

THE CHANGING NATURE OF WORK: CAUSES AND EFFECTS ON EMPLOYMENT RELATIONSHIPS IN NIGERIA

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Introduction

Changing Employment Relations

Until two decades ago, the ‘traditional’ or ‘standard’ form of employment characterised the employment relationship in developed and developing economies. This work arrangement also dominated Nigeria’s industrial relations system until about the same time, when employers started adopting non-standard work arrangements as a means to cut costs and to stop workers from unionisation.¹ Casualisation as it exists today was absent in the Nigerian industrial relations environment.² It was only present in the agricultural sector and the construction industry because of their seasonal nature.³ Casual labour in these two sectors

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¹ See generally Orifowomo, O.A., ‘Legal Perspectives on the Casualisation of Workers under Nigerian Labour Laws’ (2007) *East African Journal of Peace and Human Rights*, Vol. 13, No. 1, pp. 104-125.

² Okafor, E.E., ‘Globalisation, Casualisation and Capitalist Business Ethics: A Critical Overview of Situation in the Oil and Gas Sector in Nigeria’ (2007) *J. Soc. Sci.*, Vol. 15, No. 2, pp. 1-2.

³ Yaqub, D., ‘Legality of Casual Work, Fixed-Contract Employment’ p. 2. A Paper presented at a seminar organised by Precision electrical and related equipment employer’s association of Nigeria in Lagos, Nigeria on 11 June 2003.

was usually temporary in nature, and those persons engaged in it usually held other employment.

In contemporary times, there have been many scholarly works and much discussion devoted to the changing nature of work and employment relationships. In a standard work arrangement, it was generally expected that work was done full-time, continuing indefinitely,⁴ until retirement, or until either party gave notice of termination. Work was also usually carried out on the employer's premises as directed by the employer. In addition, a worker was usually assured pension benefits at the time of retirement. This form of employment was the 'traditional' or 'standard' form of employment, and until the twentieth century it was predominate in Europe, America, Africa, and indeed much of the world.⁵ It was on the basis of this framework that labour and employment relations evolved.

There have been differing views on the factors influencing or affecting the nature of work. A number of arguments have been proposed explaining these changes, and why they occurred. Many agree on why changes have occurred, while differing on the extent of change and its advantages and disadvantages.⁶ According to Kalleberg, changes in the mid-1970s created conditions that led to a search for greater flexibility in employment, which began to unravel standard employment relationships.⁷ These changes in the global economy, she argued, increased competition among firms, resulting in pressure on them to be more flexible in contracting with their employees and responding to consumers.⁸ However, by the mid-1980s

⁴ Kalleberg, A.L., 'Nonstandard Employment Relations: Part-time, Temporary and Contract Work' (2000) *Annual Review of Sociology*, Vol. 26, p.341.

⁵ Ibid. p. 342.

⁶ Carre, F., Ferber, A., Golden, L., Herzenberg, A., (eds) *Nonstandard Work: The Nature and Challenges of Changing Employment Arrangements* (1st edn. Industrial Relations Research Association Series 2000) p.2

⁷ Kalleberg, A.L., *Changing Employment Relations in the United States*. A Paper Presented at the Meetings of the Society for the Advancement of Socioeconomics, Madison, Wisconsin, July 8-11, 1999, p. 3.

⁸ Ibid.

permanent jobs were being replaced with temporary ones in the United States.⁹ As a result, one out of every four workers in the United States is presently a part-time or temporary employee, and temporary workers comprise one of the fastest growing segments of the labour force.¹⁰ The 1982 recession was a period of downsizing by many companies in which they had to violate their long-standing no-layoff policies. In order to remain competitive, employers argued that full-time wage employment in which workers are regarded as fixed costs was too rigid, and that there was, therefore, a need for greater flexibility.¹¹

Another reason that has been adduced for the increase in NSWAs is that employers are accommodating the needs of employees. Employers argue that this growth is influenced by demographic changes in the composition of the labour force.¹² For instance, married women and older people prefer non-standard work arrangements, rather than permanent full-time employment, because of the flexibility they offer. Many women want to work part-time in order to combine family care and work; non-standard work gives them this flexibility. Therefore, changing economic conditions, such as greater instability and uncertainty, necessitated the use of non-standard workers as a response to the market by entrepreneurs.¹³ Labour laws designed to protect permanent employees also fuelled the growth in non-standard work by encouraging employers to avoid the mandates and costs associated with these laws.¹⁴

⁹ Jeffery, F. and Baron, J.N., 'Taking the Workers Back Out: Recent Trends in the Structuring of Employment' in Staw, B.M. and Cummings, L.L., (eds) *Research in Organizational Behaviour*, Vol. 10, (JAI Press 1988) pp.257-303.

¹⁰ Plunkert, L.M. and Howard, H.V. 'Strong Employment Gains Continue in 1994' (1995) *Monthly Labor Review*, Vol. 118, No. 2, pp. 3-17.

¹¹ Cordova, E., 'From Full-Time Employment to Atypical Employment: A Major Shift in the Evolution of Labour Relations' (1986) *International Labour Review*, Vol. 125, No. 6, pp. 641-657.

¹² Kalleberg, A.L., 'Changing Employment Relations in the United States. A Paper Presented at the Meetings of the Society for the Advancement of Socioeconomics, Madison, Wisconsin, July 8-11, 1999, p. 9.

¹³ *Ibid.* p. 11.

¹⁴ Lee, D.R., 'Why is Flexible Employment Increasing?' (1996) *J. Labor Res.* Vol. 17, No 4543-53; Cappelli, P., Bassi, L., Katz, H., Knoke, D., Osterman, P. and Useem, M., *Change at Work* (Oxford University Press, New York 1997).

In short, according to Kalleberg et al., employers in United States adopted non-standard work arrangements for the following reasons:

1. To deal with the variable labour demand, including the desire to buffer their core, permanent workforce;
2. To lower employment costs;
3. To cope with labour shortages of particular kinds of skills or equipment; and
4. To screen workers for standard employment.¹⁵

The use of non-standard work arrangements in Nigeria is no different from its use in the USA. There has been a steady rise in the growth of non-standard work arrangements in Nigeria, particularly in the area of casual work. More workers are losing their jobs and are being replaced by non-standard workers. The bulk of new employment, according to Orifowomo, is comprised of casual work in Nigeria.¹⁶

The Concept of Non-standard Work Arrangements

Non-standard work arrangements, such as part-time work, temporary work, fixed-term work and casual work, have become an important topic in research and writing on labour and employment relations. Researchers have adopted different terminology for this form of work arrangement, including, for instance, ‘non-standard employment relations’,¹⁷ ‘alternative

¹⁵ Kalleberg, A.L., Reynolds, J. and Marsden, P.V., ‘Externalizing Employment: Flexible Staffing Arrangements in U.S. Organisations’ Unpublished Paper, University of North Carolina at Chapel Hill 2003. <<http://www.sciencedirect.com/science/article/pii/S0049089X03000139>> accessed 2 October 2011.

¹⁶ Orifowomo, O.A., ‘Legal Perspectives on the Casualisation of Workers under Nigerian Labour Laws’ (2007) East African Journal of Peace and Human Rights, Vol. 13, No. 1, p. 105.

¹⁷ Kalleberg, A.L., ‘Nonstandard Employment Relations: Part-time, Temporary and Contract Work’ (2000) Annual Review of Sociology, Vol. 26, pp. 341-65.

work arrangements’,¹⁸ ‘flexible staffing arrangements’,¹⁹ ‘contingent work’,²⁰ and ‘precarious employment’.²¹

The trend in employment relationships has been the adoption of non-standard work arrangements in the United States, Europe and other developed countries. However, in Nigeria, the trend crept into the economy in the mid-1990s. It is now widely accepted that Nigerian employers are increasingly moving away from the standard traditional employment relationship, and making more use of casual employment, as well as other forms of non-standard work arrangements, including contracting out and outsourcing.²²

Global economic changes have increased competition between firms, resulting in greater pressure for more flexibility in firms contracting with their employees and responding to customers.²³ The changes in employment relationships resulted in a decline of job stability, and foster little or no attachment between workers and the firms they work with.²⁴ This is the situation in many organisations in Nigerian, including those in the oil and gas industry today.

The competitive pressures brought about by globalisation, and its consequent economic instability,²⁵ have necessitated the need for social protection for workers to shield them from

¹⁸ Polivka, A.E., ‘Contingent and Alternative Work Arrangements Defined’ (1996) *Monthly Labor Review*, Vol. 119, No. 10, pp. 3-9.

