

## DECENT WORK DEFICITS IN INFORMAL ECONOMY: A CASE FOR DOMESTIC WORKERS IN NIGERIA

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### Abstract

*Globalisation comes with a growing demand for labour, particularly; cheap, disempowered labour. According to research, the weakness of labour laws and regulation to protect either wholly or partially, the rights of informal employees has contributed to the preponderance of indecent and precarious working conditions. Even though, the ILO's Decent Work Agenda (DWA) identifies the high incidence of informality as the major challenge militating against decent work, the arguments against formalisation uphold the potentials of informal economy to cushion the effect of unemployment and poverty in developing countries. This paper seeks to espouse the need to address decent work deficit by using Domestic Workers in Nigeria as case study. The paper finds that Domestic Workers suffer the worst decent work deficit as they operate at virtually the most invincible strata of the informal economy. However, it is contended that the ILO's recommendation 204 to eliminate informal economies in order to curb this deficit is rather premature giving its crucial role especially in developing countries like Nigeria. The paper adopts a doctrinal method to explore some of the challenges faced by Domestic Workers in Nigeria as well as how to reduce decent work deficit in the informal economy without stripping off the autonomy, flexibility and low cost that constitute its hallmarks. It recommends regulatory reforms geared towards effective application of existing legal and regulatory framework to informal employment as well as the ratification and domestication of the ILO's Conventions on decent work as the way forward.*

**Key Words:** Informal Economy, Decent Work, Domestic Worker, Formalisation.

### Introduction

Informal economy has been viewed as the nemesis of an over-regulated formal economy<sup>1</sup>. Authors like Fajana S. and Magbagbeola are of the opinion that the activities of the informal economy are consequent on the workings of the formal economy.<sup>2</sup> Other studies aver that as long as there is a formal economy, there will always be an informal economy thus establishing an inevitable linkage between the two.<sup>3</sup>

The term 'informal economy' first came into extensive use as a means of relating to the dualistic economic structure found in developing countries. However, not pertaining to developing countries alone, the informal economy has been a structural feature of development across the world.<sup>4</sup> According to the ILO's survey on 'Men and Women Working

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<sup>1</sup> Hernando De Soto, *The Other Path: Invincible Resolution in the Third World*, (United States, Harper & Row Publishers, 1989) p 143

<sup>2</sup> Fajana, S., *Functioning of the Nigerian Labour Market* (Yaba-Lagos, Labofin and Company 2000), Magbagbeola, Nelson O. (1996), "The Role of the Informal Sector in Nigeria's Post Adjustment Economy", in Nigerian Economic Society Beyond Adjustment: Management of the Nigerian Economy, (Ibadan, 1996)

<sup>3</sup> Roy, Ananya, 'Urban Informality: Towards an Epistemology of Planning' Journal of the American Planning Association (Lexington Press, 2005) P. 71

<sup>4</sup> Hart Keith, Informal Income Opportunities and Urban Employment in Ghana, in *The Journal of Modern African Studies*, Vol. 11 Iss. 1, (Cambridge University Press, 1973) p. 61

*in the Informal Sector*', about 60 % of the world's working population earn their living in the informal economy while in Africa, 85.8 % of employments are informal.<sup>5</sup>

Like in other African countries, the informal economy plays a major role for livelihoods in Nigeria. In fact, the Nigerian informal economy remains a major contributor to the nation's economy, accounting for 65% of the country's GDP.<sup>6</sup> Notwithstanding the potential to provide jobs for skilled, semi-skilled or unskilled labour who could not otherwise find job in the formal sector, the high incidence of informality in Nigeria is seen as essentially destructive, rather than something to celebrate.<sup>7</sup> Labour practices within the informal sector of Nigerian economy show evidence of violation of employees' right and non-implementation of labour regulations.<sup>8</sup> This has been blamed on the fact that informal work is characteristically; unregulated and in some cases, undocumented and hidden from the law.<sup>9</sup>

Consequently, in Nigeria, informal workers tend to fall through the safety nets of labour protection, evidenced by the long hours of work, low pay, debased labour standards, lack of social protection, dehumanising treatment and overall violation of International Labour Organisations (ILO) best practices as contained in its conventions.

