeria<sup>47</sup>. Thus whenever an employer, employee or trade union of the employees or employers opines that any action or omission amounts to unfair labour practice, they can approach the court for redress.

The court in *Mix and Bake Flour Mill Industries Ltd v National Union of Food, Beverage and Tobacco Employees (NUFBTE)*<sup>48</sup>, stated that an unfair labour practice is usually due to the employers' dislike of trade unions or his opposition to the presence of a trade union in his plant. To be unfair, it must be established that the practice does not conform with best practice in labour circles, as may be enjoined by local and international experience.

Similarly, the court in *United Bank for Africa v Gogo C. Anyanwu*<sup>49</sup>, the court condemned the practice of withholding the salary of the bank employee to offset the recovery of non-performing credit facilities advance to customers of bank as being unwholesome and offensive to the constitution and contrary to public policy and good conscience.

The facts of *MrShittu Habib v. Coral International Limited*<sup>50</sup> and *Abel Abel v. Trevi Foundation Nigeria Limited*<sup>51</sup> present interesting examples of the NICN intervening to afford equity to workers injured in the course of their work where the employers, in an apparent bid to avoid liability for compensatory damages, contended that the workers were not under their

<sup>46</sup> Sec. 254C (1) (h) of the Constitution.

<sup>47</sup> Sec. 254C (2) of the Constitution

<sup>48</sup> NIC/4/2000 ( Unreported) delivered on the 2<sup>nd</sup> April, 2004.

<sup>49</sup> Appeal Number: CA/L/168/2011

<sup>50</sup> Unreported suit No: NIC/PHC/79/2013 delivered on 26 June 2014 (<http://judgment.nicn.gov.ng/cont-dtl.php?contC=625>); The NICN held that an employee need not necessarily prove his employment by a written employment letter to maintain a claim against an employer.

<sup>51</sup> Unreported suit No: NIC/PHC/55/2013 delivered on 26 June 2014 (<http://judgment.nicn.gov.ng/cont-dtl.php?contC=626>).

employment as at the time of the accident. The court, in both cases, noted that even though the claimant did not show any letter of employment, a contract of employment could be properly inferred from the conduct of the parties; in the Abel case, the fact that the claimant had been doing some work for the defendant for which the defendant paid an ‘allowance’, coupled with the issuance of a work identity card. The court further invoked its equitable jurisdiction to assist the hapless employee in the Habib case by awarding monetary compensation to enable him obtain surgery to remove metal from his leg.

## **5.0 CONCLUSION AND RECOMMENDATIONS.**

Workers and employers as well as their unions should treat one another reasonably, fairly and equitably. The activities of workers, employers and their unions should always comply with the provisions of extant law guiding the relationship of worker and employers and do away with all forms of unfair labour practice. The vesting of jurisdiction in the National Industrial Court of Nigeria to adjudicate on labour and industrial disputes including dispute on unfair practices is highly commendable.

However, the absence of legislation on unfair labour practice is a vacuum that should be filled to give certainty to unfair labour practice. It is therefore recommended that the Labour Act be amended to provide for unfair labour practice. Nigerian legislator should follow the example of American and South Africa which define unfair labour practice and what constitute them in a statute.

Similarly, while there is an unsettled discussion as to whether the Labour Act (LA) extends beyond unskilled and manual workers, it nonetheless remains the governing law for labour matters. Thus employee whose nature of role is administrative, executive, technical or professional cannot invoke the provisions of Labour Act to declare an act as unfair labour practice.

The ECA provides benefit for dependents of those workers who are injured or killed because of work related accidents or illness. It also protects employers and fellow workers by limiting the

amount an injured employee can recover from employer and by eliminating the liability of co-workers in most employment. For instance, ECA covered both employees at the federal and State levels. There is need for more awareness both for employers and employees and a strict penalty for non-compliance with the provisions of the Act.

The jurisdiction of the National Industrial Court should be reviewed to provide for a compulsory registration of collective agreements with the registry of the court as it is the practice in some other jurisdictions. This can take the cloaks off consent judgment to make such agreements enforceable.

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