¹⁹ Abraham, K.G. , ‘Flexible Staffing Arrangements and Employers’ Short-term Adjustment Strategies’ in Hart, R.A. (ed) *Employment, Unemployment and Labour Utilization* (Unwin Hyman Press London, 1988) pp. 288-311. See also Houseman, S.N., *The Benefits Implications of Recent Trends in Flexible Staffing Arrangements* (W.E. Upjohn Institute Staff Working Paper No. 02-87, 2001) p.2.

²⁰ Polivka, A.E., and Nardone, T.J., ‘On the Definition of Contingent Work’ (1989) *Monthly Labor Review*, Vol. 112, No. 12, pp. 9-16. See also Belous, R.S., *The Contingent Economy: The Growth of the Temporary, Part-Time and Subcontracted Workforce* (National Planning Association, Washington, D.C. 1990).

²¹ Treu, T., ‘Labour Flexibility in Europe’ (1992) *International Labour Review*, Vol. 131 No. 4-5, pp. 497-512.

²² Yaqub, D., ‘Legality of Casual Work, Fixed-Contract Employment’ p. 1. A Paper presented at a seminar organised by Precision electrical and related equipment employer’s association of Nigeria in Lagos, Nigeria on 11 June 2003.

²³ Kalleberg, A.L., ‘Nonstandard Employment Relations: Part-time, Temporary and Contract Work’ (2000) *Annual Review of Sociology*, Vol. 26, pp. 341-65.

²⁴ Houseman, S.N., ‘The Implications of Flexible Staffing Arrangements for Job Stability’ (Upjohn Institute Staff Working Paper No. 99-056, 1999) P. 1. <www.ssrn.com> accessed 22 May 2008.

²⁵ Banks, K. ‘The Impact of Globalization on Labour Standards: A Second Look at the Evidence’, in Craig, J.D.R. and Lynk, M.S. (eds.), *Globalization and the Future of Labour Law* (Cambridge University Press, Cambridge, 2006), p.84.

the adverse effect of insecurity brought about by the adoption of non-standard work arrangements by employers. However, some proponents of globalisation disagree with this assertion. Flanagan²⁶ stated that the opening up of economies and borders through globalisation and liberalised trade improves working conditions, not degrade them as sceptics say. Despite Flanagan's argument, casualisation has had an adverse effect on workers' rights in Nigeria, especially in the area of pay and benefits, as well as the right to organise.

Another factor responsible for the rise in non-standard work arrangements has been increasing competition and uncertainty in product markets, which in turn has added to the need for companies to achieve greater flexibility in their operations.²⁷ This has led many companies to embark on strategies enabling them to concentrate on their 'core activities' by creating, according to Carley, a 'skilled permanent workforce and a 'peripheral' workforce of insecure and readily disposable workers.'²⁸ Bendapudi et al. described non-standard work arrangements as jobs that do not involve 'explicit or implicit contracts for long-term employment.'²⁹ The characteristics of this form of work arrangements include lower pay and benefits, and unequal protection under the law.³⁰

Nigeria had its own share of economic recession and financial meltdown in the mid to late 1980s, which led to widespread unemployment in the urban areas.³¹ Those who were in employment were no longer sure of their tenure because of reduced job security and fewer prospects of promotion in the same company or firm. The economy could no longer generate enough jobs to provide full-time employment for all workers. Moreover, those workers in the

²⁶ Flanagan, R.J., *Globalization and Labor Conditions: Working Conditions and Worker Rights in a Global Economy* (Oxford University Press, Oxford, 2006) P. 177.

²⁷ Carley, M., 'Non-standard Forms of Employment in Europe: Part-time Work, Fixed-Term Contracts and Temporary Work, Work Contracts' (From European Industrial Relations Review (EIRR) Report 2008) Issue 3. p. 28.

²⁸ Ibid.

²⁹ Bendapudi, V., Mangum, S.L., Tansky, J.W. and Fisher, M.M. 'Nonstandard Employment Arrangements: A Proposed Typology and Policy Planning Framework' (2003) *Human Resource Planning*, Vol. 26, No. 1, p. 26.

³⁰ Ibid., p. 27.

³¹ Fajana, S., *Functioning of the Nigerian Labour Market* (Labofin and Company, Lagos Nigeria, 2000) p. 154.

public service, who in the past enjoyed job security and the benefits associated with it, were being laid off. However, as the private sector did not have the capacity to absorb all these workers, there was an increase in unemployment,³² and, as a result, casualisation became the dominant form of employment in the Nigerian private sector,³³ including the oil and gas industry. Casualisation in the oil and gas industry has been attributed to ‘poverty, joblessness and devastated natural resources of the Niger Delta.’³⁴

Factors Affecting Growth of Non-standard Work Arrangements

As stated above, it has been argued that the theme running through many of the new approaches to management in a globalised economy today is the development of a more flexible workforce.³⁵ Flexibility has become employers’ new frontier in the management of labour.³⁶ According to Baglioni, many employers and enterprises seeking ways to reduce labour costs have used globalisation as a justification for the use of non-standard work arrangements.³⁷ Many businesses experience variations in the workload, and maintain full work practice by retaining a core workforce of skilled permanent employees, and having access to a peripheral workforce of general labour through casual labour.³⁸ Many organisations resort to employment or recruitment agencies to supply them with temporary casual workers in order to save costs on screening, training, terminal benefits, etc.

³² The Nigerian Labour Congress (NLC) estimated that 1 million workers lost their jobs in 1983. The Yearbook of Labour Statistics (ILO 1984) shows the unemployment rate generally rose from an officially quoted figure of 4.4 per cent in 1984 to 12 per cent in 1989. <<http://www.ilo.org/stat/Publications/Yearbook/lang--en/index.htm>> accessed 20 November 2011.

³³ Danesi, R.A., ‘Casualisation and International Labour Standards: The Role of Trade Unions in Nigeria (2010) *US-China Law Review*, Vol. 7, No. 2, p.20.

³⁴ The Degradation of Work: Oil and Casualization of Labour in the Niger Delta (A Report by the Solidarity Centre Washington DC 2010) p. 3. <http://www.solidaritycenter.org/files/pubs_nigeria_degradationofwork.pdf> accessed 5 June 2011.

³⁵ Benson, J. and Ieronimo, N. ‘Outsourcing Decisions: Evidence from Australia-based Enterprises’ (1996) *International Labour Review*, 59 Vol. 135, No. 1.

³⁶ Baglioni, G., ‘Industrial Relations in Europe in the 1980s’, in Baglioni, G. and Colin, C. (eds) *European Industrial Relations: The Challenge of Flexibility* (Sage, London 1990) pp.1-41.

³⁷ Ibid.

³⁸ Ibid.

Globally, the different nature and types of non-standard jobs makes it difficult to attribute the growth to specific factors, or to identify a common explanation for their growth, both in absolute and relative terms. Nevertheless some researchers have adduced this growth to massive unemployment, the impact of globalisation, the shift from the manufacturing sector to the service sector, and the development of information technology.³⁹ The effect of all these factors is that a new economy which demands flexibility (see above) has caused a decline in standard employment relations and given rise to precarious employment to the benefit of employers. On the demand-side, issues related to the desire for increased workforce flexibility arising out of the internationalisation of the economy predominate as shown above.⁴⁰ On the supply-side, on the other hand, there has been a substantial growth in the sectors of the labour force seeking alternatives to full-time work.⁴¹ Many people in developed economies, for instance, seek the flexibility of non-standard work arrangements for personal reasons, such as women taking care of family members and students working part-time in order to pay bills or earn extra income. In these instances, therefore, the flexibility offered by non-standard work arrangements is beneficial to this category of workers.

It should be noted, however, that the trend in Western Europe has been towards greater flexibility in the use of fixed-term contracts, which is a form of non-standard work arrangements. Diamond Ashiagbor⁴² has asserted that the European Union's (EU) response to the growth of precarious work is against the backdrop of various attempts to regulate non-

³⁹ Okafor, E.E. 'Emerging Nonstandard Employment Relations and Implications for Human Resource Management Functions in Nigeria' (2012) *African Journal of Business Management*, Vol. 6, No.26, p. 76154.

⁴⁰ Brosnan, P. and Thornthwaite, L. 'Atypical Work in Australia: Preliminary Results from a Queensland Study', in Callus, R. and Schumacher, M. (eds) *Current Research in Industrial Relations*, (Proceedings of the 8th AIRAANZ Conference Sydney 1994) Association of Industrial Relations Academics of Australia and New Zealand: pp. 136-185.

⁴¹ Dawkins, P. and Norris, K., 'Casual Employment in Australia' (1990) *Australia Bulletin of Labour*, Vol. 16, pp. 156-173.