Nigeria has ratified a total of 40 ILO Conventions with 35 currently in force including all the eight core conventions. However, Nigeria has not ratified a number of conventions which are crucial to addressing decent work deficits. These include ILO Conventions C122, C129, C150, C187, & C188 that relate to labour market governance, C102 on social security, C181 on Private Employment Agencies and C189 on Domestic Workers.<sup>10</sup>

Out of all the sectors in the informal economy, domestic work suffers the worst form of decent work deficit. This is largely owing to the fact that most domestic workers are isolated in private homes and thus virtually invincible to national labour regulation. According to the ILO report, about 52 million people worldwide are employed as domestic workers. While a substantial number are men working as gardeners, drivers or butlers, 83 per cent of them are women.<sup>11</sup> This figure may not well reflect the number of domestic workers in Nigeria as there is no data on the subject. The figure does not also reflect the number of children that are forced to work as domestic workers in gross violation of the Labour Act Child's Right Act<sup>12</sup> and the Universal Basic Education Act<sup>13</sup>.

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<sup>5</sup> ILO, *Report on Women and Men in the Informal Economy: A Statistical Picture*, 3<sup>rd</sup> edn, Geneva, 2018 <[https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_626831.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_626831.pdf)> accessed 7 November 2019

<sup>6</sup> Bank of Industry (BOI), *Economic Development Through the Nigerian Informal Sector: A Bank of Industry (BOI) Perspective*. <[https://www.boi.ng/wp-content/uploads/2018/05/BOI-Working-Paper-Series-No2\\_Economic-Development-through-the-Nigerian-Informal-Sector-A-BOI-perspective.pdf](https://www.boi.ng/wp-content/uploads/2018/05/BOI-Working-Paper-Series-No2_Economic-Development-through-the-Nigerian-Informal-Sector-A-BOI-perspective.pdf)> accessed 7 November 2019

<sup>7</sup> Ibid

<sup>8</sup> Ugochukwu Ikeije, Lekan Akomolafe, Chinwe Onuba, Labour Practices in the Informal Sector of Nigerian Economy: A Critical Analysis in *Global Journal for Arts, Humanity and Social Sciences* Vol. No 2 p 6 2016 <<http://www.eajournals.org/wp-content/uploads/Labour-Practices-in-the-Informal-Sector-of-Nigerian-Economy-A-Critical-Analysis.pdf>> accessed 7 November 2019

<sup>9</sup> Ibid

<sup>10</sup> Federal Ministry of Labour and Employment (FMLE)/ ILO report on Nigeria Decent Work Country Programme II, <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_mas/--program/documents/genericdocument/wcms\\_561063.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_mas/--program/documents/genericdocument/wcms_561063.pdf)> accessed 7 November 2019

<sup>11</sup> ILO Report on Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection. <[https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_173363.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf)> accessed 23 November 2019

<sup>12</sup> S. 28 Childs Right Act, Cap C50, LFN 2004

<sup>13</sup> S. 2 (1) & (2), UBE Act, LFN 2004

In the light of the foregoing, the ILO's Decent Work Agenda in alignment with the Sustainable Development Goal 8.3 on Decent work and Economic growth recommends<sup>14</sup> the formalization of the informal economy. While the ILO's Decent Work Agenda might lead to a systematic elimination of the informal sector, the questions are: (i). whether developing countries such as Nigeria can thrive in the absence of the informal economy's contribution to development. (ii) since the informal economy is the direct result of the over regulation of the formal economy, will formalisation not result into a further break down of the economy? (iii) Can decent work be achieved without formalization?(iv) can there be a formalisation strategy that preserves the essence of an informal economy?

The paper consists of five sections. Following the introduction, the second section is the conceptual clarification of terms. This section gives national and international perspectives on the concepts of informal economy, informal worker, decent work and domestic workers with the aim of delineating other related concepts. The third section discusses decent work in the informal economy with a focus on domestic workers in Nigeria. The fourth section is an overview of related laws. This section examines the extent to which the existing laws can ensure decent work in the informal economy in the absence of labour regulation. In the fifth section, the article makes recommendations that will guide law and policy makers towards a strategic implementation of the ILO's decent work agenda especially for domestic workers in Nigeria and to do this without undermining the essence of an informal economy.