⁴² Ashiagbor, D., 'Promoting Precariousness? The Response of EU Employment Policies to Precarious Work', in Fudge, J. and Owens, R. (eds) *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms* (Hart Publishing Oxford and Portland Oregon, 2006).

standard work in its various forms, and within its strategy of promoting the use of non-standard work as a means of boosting labour supply.⁴³ In addition, a second objective of the EU in promoting non-standard work is to aid flexibility in order ‘to enhance competitive efficiency of enterprises which will help to match the supply of labour with the demands of employers.’⁴⁴ The EU has in the past made proposals to regulate and restrict the use of non-standard work arrangements in line with its employment policy, the goal of which is to achieve full employment.⁴⁵ Thus, the European Community, in 1982, issued a Draft Directive on Temporary Work and Fixed-Term Contracts in which it was stated that:

‘Permanent employment must remain the rule and recourse to temporary labour should therefore be confined to situations where it is economically justified and restricted in terms of duration of contract’.⁴⁶

However, this provision failed as it was found that these forms of work arrangements were seen as job-creating measures, as well as a response to the needs of employers and employees.⁴⁷ This was because people began to desire the flexibility that such temporary work arrangements offered them. For instance, women with children found such arrangements attractive as they offered them employment as well as an opportunity to take care of their families. Ashiagbor concluded that the inferior quality of non-standard work in Europe is a result of the ‘failure of the EU Member States to reconcile quality of non-standard work arrangements with the objective of creating employment.’⁴⁸

⁴³ Ibid., p. 77.

⁴⁴ Ibid. See also General Consideration 7 of Council Directive 97/81/EC of December 1997 – Concerning Part-Time Work.

⁴⁵ Directive 97/70, Annex (Framework Agreement on Fixed-Term Work concluded by ETUC, UNICE and CEEP), recital 2.

⁴⁶ Ibid.

⁴⁷ Blanpain, R., *European Labour Law* (10th edn. Kluwer Law International, 2006) p. 410.

⁴⁸ Ashiagbor, D., ‘Promoting Precariousness? The Response of EU Employment Policies to Precarious Work’, in Fudge, J. and Owens, R. (eds) *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms* (Hart Publishing Oxford and Portland Oregon, 2006) p. 94.

Yuval Feldman⁴⁹ argued that in guaranteeing equal treatment of primary⁵⁰ and secondary⁵¹ workers in an organisation there should be a distinction between ‘justified cost reduction’ attributed to flexibility and specialisation, and ‘unjustified cost reduction’ based on the exploitative arbitrary reduction of salary and benefits of secondary workers,⁵² such as casual workers employed through contractors. However, in developing countries like Nigeria, the situation described by Feldman above is not the case, as most of those working in non-standard jobs are exploited by employers with low wages and no benefits. This situation can be adduced to the fact that there is a high unemployment rate globally, with Nigeria having its fair share of unemployment. So it is therefore a case of take it or leave it, and usually the alternative to casual or contract employment may be unemployment. In other words, many new positions created in a number of sectors, including the oil and gas industry, are non-standard jobs, which mean that the bulk of workers are casuals.

The South Africa Department of Labour, in a Green Paper on Labour published in 1996,⁵³ reported on the many different forms of non-standard employment in South Africa, and drew attention to the adverse consequences non-standard workers experience, and the lack of legal protection for them. The purpose of the Green paper was to promote a debate on the development of the law. It contained proposals and options for discussion and to serve as a basis for a new law.⁵⁴ The Green Paper on Labour 1996 led to the enactment of a new BCEA 1997⁵⁵, which replaced the old BCEA 3 of 1983.

⁴⁹ Feldman, Y., ‘Ex Ante vs. Ex-Post: Optimizing State Intervention in Exploitative Triangular Employment Relationships’ (2009) *Comparative Labor Law and Policy Journal*, Vol. 31, No. 1.

⁵⁰ Permanent employees employed directly by the firm.

⁵¹ Workers employed through agencies, such as contract and casual workers.

⁵² Feldman, Y., ‘Ex Ante vs. Ex-Post: Optimizing State Intervention in Exploitative Triangular Employment Relationships’ (2009) *Comparative Labor Law and Policy Journal*, Vol. 31, No. 1, p. 7.

⁵³ The Green Paper on Labour is also known as ‘Minimum Standards Directorate Policy Proposals for a new Employment Standards Statute Green Paper’ 13 February 1996.

⁵⁴ Department of Labour, ‘Green Paper: Policy Proposals for a New Employment Standards Statute’ (Government Gazette, 23 February 1996).

⁵⁵ Basic Conditions of Employment Act, 1997.

With the aim of providing statutory protection for non-standard workers, the South African Department of Labour, in 2000, published draft Bills to amend the LRA 1995 and the BCEA 1997.⁵⁶ This was to address the issue of who is an ‘employee’.⁵⁷ If the term were to include non-standard workers, then they would be covered by labour law. The bills proposed that certain statutory factors should be enacted in order to determine if a worker was an employee. If one of these factors was present, then the worker would be presumed to be an employee, and therefore covered by the labour legislation, subject to the employer providing evidence to the contrary.⁵⁸ The proposed factors are similar to those used in a ‘traditional’ multi-test approach in determining who is an employee. This was a favourable development for non-standard workers because it sought to balance the various existing forms of employment relationships with the need to assist vulnerable workers in establishing that they were employees.

Concerning non-standard workers in triangular employment⁵⁹ provided by agencies, known as labour brokers, to user companies in South Africa, the amendments to the Labour Relations Act,⁶⁰ Basic Conditions of Employment Act,⁶¹ and the Employment Equity Act⁶² have provided a legal framework for the regulation of this multilateral relationship. Therefore, the labour brokers providing employees to user companies are regulated by the

⁵⁶ The 2 Bills came into force in 2002 after it was passed by the Parliament as Basic Conditions of Employment (Amendment) Act, 2002, and Labour Relations (Amendment) Act 2002.

⁵⁷ Section 28 of the Basic Conditions of Employment Act 1997 was amended to include workers in the informal sector and home workers.

⁵⁸ Certain factors were to be incorporated to assist workers in establishing that they were employees in order to be covered by the LRA 1995 and the BCEA 1997. The factors are: (a) the worker’s manner or hours of work are subject to control or direction; (b) the worker forms part of the organisation he or she works for; (c) the worker has worked for the same person for an average of at least forty hours per month over the last three months; (d) the worker is economically dependent on the person for whom he or she works or provides services; (e) the person is provided with his or her tools of trade or work equipment; (f) the worker only works or supplies services to one person.

⁵⁹ See further chapter 2, section 2.3.7 of thesis.

⁶⁰ 1995 as amended in 2002.

⁶¹ 1997 as amended in 2002.

⁶² 1998.

LRA, as amended in 2002,⁶³ the BCEA, as amended in 2002,⁶⁴ and the EEA.⁶⁵ Section 198(2) of the LRA regards agency work as temporary, and the temporary employment service (TES) who supply them to the user company as the employer, and not the user company. Case law has been developed in South Africa, unlike Nigeria to confirm this.⁶⁶ Even though Section 48(2) of the Nigerian Labour Act⁶⁷ provides that the agency is the employer of the agency worker supplied to the user company, there are no cases to test this provision.

In 2003, Ghana's labour laws were consolidated into one Act, the Labour Act.⁶⁸ Ghana, as a signatory to ILO Conventions, incorporated the Conventions in the new Act.⁶⁹ Part X⁷⁰ of the Labour Act 2003 provides a legal framework for the regulation and protection of casual and temporary workers in Ghana unlike Nigeria. Even though there is a general definition of a 'worker' under Section 75, it also defines the concepts of casual worker, and prescribes the remuneration that should accrue to them, as well as the procedure to follow in the event of a breach by the employer.

The increasing casualisation of employment in Nigeria can also be attributed to the deregulation of the labour market and the adoption of the structural adjustment programme

⁶³ Labour Relations Act 1995 No. 66 - as amended by the LRA (Amendment) Act, 2002.

⁶⁴ Basic Conditions of Employment Act 1997, as amended by the BCEA No 11, 2002.

⁶⁵ Employment Equity Act 1998.

⁶⁶ See the case of *LAD Brokers (Pty) Ltd v Mandla 2001 22 ILJ 1813 (LAC)*. The Labour Appeal Court held that the clear intention of the Labour Relations Act 1995 is to ensure that persons such as labour brokers (employment agencies) who pay employees' remuneration should be held liable as employers.

⁶⁷ 1974 Cap L1, Laws of the Federation of Nigeria 2004.

⁶⁸ 2003 No. 651.

⁶⁹ The Ghana Labour Act No. 651 2003: 'It covers all employers and employees except those in strategic positions such as the Armed Forces, Police Service, Prisons Service and Security Intelligence Agencies. Major provisions of the Act include establishment of public and private employment centres, protection of the employment relationship, general conditions of employment, employment of persons with disabilities, employment of young persons, employment of women, fair and unfair termination of employment, protection of remuneration, temporary and casual employees, unions, employers' organisations and collective agreements, strikes, establishment of a National Tripartite Committee, forced labour, occupational health and safety, labour inspection and the establishment of the National Labour Commission'.

Ghana National Labour Law Profiles – Information Resources. International Labour Organisation. P.1. <<http://www.ilo.org/public/english/dialogue/ifpdial/info/national/gha>> accessed: 12 October 2010.

⁷⁰ Special Provisions Relating to Temporary Workers and Casual Workers of the Ghana Labour Act 651 2003.

(SAP) by the federal government in the early 1980s⁷¹ as dictated by the World Bank and the International Monetary Fund (IMF). Before the SAP was introduced, the Nigerian government was involved in economic management, with 100% control of management of Parastatal and State-owned corporations like the Nigerian Telecommunication Corporation (NITEL). All social provisions were provided by the government, and workers in these corporations were on permanent contracts which only came to an end at the retirement age of 60 years.⁷² Employment in Nigeria was thus regarded as employment for life. The labour market was seen as inflexible as a result of distortion caused by minimum wage and job-security legislation. The SAP was therefore introduced with the aim to reduce real wages, partly to reduce aggregate demand, and partly to cheapen labour costs. This, in turn, it was thought, would lead to more foreign direct investments (FDI), and consequently generate employment. This led to many governments in developing countries like Nigeria to adopt various measures to promote competitiveness and attract FDI. One of such measure is the promotion of Export Processing Zones as an instrument of trade policy.⁷³ The International Labour Organisation summed this up as follows:

‘... Removing labour market distortions, it is argued would enhance labour market flexibility “and have a positive effect on economic growth in developing countries’.⁷⁴

The SAP, therefore, brought with it the ‘withdrawal of the State from economic management (because the private sector was supposed to run things better), trade liberalisation, currency devaluation, reduction of non-productive investments in the public sector, rationalisation of the work force in the public sector (unfortunately the private sector could not absorb all the

⁷¹ Dakare, O., Udeozor, C.T., and Alaribe, J.O., ‘Employment Casualisation as a Modern Slavery’ (2011) *European Journal of Social Sciences*, Vol. 22, No. 4, p. 492.

⁷² Ibid.

⁷³ Companies operating in these zones are also given concessions on taxes, tariffs, and regulations, including the enforcement of labour rights and standards, particularly the right to organise.

⁷⁴ ILO, 1996, p. 193.

workers retrenched from the public sector as anticipated), privatisation and economic liberalisation, among others.⁷⁵ In addition, some critics have opined that the government ‘easily capitulate to the arm-twisting tactics of foreign investors’ who usually compel the government to lower labour standards as a pre-condition to investing in the Nigerian economy.⁷⁶ This has arguably resulted in the increased casualisation of labour in Nigeria.

These changing patterns of work (e.g. casual work, temporary employment, contract work, part-time employment, subcontracting, etc.) have created concerns for workers and trade unions alike, including job security, social security, terminal benefits, and minimum conditions of work.

Globalisation, Foreign Direct Investment and Structural Adjustment Policy in Nigeria

The process of globalisation, as stated earlier, has been said to generate unbalanced outcomes.⁷⁷ Many countries and their peoples are sharing the benefits of globalisation while others are not. The powerful industrialised countries of the West, as well as emerging market economies like China and India, are benefiting from globalisation, while countries in sub-Saharan Africa are not.⁷⁸ The rich countries of the North seem to be getting richer while those in the South are getting poorer, with poverty and inequality increasing.⁷⁹

In Nigeria, the effect of globalisation on the oil and gas industry, which is used as a case study in this paper, has been the attraction of foreign direct investments (FDI) by international oil and gas companies from developed economies. The domination of the industry by these multinationals has been adduced to the huge capital and technological

⁷⁵ Anugwom, E.E., ‘Globalisation and Labour Utilisation in Nigeria: Evidence from the Construction Industry’ (2007) *Africa Development*, Vol. XXXII, No. 2, P. 115.

⁷⁶ Adewumi, F. and Adenugba, A., *The State of Workers’ Rights in Nigeria: An Examination of the Banking, Oil and Gas and Telecommunication Sectors* (Friedrich-Ebert-Stiftung, Abuja-Nigeria 2010) p.63.

⁷⁷ A Fair Globalisation: Creating Opportunities for All (Report of the World Commission on the Social Dimension of Globalisation, an ILO Publication, April 2004) p. x. <<http://www.ilo.org/fairglobalization/report/lang--en/index.htm>> Accessed 4 February 2008.

⁷⁸ Ibid., p. 16.

⁷⁹ Ibid., p. 15.

means required for the operations of the oil and gas industry.⁸⁰ Many of these companies are reported to conduct their operations without observing minimum labour standards, either as stipulated by the laws of the countries they operate in, or as prescribed by international labour standards.⁸¹ The government in Nigeria, in its quest to attract more FDI into the economy, is perceived to have abdicated its responsibility as regulator because it is regarded as not enforcing labour standards.⁸²

The companies who make use of casual workers in Nigeria use employment agencies, known as labour and service contractors,⁸³ to supply them casual workers. From the interviews conducted, and various reports and literature available on this subject, it is on record that up to 50% of all the workers in the private sector are casual workers employed on fixed-term contract of 2 to 3 years. For instance, a report in 2010 by a non-governmental organisation⁸⁴ in Nigeria estimated the number of casual workers employed through contractors to be 45% of the entire workforce.⁸⁵ According to the figures provided by the International Federation of Chemical, Energy, Mine and General Worker's Unions (ICEM), more than half of the work force⁸⁶ in the oil and gas industry is recruited by agencies, for labour and various services, such as canteen facilities and security. According to the figures from the interviews I conducted, more than half of the labour force in the oil and gas industry is casual workers supplied by labour contractors. According to the International Labour Organization, for

⁸⁰ Adewumi, F. and Adenugba, A., *The State of Workers' Rights in Nigeria: An Examination of the Banking, Oil and Gas and Telecommunication Sectors* (Friedrich-Ebert-Stiftung, Abuja-Nigeria 2010) p. 23.

⁸¹ Okafor, E.E. 'Emerging Nonstandard Employment Relations and Implications for Human Resource Management Functions in Nigeria' (2012) *African Journal of Business Management*, Vol. 6, No.26, p. 7612.

⁸² Adewumi, F., 'Globalisation, Labour Standards and the Challenge of Decent Work in Nigeria.' A Paper Presented at a lecture organised by the MIPRSA, Sociology Department of University of Ibadan, Nigeria, 2008.

⁸³ Section 48(2) of the Labour Act 1974, Cap L1 Laws of the Federation of Nigeria 2004 defines Labour Contractors as 'persons who undertake to provide another party with the services of workers while themselves remaining the employers of the workers in question.' Section 3.7. of the Guidelines on Labour Administration: Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector defines a Service Contractor as 'a contractor who supplies personnel with equipment to another company'.

⁸⁴ Campaign for Democratic and Workers Rights in Nigeria (CDWRN) 2010.

⁸⁵ www.nigeriasolidarity.org. Accessed 5 June 2010.

⁸⁶ ICEM, *ICEM Guide on Contract and Agency Labour*, (Geneva: September 2008) p. 74. <<http://cal.icem.org>> accessed 10 August 2011.

every one permanent employee there are two casual workers in the oil and gas industry, either employed directly by the company, or recruited through labour contractors.⁸⁷

The 'key characteristics of globalisation as have been shown above have been the liberalisation of international trade and the expansion of Foreign Direct Investment (FDI) and the emergence of massive cross-border financial flows.'⁸⁸ According to the report of the World Commission on the Social Dimension of Globalisation,⁸⁹ even though this has led to increased competition in the global markets, Sub-Saharan Africa has experienced a proportional decline in its share of world markets despite the fact that many countries had implemented trade liberalisation measures, such as the structural adjustment policies imposed on them by the International Monetary Fund.⁹⁰

In many African countries, the adoption of structural adjustment policies means the implementation of neo-liberal policies, such as the privatisation of government companies, deregulation of many sectors of the economy, and the removal of subsidies on agriculture and, in the case of Nigeria, petroleum products.⁹¹ Deregulation allowed the Nigerian government to hand off its monopoly in many sectors of the economy such as banking, health care, water resources, and telecommunications.⁹² It did this in order to bring about competition and better service, as well as generate employment for the teeming masses of the unemployed. These developments, which were done as a result of recommendations from the

⁸⁷ The Degradation of Work: Oil and Casualization of Labour in the Niger Delta (Solidarity Center Washington DC 2010) p.15. <www.solidaritycenter.org> accessed 4 July 2011.