### **Informal Economy**

There is no universally common definition of informal economy. This is because, the concept adopts its meaning from country by country experience.<sup>15</sup> Several criteria have been used to define the informal economy, such as: size, ease of entry, legal status, reliance on indigenous resources, family ownership; small scale operations, labour intensive and adaptive technology, unregulated and competitive markets.<sup>16</sup> The informal economy in Nigeria refers to economic activities in all sectors of the economy that are operated outside the purview of government regulation.<sup>17</sup> The above description aptly captures the inevitable linkages between formal and informal economies. Activities in the informal economy has been viewed as invisible, irregular, parallel, non-structured, backyard, underground, subterranean, unobserved or residual.<sup>18</sup> The informal economy does not appear to have a meaning independent of the formal sector, as it only derives its meaning when contrasted with the formal sector.<sup>19</sup> Thus, the survival and functioning of the informal sector is a function of the survival and functioning of

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<sup>14</sup> ILO's website, R204; Transition from the informal to formal to the informal Economy Recommendation, 2015 (No. 204) < [https://www.ilo.org/employment/units/emp-invest/informal-economy/WCMS\\_443501/lang--en/index.htm](https://www.ilo.org/employment/units/emp-invest/informal-economy/WCMS_443501/lang--en/index.htm) > accessed 7 November 2019

<sup>15</sup> T. S. Papola, Informal Economy: Concept and Policy in Economic and Political Weekly, Vol. 15, No 18, (1980) p. 817 <[www.jstor.org/stable/4368628](http://www.jstor.org/stable/4368628)> accessed 7 November 2019

<sup>16</sup> Cole, W. E. and Fayissa, B., The Urban Subsistence Labour Force: Toward a Policy Oriented and Empirically Accessible Taxonomy in World Development Journal, Vol. 19 (7) (1991), p 789 (1991).

<sup>17</sup> Olabisi Yusuf, A Theoretical Analysis of the Concept of Informal Economy and informality in Developing Countries in European Journal of Social Sciences, Vol. 20 Iss. 4 (2011) pp. 625 <[https://www.researchgate.net/publication/285515582\\_A\\_theoretical\\_analysis\\_of\\_the\\_concept\\_of\\_informal\\_economy\\_and\\_informality\\_in\\_developing\\_countries](https://www.researchgate.net/publication/285515582_A_theoretical_analysis_of_the_concept_of_informal_economy_and_informality_in_developing_countries)>

<sup>18</sup> Magbagbeola, Nelson O. (1996), "The Role of the Informal Sector in Nigeria's Post Adjustment Economy", in Nigerian Economic Society Beyond Adjustment: Management of the Nigerian Economy, (Ibadan, 1996)

<sup>19</sup> Keith Heart, The Informal Economy, in The Cambridge Journal of Anthropology Vol. 10, No 2 (Berghahn Books, 1985), pp. 54

the formal sector.<sup>20</sup>The ILO defines the informal economy as all activities by workers and economic units that are in law or in practice not covered or insufficiently covered by formal legislation.<sup>21</sup>Even though, terms such as; casualisation, non- standard work, part time workers are considered informal workers, a distinction could be drawn from the fact that they are informal workers, working in a formal structure.<sup>22</sup> It would also be inaccurate to include illegal/ criminal activities such as the sale of narcotics, prostitution, touting, fraudsters e.tc in the definition of informal economy.<sup>23</sup>Nonetheless, these modes of employment relations constitute serious infractions to the labour regulations and contributes to the decent work deficit in Nigeria.

Other related concepts such as; ‘Informal Sector’ and ‘Informal Employment’ are sometimes used to reflect the informal economy. The ILO also delineates these concepts by defining ‘Informal Sector’ as a group of production units comprised of unincorporated enterprises owned by households, including informal own-account enterprises and enterprises of informal employers (typically small and non-registered enterprises).<sup>24</sup> This definition limits the definition of informality to enterprises. Whereas the term informal employment connotes "all remunerative work (i.e. both self-employment and wage employment) that is not registered, regulated or protected by existing legal or regulatory frameworks, as well as non-remunerative work undertaken in an income-producing enterprise."<sup>25</sup>

### **Informal Worker**

In the past, informal workers were classified as those uneducated, unskilled, semi-skilled workers who would otherwise be absorbed into the formal economy.<sup>26</sup>With the rate of unemployment in Nigeria, informal workers now range from educated, to non-educated, skilled to unskilled.<sup>27</sup> An informal worker connotes a person who carries out remunerative work that is not recognised, registered and who does this outside the covering of the law.<sup>28</sup>

### **Decent Work**

Originally developed by the International Labour Organisation and having been endorsed by a wide range of international stakeholders including the European Commission, the concept of decent work is based on an integrated approach of four pillars covering productive

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<sup>20</sup> Fapohunda, T.M., *Women and the informal sector in Nigeria: Implications for development* in British Journal of Arts and Sciences, Vol .4 (1), (British Journal Publishing ,2012) p. 35 <<http://www.bjournal.co.uk/BJASS.aspx> > accessed 9 November 2019