⁸⁸ Ibid., p. 24.

⁸⁹ A Fair Globalisation: Creating Opportunities for All (Report of the World Commission on the Social Dimension of Globalisation, an ILO Publication, April 2004) p. 24 <<http://www.ilo.org/fairglobalization/report/lang--en/index.htm>> Accessed 4 February 2008.

⁹⁰ Ibid., pp. 24 and 25

⁹¹ Anugwom, E.E., 'Globalisation and Labour Utilisation in Nigeria: Evidence from the Construction Industry' (2007) Africa Development, Vol. XXXII, No. 2, P. 115.

⁹² Ibid. See also, *A Fair Globalisation: Creating Opportunities for All* (Report of the World Commission on the Social Dimension of Globalisation, an ILO Publication, April 2004) p. 21 <<http://www.ilo.org/fairglobalization/report/lang--en/index.htm>> Accessed 4 February 2008.

International Monetary Fund and World Bank,⁹³ resulted not only in job losses, but also changes in the nature of employment arrangements. This is because many of the workers that were retrenched from the public service as a result of privatisation and deregulation could not be absorbed by the private sector as was intended.⁹⁴ It is the latter which has resulted in the emergence of non-standard work arrangements, or casualisation, in Nigeria.⁹⁵

Nigeria and many other African countries have been forced to take loans from the international financial institutions in order to develop their weakening economies, and increase production.⁹⁶ The expected result for Nigeria was economic recovery and growth that would meet the challenges of globalisation and competition. Unfortunately, the loans offered by these institutions have ‘come at a price’, which includes, for instance, cuts in public spending including basic social services, such as education and health, the privatisation of government enterprises, and the retrenchment of workers in the public sector.⁹⁷ It was hoped that the private sector would absorb the retrenched workers from the public sector. However, this was not the result, as the private sector had not, at that time, been developed enough to do so. Consequently, the unemployment rate spiralled upwards, and increased the number of people available for non-standard work arrangements.⁹⁸

Structural adjustment programmes (SAP) were designed by the IMF and the World Bank for African countries in order to help with the debt trap they faced in the early 1980s as a result

⁹³ Ibhawoh, B., ‘Structural Adjustment, Authoritarianism and Human Rights in Africa’ (1999) *Comparative Studies of South Asia, Africa and Middle East Journal*, Vol. XIX, No. 1, p. 158.

⁹⁴ Mkandawire, T., and Soludo, C.C., *African Perspectives on Structural Adjustment: Our Continent Our Future*. Council for the Development of Social Science Research in Africa (Africa World Press, INC. Asmara, Eritrea, 1998) p. 59.

⁹⁵ Okafor, E.E., ‘Globalisation, Casualisation and Capitalist Business Ethics: A Critical Overview of Situation in the Oil and Gas Sector in Nigeria’ (2007) *Journal of Social Science*, Vol. 15, No. 2, p. 169.

⁹⁶ Ibhawoh, B., ‘Structural Adjustment, Authoritarianism and Human Rights in Africa’ (1999) *Comparative Studies of South Asia, Africa and Middle East Journal*, Vol. XIX, No. 1, p. 158.

⁹⁷ Fajana, S., *Functioning of the Nigerian Labour Market* (Labofin and Company, Lagos, Nigeria 2000) pp. 32-34.

⁹⁸ Okafor, E.E. ‘Emerging Nonstandard Employment Relations and Implications for Human Resource Management Functions in Nigeria’ (2012) *African Journal of Business Management*, Vol. 6, No.26, p. 7614.

of the worldwide economic recession and collapse of the world commodity prices.⁹⁹ It was thought to be a measure that would fix African economies, and make them self-reliant.¹⁰⁰ The IMF and the World Bank, however, applied ‘one-size-fits-all’ policies¹⁰¹ rather than taking into consideration local conditions.¹⁰² This led to a weakening of the African economy.¹⁰³ Per capita income in most African countries, including Nigeria, dropped despite the increased income from the sale of crude oil.¹⁰⁴ Poverty and inequality is on the increase, and there does not seem to be a solution in sight.¹⁰⁵ Participants at the World Commission on the Social Dimensions of Globalisation in 2004, in their dialogue with trade unions, observed that:

‘The economic base of developing countries was being progressively eroded by the policies of industrialised countries, the International Financial Institutions (IFIs) and the World Trade Organisation (WTO). They were concerned by a continued emphasis on privatisation of utilities such as water, electricity and health services that was exacerbating poverty.’¹⁰⁶

Okafor¹⁰⁷ argued that the term ‘globalisation’¹⁰⁸ has acquired considerable emotive force over the years, and that many economists and analysts in African nations, including Nigeria; do

⁹⁹ Ibhawoh, B., ‘Structural Adjustment, Authoritarianism and Human Rights in Africa’ (1999) *Comparative Studies of South Asia, Africa and Middle East Journal*, Vol. XIX, No. 1, p. 158.

¹⁰⁰ Olukoshi, A.O., ‘Structural Adjustment and Social Policies in Africa: Some Notes’ (Draft paper prepared for the GASPP 4 Seminar on Global Social Policies and Social Rights, New Delhi, India, 8 November, 2000) p. 1.

¹⁰¹ *A Fair Globalisation: Creating Opportunities for All* (Report of the World Commission on the Social Dimension of Globalisation, an ILO Publication, April 2004) p.15 <<http://www.ilo.org/fairglobalization/report/lang--en/index.htm>> Accessed 4 February 2008.

¹⁰² Ibid.

¹⁰³ Anugwom, E.E., ‘Globalisation and Labour Utilisation in Nigeria: Evidence from the Construction Industry’ (2007) *African Development*, Vol. XXXII, No. 2, p. 2.

¹⁰⁴ Fajana, S., *Functioning of the Nigerian Labour Market* (Labofin and Company, Lagos, Nigeria 2000) p. 31.

¹⁰⁵ Ibid., 31 and 33.

¹⁰⁶ *A Fair Globalisation: Creating Opportunities for All* (Report of the World Commission on the Social Dimension of Globalisation, an ILO Publication, April 2004) p.21. <<http://www.ilo.org/fairglobalization/report/lang--en/index.htm>> Accessed 4 February 2008.

¹⁰⁷ Okafor, E.E., ‘Globalisation, Casualisation and Capitalist Business Ethics: A Critical Overview of Situation in the Oil and Gas Sector in Nigeria’ (2007) *Journal of Social Science*, Vol. 15, No. 2, p. 169.

¹⁰⁸ There is no clear-cut definition of the term ‘globalisation’. However, according to the International Monetary Fund (IMF) ‘globalisation is a historical process, the result of human innovation and technological progress. It refers to the increasing integration of economies around the world, particularly through trade and financial

not believe that globalisation is beneficial to Africa. They believe that globalisation has further increased inequality, and widened the development gap between the developed and the underdeveloped nations in Africa.¹⁰⁹ Okafor also argues that it threatens full employment and living standards, and thwarts social progress.¹¹⁰

Fixed-Term Work

A fixed-term contract is one which expires on a certain predetermined date without the need for notice to be given by either the employee or employer concerned. The worker is recruited directly by the employer on a temporary basis,¹¹¹ distinguishing this form of employment from a temporary work contract, where there is a third party involved.¹¹² However, a third party can be involved in fixed-term employment, as is the case in the Nigerian oil and gas industry where the workforce supplied by labour contractors is usually for a fixed-term of between 6 months and three years.¹¹³ Examples of fixed-term employment are seasonal and casual work.¹¹⁴

In many parts of the developed world, employment legislation has been, and is being, reformed in order to protect non-standard workers, while at the same time ensuring flexibility in hiring for employers, due to pressures from both unions and employees. In the UK, for instance, employees on fixed-term contracts are entitled to the same rights and treatment as

streams. The term sometimes also refers to the movement of people (labour) and knowledge (technology) across international borders’.

¹⁰⁹ Adeboye, T., *Globalisation: How should Nigeria Respond?* An Occasional paper presented at the Nigerian Institute of Social and Economic Research (NISER) Ibadan, Paper No. 2 March 23 2002. Quoted in Okafor, E.E. supra note 89.

¹¹⁰ Ibid.

¹¹¹ Pitt, G., *Employment Law* (7th edn. Sweet and Maxwell, London 2009) p. 100.

¹¹² Carley, M., *Non-standard forms of employment in Europe: Part-time work, fixed term contracts and temporary work contracts*. European Industrial Relations Review (EIRR) Report (Eclipse Publication, July 1990) Issue 3, p.28.

¹¹³ Nigerian Union of Petroleum and Natural Gas Workers (NUPENG) Press Release in Lagos, Nigeria on 22nd June 2011. p. 19-20. <<http://nupeng.org/id20.html>> 4 August 2011.

¹¹⁴ E.g. Employees at children’s summer camps, agricultural workers, shop assistants working for Christmas or other busy periods, cover for maternity, parental and paternity leave or sick leave and employees whose tenure will expire on the completion of specific tasks.

permanent employees,¹¹⁵ such as the right to paid holidays, *pro rata* to the length of their contract.¹¹⁶ The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulation guarantees equal treatment of fixed-term employees and permanent employees, and prevents employers from abusing successive fixed-term contract¹¹⁷ in order to escape obligations inherent in keeping workers on permanent positions.

In Nigeria, on the other hand, fixed-term employment has become the dominant form of employment in many organisations. Although getting adequate and accurate data is near impossible in Nigeria, it is estimated that as much as 60% of the total workforce in the private sector is comprised of contract workers employed on fixed-term contract¹¹⁸ ranging between 6 months and 3 years.¹¹⁹

It is clear that sometimes employers genuinely need workers for a short duration. However, sometimes fixed-term contracts are abused by employers where the worker is employed on successive fixed-term contracts in order to avoid the obligations imposed by labour law were the position to be made permanent.¹²⁰

Equality in the Workplace

Equality and the Constitution of the Federal Republic of Nigeria

Under the Nigerian Constitution, the principle of equal pay for equal work without discrimination ‘on account of sex, or any other ground whatsoever’ is guaranteed by section

¹¹⁵ See the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 which implements the EU Fixed-term Work Directive 99/70/EC Concerning the Framework Agreement on Fixed-Term Work, (FTER 2002, SI 2002/2034. Regulation 1(2) defines ‘a fixed-term contract as including not only one which terminates on expiry of task or on the happening of a specific event (other than the employee reaching retirement age).’

¹¹⁶ Peck, S., *Law at Work* (Labour Research Department (LRD) Booklets Publications Ltd. June 2006) p. 33.

¹¹⁷ Deakin, s. and Morris, G.S., *Labour Law* (4th edn Hart Publishing, Oxford 2005) p. 192.

¹¹⁸ Statistics provided by Bayo Olowoshile, Secretary General of PENGASSAN in an interview on the 26 January 2010 in Lagos, Nigeria. Also from management staffs of companies in the oil and gas industry in Nigeria interviewed in Lagos Nigeria on 20 January 2010.

¹¹⁹ *Ibid.*

¹²⁰ Pitt, G., *Employment Law* (7th edn. Sweet and Maxwell, London 2009) p. 100.

17(3)(e).¹²¹ The Constitution seeks to ensure that citizens secure work under good working conditions¹²² with regard to the protection of health and safety,¹²³ and equality in pay without discrimination,¹²⁴ and protection against exploitation.¹²⁵ The reality in practice, however, is that although there is equal pay for equal work for permanent employees, there is no such thing for those employees engaged in non-standard work arrangements, such as casual workers. Thus, there is discrimination with respect to pay in Nigeria with regard to job status, in that a casual worker may earn less than a permanent employee even if they possess the same skills, work same hours, and do the same work of equal value. There is no law which permits such a practice. If so, the law would be contrary to the provisions of the Constitution. It is a practice which has been backed up by industry standards and practice, which has become a custom. In conclusion, it is submitted that the policy and practice of discrimination in pay between permanent and contract employees in Nigeria is unconstitutional since the Constitution guarantees equal pay for equal work in Section 17(1)¹²⁶ and (3)(e).¹²⁷

It therefore appears that workers engaged in Non-standard Work Arrangements are being discriminated against solely on the basis of their employment status, and that as this amounts to a flagrant breach of section 17(1)(e) of the Nigerian Constitution such practices are invalid.¹²⁸

Freedom of Association and the Right to Organise under Nigerian Labour Law

¹²¹ Chapter II, Fundamental Objectives and Directive Principles of State Policy, Constitution of the Federal Republic of Nigeria, (CFRN) 2011 (As amended).

¹²² Section 17 (3)(a) CFRN 2011 (As amended).

¹²³ Section 17 (3)(c) of the CFRN 2011(As amended).

¹²⁴ Section 17 (3)(e) of the CFRN 2011 (As amended).

¹²⁵ Section 17 (3)(f) of the CFRN 2011 (As amended).

¹²⁶ ‘The State social order is founded on ideals of freedom, equality and justice.’

¹²⁷ ‘The State shall direct its policy towards ensuring that – all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.’

¹²⁸ Section 1 (3) of the Constitution of the Federal Republic of Nigeria 2011 (As Amended).

The right to freedom of association is a well-protected right under Nigerian law. The right to form or join a trade union of one's choice is the basis for the exercise of other rights at work. Without the right to collective bargaining, one of the rights derived from freedom of association, workers will not be able to enjoy other rights at work. Therefore, as Okene puts it, 'the concept of freedom of association in labour relations means that workers can form, join or belong to a trade union and engage in collective bargaining.'¹²⁹ Freedom of association, in essence, also implies that the right to organise must be without any interference from the State and the employer as enunciated in the ILO Convention Nos. 87¹³⁰ and 98.¹³¹ The following are the sources of freedom of association in Nigeria:

1. Constitutional Protection 1999, as amended;
2. The Trade Union Act 1973;
3. The Labour Act 1974.

I. Freedom of Association and the Nigerian Constitution

Section 40 of the Constitution of the Federal Republic of Nigeria¹³² guarantees the right to freedom of association. It provides that:

¹²⁹ Okene, O.V.C., 'Current Issues and Developments in Workers' Freedom of Association in Nigeria' (2007) *Journal of Commonwealth and Legal Education*, Vol. 5, No. 1, p.50 Online publication <http://www.informaworld.com/smpp/title~content=t744347544> Accessed 2 November 2008.

¹³⁰ Article 2 of the Freedom of Association and Protection of the Right to Organise Convention states that: 'Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation'.

¹³¹ Article 2(1&2) of the Freedom to Organise and Collective Bargaining Convention states that: 'Workers' and employers' organisation shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration'. 'In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this article.'

¹³² Constitution of the Federal Republic of Nigeria, 2011 (As amended).

‘Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.’¹³³

From the above, it is clear that an employer who prevents or bars his employee from joining a trade union is violating the rights of his employee.¹³⁴ The constitutional¹³⁵ right of workers to form or belong to a trade union of their choice is openly breached with impunity in the case of workers in non-standard work arrangements. These workers are denied the right to join a trade union, or to benefit from collective agreements. This is so, even though both private and public employers are bound by the Constitution by virtue of Sections 1(1) and (3).

The National Industrial Court (NIC)¹³⁶ has upheld the constitutional right to freedom of association in many cases. For instance, in the case of *Management of Harmony House Furniture Company Limited v National Union of Furniture, Fixtures and Wood Workers*,¹³⁷ the NIC upheld Section 40 of the Constitution. The court held that the dismissal of the chairman of the worker’s union, because of his union activities, violated his right to freedom of association. It also declared that the two undertakings, issued by the employer to be signed by workers to scare them from joining their trade union, were illegal. This undertaking

¹³³ Section 40 of the Constitution of the Federal Republic of Nigeria 2011 (As amended).

¹³⁴ Uvieghara, E.E. *Labour Law in Nigeria* (Malthouse Press limited 2001) p.321.

¹³⁵ The Constitution of the Federal Republic of Nigeria 2011 (As amended), Section 40.

¹³⁶ The National Industrial Court (NIC) was established by the Trade Disputes Act in 1976 (Decree No. 7 of 1976). The NIC is given exclusive jurisdiction over the following matters – making awards for the purpose of settling trade disputes, interpret questions relating to collective agreements, interpreting an award made by an award tribunal or by the Court itself and the terms of settlement of any trade dispute by a conciliator. However a new NIC Act was signed into law in 2006 which repealed Part II of the Trade Disputes Act 1976. Under the 2006 Act the NIC has jurisdiction under section 7(1) to exercise exclusive jurisdiction in civil causes and matters ‘relating to labour, including trade union and industrial relations; environmental and conditions of work, health, safety and welfare of labour and matters incidental thereto, relating to issues of strikes and lockouts, relating to the determination of any question as to the interpretation of any collective agreement, any award made by an arbitral tribunal in respect of a labour dispute, or any organisational dispute, the terms of settlement of any labour dispute, organisational as may be recorded in any memorandum of settlement, any trade union constitution, and any award or judgment of the Court. The 2011 amendment of the Nigerian Constitution has elevated the NIC to the status of a High Court under section 254C and an appeal on a case before it can lie with the Court of Appeal on questions of fundamental rights only as contained in chapter 4 of the Nigerian Constitution 2011 (as amended).