<sup>21</sup> ILO, ‘Distinguishing the Concepts, Informal Sector, Informal Employment and Informal Economy’ in Minimum Wage Policy Guide, < [https://www.ilo.org/global/topics/wages/minimum-wages/beneficiaries/WCMS\\_436492/lang--en/index.htm](https://www.ilo.org/global/topics/wages/minimum-wages/beneficiaries/WCMS_436492/lang--en/index.htm)> accessed 9 November 2019

<sup>22</sup> David Eyongndi, Analysis of Casualisation of Labour Under Nigerian Labour Law in The Gravitas Review of Business and Property Law, Vol 7 No 4 (2016) p. 103

<sup>24</sup>According to a Resolution concerning statistics of employment in the informal sector, adopted by the Fifteenth International Conference of Labour Statisticians (January 1993) <[https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms\\_087484.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms_087484.pdf) > accessed 16 August 2020

<sup>25</sup> *ibid*

<sup>26</sup> ILO, ‘Report on Decent Work and the Informal Economy’ (Switzerland, 2002) p 12 <<https://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/rep-vi.pdf> > accessed 16 August 2020

<sup>27</sup> *Ibid* F(n) 16

<sup>28</sup> RaLf Hussmanns, Defining and Measuring Informal Employment, (1993) p. 8 <https://www.ilo.org/public/english/bureau/stat/download/papers/meas.pdf>

employment, rights at work, social protection and social dialogue.<sup>29</sup> The 2008 ILO Declaration on Social Justice and Fair Globalization emphasises that these four components of decent work are “inseparable, interrelated and mutually supportive”. Decent work is therefore defined as work with fair and equal treatment, decent remuneration, fair conditions of employment, safety and social protection, opportunities for training and development, and collective bargaining<sup>30</sup>.

### **Domestic Work**

Domestic work is one of the oldest and most important occupations for millions of women around the world. The Concept of domestic work derive its roots from the global history of slavery, colonialism and other forms of servitude.<sup>31</sup>

In contemporary society, care work at home is vital for the economy outside the household to function. In the past two decades demand for care work has been on the rise everywhere.<sup>32</sup> The massive incorporation of women in the labour force, the ageing of societies, the intensification of work and the frequent lack or inadequacy of policy measures to facilitate the reconciliation of family life and work underpin this trend. Today, domestic workers make up a large portion of the workforce, especially in developing countries, and their number has been increasing – even in the industrialized world.<sup>33</sup>

The term “domestic work” means work performed in or for a household or households while the term “domestic worker” refers to any person engaged in domestic work within an employment relationship. However, it is important to note that a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.<sup>34</sup>

### **Decent Work For Domestic Workers In The Informal Economy: The Problem**

The informal economy is a major contributor to the Nigerian economy, accounting for a significant portion of employment and national GDP.<sup>35</sup> According to the IMF, the Nigerian informal sector accounted for 65% of Nigeria’s 2017 GDP.<sup>36</sup> Labour practices within the informal sector of Nigerian economy show evidence of violation of employees’ right and non-implementation of labour regulations<sup>37</sup>.

<sup>29</sup> Bret J Miller, *Living Outside of the Law: How the Informal Economy Frustrates the Enforcement of the Human Rights Regime for the Billions of the Worlds most Marginalised in North-western Journal of International Human Rights* Vol. 4 Iss. 1 <<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1050&context=njihr> > accessed 12 November 2019

<sup>30</sup> Egger, P. and Sengenberger, W. (2001). *The Definition of decent Work*. ILO, Geneva.

<sup>31</sup> ILO, *Report on Decent Work for Domestic Workers*, 99th Session (2010) p.5 <[https://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_104700.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_104700.pdf) > accessed 23 November 2019

<sup>32</sup> Glenda Labadie -Jackson, *Reflections on Domestic Work and the Feminization of Migration in Campbell Law Review*, Vol. 31 Iss. 1 (Scholarly Repository, Campbell University Press 2008) p. 68

<sup>33</sup> *Ibid f(n)* 28

<sup>34</sup> Article 1, ILO Domestic Work Convention No. 189 (2011)

<sup>35</sup> Fajana, S. and Samuel, O. (2007). “The Nigerian informal Sector: unionism, Industrial Relations and National Development” *LASU Journal of Social Sciences*, Vol. 6, Nos. 1 & 2 LASU, Lagos.