¹³⁷ NIC/3/86, Digest of Judgments of National Industrial Courts (NIC) 1978-2006, p.187.

amounted to a ‘yellow dog’ contract, in violation of Section 9(6)(a)¹³⁸ of the Labour Act 1974. Unfortunately, despite the ruling in this case, most Nigerian workers employed in non-standard work arrangements are still continually denied this right by their employers.

The Constitution provides for access to a court of law as a remedy in the event that the right to freedom of association has been violated. Section 46¹³⁹ provides that ‘any person who alleges that any of the provisions of the Constitution has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.’ However, casual workers are yet to take advantage of this section to seek a remedy against their employers. Employers have continued to violate this constitutional right with impunity because there are no provisions for sanctions by the State against erring employers. In addition, there seems to be no enforcement mechanism in place to ensure compliance with the Constitution in this regard. Rather, it appears that the reverse is the case. For instance, attempts by unions to organise casual workers and negotiate on their behalf are sometimes met with police violence.¹⁴⁰

II. Freedom of Association and the Trade Unions Act 1973

Section 1 of the Trade Unions Act¹⁴¹ 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’.¹⁴²

The above definition indicates that workers no matter their status ‘whether temporary or permanent’ have the right to join or form a trade union. An employer is mandated by section

¹³⁸ Section 9(6)(a) of the Labour Act 1974 provides that ‘No contract shall make it a condition of employment that a worker shall or shall not join a trade union or shall or shall not relinquish membership of a trade union’.

¹³⁹ Constitution of the Federal Republic of Nigeria 1999 (As amended).

¹⁴⁰ *The Degradation of Work: Oil and Casualization of Labor in the Niger Delta* (A Report by the Solidarity Centre Washington, DC 2006) p. 14. <www.solidaritycenter.org> accessed 6 July 2011.

¹⁴¹ 1973 CAP T14, Laws of the Federation of Nigeria (LFN) 2004.

¹⁴² Emphasis added.

24 of the Act¹⁴³ to automatically recognise a trade union on registration, and this recognition is interpreted to be for the purpose of collective bargaining. A minimum of 50 members are required to form a trade union in Nigeria.¹⁴⁴ This implies that the trade union can bargain collectively on behalf of its members, whether temporary or permanent, and that any collective agreement reached should be applicable to all categories of workers.

In a case concerning the organisation of casual workers by the National Union of Hotels and Personal Services Workers, *Patovilki Industrial Planners Limited v National Union of Hotels and Personal Services Workers*,¹⁴⁵ the National Industrial Court held that both regular and casual workers have a right to form a trade union. The court concluded by saying that Section 1(1) of the Trade Unions Act¹⁴⁶ allowed workers, permanent or temporary, to form a trade union, and that a relevant trade union could unionise workers who were casual daily paid workers. In this case, the appellant company was engaged in the business of industrial cleaning. The respondent union was a registered trade union. The union sought permission to unionise the appellant's workers, but the company refused on the basis that they were casual workers. The respondent therefore declared a trade dispute. The Industrial Arbitration Panel (IAP)¹⁴⁷ heard the dispute, and gave an award in favour of the respondent union. The appellant, being dissatisfied, appealed to the NIC, which upheld the ruling of the IAP. The

¹⁴³ 1973 Cap T14 Laws of the Federation of Nigeria (LFN) 2004. S. 24 (1) 'Subject to this section, where there is a trade union of which persons in the employment of an employer are members, that trade union shall, without further assurance, be entitled to recognition by the employer.' S. 24 (2) 'If an employer deliberately fails to recognise any trade union registered pursuant to the provision of subsection (1) of this section, he shall be guilty of an offence and be liable on summary conviction to a fine of N1,000.'

¹⁴⁴ Section 3 1(a) of the Trade Unions Act Cap T14 LFN 2004 provides that 'An application for the registration of a trade union shall be made to the Registrar in the prescribed form and shall be signed- in the case of a trade union of workers, by at least fifty members of the union.'

¹⁴⁵ Suit No. NIC/12/1989, Digest of Judgments of National Industrial Court (1978-2006) pp.288-289.

¹⁴⁶ 1973, Cap T14 LFN 2004.

¹⁴⁷ The Industrial Arbitration Panel (IAP) was established by the Trade Disputes Act of 1976 for the settlement of trade disputes. A dispute is only referred to the panel by the Minister of Labour and Productivity when the parties have failed to resolve it through internal dispute resolution machinery, and mediation and conciliatory mechanisms as stated in the Act. The decision of the IAP is known as an 'award' which must be in writing, must be certain in meaning, and must be final and binding on the parties (See sections 8-15 of the Trade Disputes Act 1976). If either party object to the IAP decision then it will be referred to the National Industrial Court (NIC) which is the final court in dispute resolution (See further below).

above case created a precedent whereby casual workers have the right to unionise, not only as a constitutional right,¹⁴⁸ but by virtue of Section 1(1) of the Trade Union Act. It must be noted, however, that in this case it was not the casual workers who brought the matter to court, but the union which had sought to organise them.

Two decades after the above case, in 2012, the National Union of Petroleum and Natural Gas workers¹⁴⁹ declared a trade dispute between it, Shell, and its labour contractors.¹⁵⁰ The dispute was taken to the IAP for settlement. The union accused Shell and its labour contractors of:

1. Refusal of the management to allow workers to join NUPENG even after they had applied to do so;
2. Arbitrary sacking of casual workers as a result of their participation in union activities;
3. Refusal to pay workers' salaries, allowances, and bonuses for 2-14 months;
4. Threats, victimisation, harassment and intimidation of union members and non-compliance with minimum labour standards.¹⁵¹

The IAP, after a full and careful consideration of the facts and circumstances surrounding the dispute, held that:

¹⁴⁸ Section 40 of the Nigerian Constitution provides that everyone has the right to form or join a trade union in order to protect his or her interest.

¹⁴⁹ NUPENG – This is the union of junior level and intermediate staff categories of workers (below supervisory level) in the oil and gas industry in Nigeria.

¹⁵⁰ *NUPENG v SPDC & All the Labour Contractors of SPDC & National Petroleum Development Company- Ohaji- Egbema- Oguta in Imo State, M.A. Nwaokocha & Sons & 42 Ors.* NIC/2011.

¹⁵¹ *NUPENG v SPDC & All the Labour Contractors of SPDC & National Petroleum Development Company- Ohaji- Egbema- Oguta in Imo State, M.A. Nwaokocha & Sons & 42 Ors.* NIC/2011.

The first party (*i.e.* NUPENG] having proved all its allegations against the second parties [*i.e.* Shell and its contractors), the tribunal hereby gives award to the first party and others as follows:

- (a) ‘All the employees of the labour contractors working on SPDC/NPDC oil and gas facilities should be unionised by NUPENG forthwith if they fall within the junior and intermediate staff categories and should have freedom of association and the right to organise and also bargain collectively;
- (b) All the employees of the labour contractors whose appointments were terminated based on their union activities must be reinstated within 30 days of the service of this award on the parties;
- (c) All the employees of the labour contractors whose salaries, allowances and bonuses are being withheld should be paid their entitlements without delay.
- (d) All forms of intimidation, witch-hunting and termination of appointments based on union activities must stop.’¹⁵²

By virtue of Section 12(4) of the Trade Disputes Act,¹⁵³ an IAP judgment is binding on both workers and employers as from the date of the award.¹⁵⁴ However, in this case, Shell and its labour contractors refused to be bound by the award by not implementing the judgment as required by the tribunal.¹⁵⁵ The union wrote to the Ministry of Labour to enforce the judgment, at the time of writing, the judgment had not been enforced.¹⁵⁶

¹⁵² The award of the Industrial Arbitration Panel (IAP) April 2011.

¹⁵³ 1976 Cap T8 Laws of the Federation of Nigeria 2004.

¹⁵⁴ ‘... The Minister shall publish in the Federal Gazette a notice confirming the award and the award shall be binding on the employers and workers to whom it relates as from the date of the award (or such earlier or later date as may be specified in the award).’