<sup>36</sup> *Ibid f(n)* 6

<sup>37</sup> The National Human Rights Commission, a government rights watchdog, said it frequently received reports of house girls being abused, and worked with the police and NAPTIP to secure prosecutions as well as provide shelter and aid for the victims., See NAPTIP 2018 first quarter report on Human Trafficking and other related matters.

In the current debate on the significance of the informal economy in developing countries, many authors highlight their economic role in stimulating the growth of the market economy, promoting a flexible labour market, stimulating productive activities, and absorbing retrenched/ rejected labour from the formal sector. Others claim that informal labour has become a convenient means of pursuing the global agenda of privatisation and liberalisation<sup>38</sup>.

Although the informal economy provides a safety net for skilled, semi-skilled or unskilled labour who could not find job in the formal sector of the labour market, informal economy in Nigeria has practices that are not in conformity with the International Labour Organization (ILO) best practices as ratified in its conventions.<sup>39</sup>

However, Nigeria has not ratified a number of conventions which are crucial to addressing decent work deficits. These include: ILO Conventions C122, C129, C150, C187, & C188 that relate to labour market governance, C102 on social security, C181 on Private Employment Agencies and C189 on Domestic Workers.<sup>40</sup>

Domestic workers are amongst the most vulnerable when it comes to abuse in the workplace.<sup>41</sup> Due to their isolation (i.e. working alone in a private household) and the nature of the work (relatively unskilled), domestic workers are subject to all sorts of unfair treatment and exploitation ranging from long working hours to sub-standard wages. Many women and girls employed as domestic workers around the world face an appalling array of domestic violence and abuses. Sexual harassment against domestic workers is amongst these abuses<sup>42</sup>.

According to the ILO report, about 52 million people worldwide are employed as domestic workers. While a substantial number are men; working as gardeners, drivers or butlers, 83 per cent of them are women<sup>43</sup>. In Africa, there is an estimate of 5.24 million domestic workers, 70 percent of which are women. In Nigeria, the prevalence of domestic work is unclear as the 2009 National Bureau of Statistics pins the number at 200,000 domestic works; half of which are men<sup>44</sup>. This may not be accurate as domestic work in Nigeria is scarcely documented. UNICEF's Nigeria Country Programme reported that more than half of Nigeria's 79 million children between the ages of 5 to 17 are put to work contrary to section 28 of the Childs Right Act Cap C50 LFN. A number of these children are those that are placed in households as domestic workers.<sup>45</sup>

The nexus between informal economy , decent work and domestic worker is hinged on the fact that the need for domestic workers to undertake housekeeping, childcare and care of the elderly is a "formal economy" solution that dual-income, middle-class professional

<sup>38</sup> Amin, N, The Informal Sector in Asia from Decent Work Perspective, Employment Paper 2002/4, ILO, Geneva, (2002) p. 17

<sup>39</sup> *Ibid* f(n) 8, Nigeria has ratified a total of 40 ILO Conventions with 35 currently in force including all the eight core conventions.

<sup>40</sup> ILO/FMLE Report on Decent Work Deficit in Nigeria <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_mas/---program/documents/genericdocument/wcms\\_561063.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_mas/---program/documents/genericdocument/wcms_561063.pdf) > accessed 26 November 2019

<sup>41</sup> Gbenga Komolafe, General Secretary of Federation of Informal Workers' Organisations of Nigeria (FIWON), confirms that domestic workers are exploited and abused in Nigeria. According to him, the gruesome stories of gross abuse and inhumanity suffered by domestic workers in the country, demonstrates the pivotal importance of a legislation to protect them. The Harrowing Life of Domestic Workers , This Day Live , January 14 2013 <<http://www.thisdaylive.com/articles/the-harrowing-life-of-domestic-workers/136273/> > accessed 26 November 2019

<sup>42</sup> See Ochanya: Accused lecturer arraigned in court, Daily Trust News Paper Tuesday 26<sup>th</sup> November 2019

<sup>43</sup> ILO Report on Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection. <[https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_173363.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf)> accessed 23 November 2019

<sup>44</sup> See National Bureau of Statistics, Women and Men in Nigeria 2009

<sup>45</sup> See UNICEF Nigeria Country Programme Document 2018-2022

families tend to adopt in many industrialized market countries in order to balance their work and home life, though this is an option that is beyond the reach of most working class families. In such economies, the decision to employ a domestic worker is no doubt greatly influenced by the availability of social facilities for workers with family responsibilities.<sup>46</sup>

### **Reviewing The Role Of Existing Laws**

In spite of several national and international laws and policies protecting worker's rights in Nigeria, it remains that workers who fall under the informal economy are continually left without legal protection. This section explores the extent to which existing legal framework can be invoked to address the decent work deficit amongst domestic workers in Nigerian Informal economy.

#### ***International Conventions To Which Nigeria Is A Member***

**The ILO Declaration On Fundamental Principles And Right At Work 1998** : The 1998 ILO Declaration on Fundamental Principles and Rights at Work “declares 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 their Constitution, 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; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.<sup>47</sup>

**The Worst Forms Of Child Labour Convention, 1999 (No. 182)**: An examination of the preamble to the convention reveals that the convention aims at the effective elimination of the worst forms of child labour. Article 2 of the convention recognized a child to be a person under the age of 18 years while article 3 prohibits all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict as well as work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.<sup>48</sup>

**Abolition Of Forced Labour Convention 1957 (No. C 105)**: The convention by article 1 prohibits all forms of forced labour including those allowed under the Forced Labour Convention of 1930, such as punishment for strikes and punishment for holding certain political views.<sup>49</sup>

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<sup>46</sup> ILO, Report on Decent Work for Domestic Workers, 99th Session (2010) p.14 <[https://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_104700.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_104700.pdf)> accessed 23 November 2019

<sup>47</sup> ILO, Declaration on Fundamental Principles and Rights at Work, <[https://www.ilo.org/actrav/areas/WCMS\\_DOC\\_ATR\\_ARE\\_DECL\\_EN/lang--en/index.htm](https://www.ilo.org/actrav/areas/WCMS_DOC_ATR_ARE_DECL_EN/lang--en/index.htm)> accessed 26 November 2019

<sup>48</sup> Art. 3 (a) and (d) The Worst Forms of Child Labour Convention, 1999 (No. 182)

<sup>49</sup> Art. 1, International Labour Organisation, C105 - Abolition of Forced Labour Convention, 1957 (No.105)<[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100\\_ILO\\_CODE:C105:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C105:NO)> accessed 8 November 2018

**Occupational Safety And Health No 155:** By this convention, workers are protected from accidents and injuries to health arising out of, linked with and occurring in the course of work. Employers are obligated to minimise as far as possible, the causes of hazards inherent in the working condition.<sup>50</sup>

**Minimum Age Convention 1973 (No. 138):** Article 2 of the convention sets the Minimum age for a child to be admitted to employment at 15. This is as long as the Child has completed his /her Secondary School Education.

**ILO Convention On Domestic Workers No. C 189 (2011):** The Convention on Domestic Workers, formally the Convention concerning Decent Work for Domestic Workers is a convention setting labour standards for workers. The convention which came into force in 2013 contains 27 articles which are geared towards protection of the rights of domestic workers. The main rights given to domestic workers under the convention include; the right to daily and weekly at least 24 hours rest, the right to choose the place where they live and spend their leave. Ratifying states parties should also take protective measures against violence and should enforce a minimum age which is consistent with the minimum age at other types of employment. It is contended that Article 2 of the Convention fails to list domestic workers under its definition of workers in respect of their minimum wage entitlement. Notwithstanding, domestic workers have a right to a clear (preferably written) communication of employment conditions which should in case of international recruitment be communicated prior to immigration. They are also, not required to reside at the house where they work or to stay at the house during their leave.<sup>51</sup>

### **National Legislation**

**Child's Right Act (2003):** Consisting of 278 sections, the Child's Right Act is all encompassing towards protecting the interest of children. Accordingly, section 28 of the Act prohibits every form of exploitative labour.<sup>52</sup>

**Compulsory, Free Universal Basic Education Act 2004:** Section 2 of the Act stipulates that every parent must ensure that his/her child or in this case; ward attends and completes his/her primary to secondary education.<sup>53</sup>

**Pension Reform Act (2014):** Sections 1 and 2 of the Pension Reform Act articulate the creation of the Contributory Pension Scheme and the terms of inclusion therein. In particular, Section 2(3) stipulates that employees of organizations with less than three employees and self-employed persons will be eligible to participate in the scheme according to guidelines issued by the commission regulating its functions and application. While domestic work often takes place in an environment where less than three workers are employed, the particular nature of domestic work is not articulated, nor excluded, in this act. Nonetheless, the right for domestic workers to participate, while not explicit, appears evident.

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<sup>50</sup> Art. 4, ILO Convention on Occupational Safety and Health NO C 155 (1981)

<sup>51</sup> See Art. 2, 3, 4, 11, 17 ILO Convention on Domestic Workers NO. C 189 (2011)

<sup>52</sup> Ss 28 & 32 CRA 2003 Cap C50 LFN (2004)

<sup>53</sup>S. 2 UBEA, LFN (2004)

**National Health Insurance Scheme Act (1999):** Section 7 of the National Health Insurance Scheme Act provides access to the scheme to those employers with a minimum of 10 employees. This requirement evidently excludes domestic workers from coverage given that most domestic workers work in environments with fewer than 10 employees. No provisions were found by this review extending access to the scheme to domestic workers.

**Labour Act:** Section 1 of the Labour Act protects workers right to wages<sup>54</sup> and by this includes all persons who have entered into or work under a contract with an employer, whether the contract is for manual labour, or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour.<sup>55</sup> However, there are exemptions that exclude other forms of working relationships but do not exclude domestic workers, or others working in the informal economy. From the foregoing, it is apparent that all workers that come under this definition whether informal or formal are protected under the provisions of the Act. Furthermore and more explicitly section 88(1) of the Labour Act provides that “The Minister may make regulations - (a) providing for the payment of compensation by employers to workers or domestic servants for injury arising out of and in the course of their employment in cases not coming within the provisions of any other enactment, and for the recovery of the compensation in question; (b) requiring employers to report any accident involving the death of or injury to a worker or domestic servant, in cases not coming within the provisions of any other enactment; and (e) prescribing anything which is to be prescribed under this Act and is not otherwise provided for”. The scope of ministerial authority in Section 88, as well as in Section 65 of the Act, provides for establishing regulations that could assure domestic workers’ social security protection not less favourable than those for workers generally.

**NAPTIP Act:** The Act was enacted to provide an effective and comprehensive legal and institutional framework for the prohibition, prevention, detection, prosecution and punishment of human trafficking and related offences. While section 22 of the Act prohibits forced and exploitative labour, section 23 prohibits and sanctions the recruitment of children under the age of 12 as domestic workers especially where such work exposes the child to injuries, social, psychological and physical harm.<sup>56</sup>

**Violence Against Persons Act (2015):** The Violence Against persons (prohibition) Act (VAPP) was passed into law in May, 2015. The Act was a result of agitations for protection of persons against the different forms of violence. The content of the Act protects against most of the prevalent forms of violence in Nigeria today ranging from physical violence; psychological violence; sexual violence; harmful traditional practices; and socio-economic violence. The National Agency for the Prohibition of Trafficking in Persons (NAPTIP) is named as the service provider.

A keen look at the above laws protecting workers and persons generally, there is nothing that suggests that workers in the informal economy cannot seek refuge, protection or redress under the law simply because they are informal workers. The requirement for decent work applies to both formal and informal employment. Although, underground activities such as the

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<sup>54</sup> S.1, L.A Cap L1 Laws of the Federation (2004)

<sup>55</sup> S.91 LA Cap L1 L.F.N (2004)

<sup>56</sup> S. 22 and 23 NAPTIP Act (2015)

sale of narcotics and prostitution may for obvious reasons not enjoy the backing of the law, certain protections of vulnerable persons such as children and minors may still apply.

### **Conclusion And Recommendations**

The significance of the informal economy to a developing country such as Nigeria cannot be over-emphasised. Being a direct result of the over-regulation and high cost of the formal sector, people are bound to seek for their survival through less formal means. Sadly, the fact that the informal economy remains unregulated and allowed to operate outside the protection of the law widens the gap for decent work deficits.

The ILO's Decent work Agenda in agreement with Sustainable Development Goal 8.3 has recommended that in order to curb decent work deficits in the informal economy there's need to formalise the informal economy.

The paper finds that the problem of decent work deficit in the informal economy may not entirely owe to the absence of legal protection or regulatory framework, but rather to the failure of existing laws and the regulatory regimes to extend these protections to informal workers. This finding derives from the fact that section 91 of the Labour Act defines workers to include both those in the formal and informal economies. Secondly, there is nothing in the existing laws examined in section three of this paper that expressly excludes informal workers from seeking covering under the law.

On the precarious conditions that plague domestic workers in Nigeria, the paper finds that domestic work like all other informal work is a derivative of the formal economy. Domestic workers are there to fill the gaps created by formal workers. It is therefore a fallacy to say that domestic workers are invincible and not contemplated by law. In fact, section 88(1) of the Labour Act provides that "The Minister may make regulations - (a) providing for the payment of compensation by employers to workers or domestic servants for injury arising out of and in the course of their employment in cases not coming within the provisions of any other enactment, and for the recovery of the compensation in question; (b) requiring employers to report any accident involving the death of or injury to a worker or domestic servant, in cases not coming within the provisions of any other enactment; and (c) prescribing anything which is to be prescribed under this Act and is not otherwise provided for". The scope of ministerial authority in Section 88, as well as in Section 65 of the Act, provides for establishing regulations that could assure domestic workers' social security protection not less favourable than those for workers generally. Unfortunately, this ministerial authority has remained unused. Also, the ILO's conventions on decent work and domestic workers which ought to serve as the basis for all national legislation on the subject matter has neither been ratified nor domesticated by Nigeria. There are also some discrepancies in the laws protecting against child labour with regards to the actual age of minority with regards to employment.

Furthermore, while the protection of domestic workers seems already evident in the analysis of existing legal framework, some laws such as the NHIS Act creates a ceiling where only employments that have up to 10 employees are entitled to health insurance.

Although the paper recognises the obvious challenges inherent in regulating the informal economy, the paper concludes that decent work deficit in the informal economy should not be addressed by using an all-or-non-approachakin to formalisation. It recommends amongst others a phased approach that would see to the regulation of informal employment relations without stripping off the autonomy, flexibility and low cost that constitute the hallmarks of the informal economy.

The paper therefore recommends as follows:

1. Sequel to Section 65 of the Labour Act, there is need to create mediums for compulsory registration of domestic workers in an inventory to be domiciled with the Federal Ministry of Labour and Employment as well as with the Federal Ministry of Women's affairs and NAPTIP
2. Ensure that any regulation made by the discretionary authority of the Minister in accordance with section 65 of the Labour act are in conformity with the provisions of the ILO Convention on Decent work.
3. Consider review and revision of Section 54 of the Labour Act to ensure that women in domestic work may enjoy the same right to maternity leave as workers in other sectors especially as regards part payment of wages during the maternity period.
4. There is need to review the National Health Insurance Scheme Act to ensure that domestic workers can participate in and receive benefits from the scheme.
5. Consider the implementation of Section 88(1)(d) of the Labour Act, as well as the National Minimum Wage(Amendment) Act, to ensure that domestic workers are included and paid at least the national minimum wage,in accordance with Article 11 of ILO C-189.
6. Reconcile and apply the provisions on minimum age as stipulated by the Minimum Age Act, the NAPTIP Act, Labour Act with the provisions of the Child's Right Act and the UBEC Act to ensure that children under the age of 18 and above the age of 15 who perform domestic work are not deprived of compulsory education or vocational and/or other training opportunities.
7. There is need for the minister of labour to invoke his ministerial authority in section 65 of the labour Act to adopt regulations to ensure that domestic workers enjoy fair terms of employment and decent working conditions, as well as living conditions that respect their privacy if they live in the household in which they work. This is in consonance with the provisions of ILO's Convention 189 Articles 6 and 9 respectively.
8. Ensure that the equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave which are provided for in Section 13 and 18 of the Labour Act is effective in practice, but taking into consideration; the special characteristics of domestic work.
9. Formulate and/or revise and enact regulations ensuring that domestic workers' weekly rest time is for a period of at least 24 consecutive hours, and that periods during which domestic workers are not free to dispose of their time as they please and during which they remain at the disposal of the household shall be considered as hours of work (ILO C-189 Articles 10.2 and 10.3).
10. Extend labour inspection activity to domestic work as permitted under the Labour Act (Section 78), with due regard for the special conditions of domestic work and the private household workplaces and domestic worker living premises, with due respect for privacy.
11. Initiate consultations and negotiations for measures or agreements in cooperating with other member states to ensure effective application of the provisions of the Convention to migrant domestic workers.
12. The application of Section 65 (c) and (d) of the Labour Act to formulate regulations that guarantee domestic worker's freedom to reach agreement with their employer on whether to reside in the household, on their right to leave the household or members of

the household during periods of rest or leave, and to keep their travel and identity documents in their possession.

13. Access to household premises for labour inspection to ensure the occupational safety and health of domestic workers.
14. Ensure full and substantive consultations with the most representative organizations of employers and workers – including associations of domestic workers – in fully implementing the provisions of the Convention (ILO C-189 Article 18, as well as Articles 13.2, 14.2 and Such consultations and cooperation should also be engaged to promote ratification of the Convention.
15. There is need for increased funding of the Ministry of Labour and Employment as well as other related regulatory bodies. This is in order to ensure effective execution of their administrative, monitoring and implementation mandate.
16. There is need to minimise registration and compliance cost.