¹⁵⁵ Source: Nigerian Union of Petroleum Gas Workers [NUPENG]. The documents were received on 14 September 2011 from NUPENG.

¹⁵⁶ *Ibid.*

It should be noted that, although this judgment came over two decades after the *Patovilki's* case, there is still resistance on the part of employers in Nigeria to treat casual workers on an equal basis with permanent employees. Even the Minister of Labour, whose job is to set up the arbitration panel and enforce judgments¹⁵⁷ has not been able to compel the concerned employers to implement the award. The ongoing violation of the rights of casual workers in the industry is perpetrated with impunity, and should not be condoned by the Nigerian government and its agencies, which are responsible for monitoring and enforcing compliance. According to Sola Iji, former Executive Secretary of Food, Beverages and Tobacco Senior Staff Association¹⁵⁸ and a critic of casualisation, there is no future for casual workers. He posits that, if trade unions are not permitted to organise, then the prospects of effective trade unionism demands in future will be very slim.¹⁵⁹

III. Freedom of Association and the Labour Act 1974

Another law that protects the rights of workers to associate for trade union purposes is the Labour Act.¹⁶⁰ Workers' membership in trade unions and trade union activities are protected by Sections 9(6)(a) and (b), which provide that:

No contract shall-

- (a) Make it a condition of employment that a worker shall or shall not join a trade union or shall or shall not relinquish membership of a trade union; or
- (b) Cause the dismissal of, or otherwise prejudice, a worker

¹⁵⁷ See Sections 8 and 12 of the Trade Disputes Act 1976 Cap T8 LFN 2004. Section 12(4) of the Trade Disputes Act 1976 provides that '... the Minister shall publish in the Federal Gazette a notice confirming the award and the award shall be binding on the employers and workers to whom it relates as from the date of the award (or such earlier or later date as may be specified in the award)'.

¹⁵⁸ Former Executive Secretary of Food, Beverages and Tobacco Senior Staff Association of Nigeria.

¹⁵⁹ Interview with Sola Iji former Executive Secretary of the Food, Beverages and Tobacco Senior Staff Association in Lagos, Nigeria (Lagos 8 January 2009).

¹⁶⁰ 1974, Cap L1, Laws of the Federation of Nigeria 2004.

- (i) By reason of trade union membership, or
- (ii) Because of trade union activities outside working hours or, with the consent of the employer, within working hours, or
- (iii) By reason of the fact that he has lost or been deprived of membership of a trade union or has refused or been unable to become, or for any other reason is not, a member of a trade union.

From the above, any company that requires its employees to sign a ‘yellow dog’ contract,¹⁶¹ or dismisses an employee for his trade union membership and activities is acting unlawfully. This position was confirmed by the Industrial Arbitration Panel in *NUPENG v SPDC & All the Labour Contractors of SPDC & National Petroleum Development Company- Ohaji-Egbema- Oguta in Imo State, M.A. Nwaokocha & Sons & 42 Ors.*¹⁶²

The only explanation for the degree of breach of this provision by employers is that the Act does not provide a penalty for breach, and the various government agencies that are responsible for monitoring and enforcing compliance have not done so.

The National Industrial Court (NIC) has applied and upheld the provision of Sections 9(6)(a) and (b) in many of its decided cases. For example, in *Management of Harmony House Furniture Company Limited v National Union of Furniture, Fixtures and Wood Workers*,¹⁶³ the NIC held that the dismissal of the chairman of the worker’s union for his union activities contravened the provisions of this section. It also declared that the two undertakings, issued by the employer to be signed by workers to scare them away from joining their trade union,

¹⁶¹ A yellow-dog contract is an agreement between an employer and an employee in which the employee in which the employee agrees, not to be a member of a trade union as a condition of employment.

¹⁶² Suit no. NIC/6/2011.

¹⁶³ Suit No. NIC/3/86, Digest of Judgments of National Industrial Courts (NIC) 1978-2006, p.187.

were illegal. In *Management of Atlas (Nigeria) Limited v Shop and Distributive Trade Senior Staff Association*,¹⁶⁴ the NIC held that, where the court finds dismissed workers are victimised on account of their trade union activities, monetary compensation is payable to the dismissed staff. In the case, the court ordered that severance pay be made to each of the 11 dismissed workers.

The NIC also held in *National Union of Food, Beverage and Tobacco Employers v Cocoa Industries Ltd. Ikeja*¹⁶⁵ that the court can, by virtue of Section 9(6)(b)(ii) of the Labour Act, order the reinstatement of a worker where he or she was dismissed for embarking on trade union activities. In *National Union of Banks, Insurance and Financial Institutions Employees v Management of Nigerian Industrial Development Bank*,¹⁶⁶ in which the employer terminated the employment of the three employees because of their trade union activities, it was held that termination was contrary to Section 9(6)(b)(ii) of the Labour Act 1974.

Another case in which the NIC found the termination of appointments of union officials by an employer on account of union activities amounted to victimisation of the union officials was that of *Stadium Hotel v National Union of Hotel and Personal Services Workers*.¹⁶⁷ The court held that the termination of their appointments amounted to victimisation and was therefore unjust. In *Nigerian Tobacco Company Ltd. v National Union of Food and Tobacco Employees*,¹⁶⁸ the NIC ruled that the only reasonable inference that could be drawn from the circumstances surrounding the termination of the respondent's appointment was that he had been victimised for his trade union activities. His summary dismissal was therefore 'unfair and unjustified'.¹⁶⁹

¹⁶⁴ Suit No. NIC/1/2001 Digest of Judgments of National Industrial Courts (NIC) 1978-2006, pp. 167-168.

¹⁶⁵ Suit No. NIC/1/2001, pp. 486-489.

¹⁶⁶ Suit No. NIC/8/85, pp. 235-236. Digest of Judgments of National Industrial Courts (NIC) 1978-2006.

¹⁶⁷ Suit No. NIC/3/1978, pp. 32-32. Digest of Judgments of National Industrial Courts (NIC) 1978-2006.

¹⁶⁸ NIC/6/1981, pp. 111-114.

¹⁶⁹ *Ibid.*, pp. 352-354, paras H-B.

It is important to note, however, that most of the cases above involved *permanent* employees. As has already been noted, there is no reported case in which a non-standard worker challenged an employer with regard to the denial of the right to join or form a trade union. Reported cases are usually brought on by union members and officials.¹⁷⁰ The reason for this can be adduced to the fact that workers risk losing their job if they bring court proceedings against their employer. It is submitted that if a non-standard worker were to bring proceedings, it is likely, on the basis of the precedents above, that the court would rule in favour of the applicant concerning the right to organise,¹⁷¹ as was done in *NUPENG v Shell & Shell's Labour Contractors* above. It should be noted, however, that in spite of the above decisions, employers in Nigeria still prevent casual workers from joining or forming unions.

Many employers in Nigeria believe that unionisation will disrupt production and increase tension and conflict in the workplace. If the right to belong to a union to promote and protect workers' interests is denied, then it is a serious infringement of the right to organise, and does not promote the principle of democracy in the workplace. To resolve the issue of denial of freedom of association for non-standard workers, the current realities of globalisation have to be considered.

Conclusion

This paper explored the changing nature of work and its impact on employment relationships. In addition it examined some of the factors affecting the nature of work and why they occur. Such factors are globalisation, flexibility, the structural adjustment programme introduced

¹⁷⁰ Usually Unions representing permanent employees.

¹⁷¹ See again the case of *Patovilki Industrial Planners limited v National Union of Hotels and Personal Services Workers*, on page 16, where the NIC upheld that both regular and casual workers have the right to form a trade union. The Court cited S. (1) of the Trade Unions Act which provides that workers whether permanent or temporary can form a trade union. The court therefore concludes that a relevant trade union can unionise workers who are casual daily paid workers. See the facts of this case in 4.3 on page 16 of this chapter.

through the IMF and World Bank to the Nigerian economy. An analysis of non-standard work arrangements reflected its impact on employment relationships especially that of casual workers on fixed-term employment. Workers in this form of employment are discriminated against in terms of pay and the right to freedom of association in the work place.

This paper brought to fore that even though other countries in Africa such as South Africa and Ghana have developed a legal framework for the protection of non-standard workers, this is not the case with Nigeria as it is yet to do same. So the workers here are still being discriminated against and denied the right to equal pay and freedom of association. It was also shown that the European Union has also created a legal framework through Directives for the protection of workers in non-standard work arrangements.

The only way forward will be for the Nigerian government to review and reform current labour laws so that workers engaged in non-standard work arrangements can enjoy the same employment rights as ‘standard’ workers, and thereby be protected from exploitation by employers. This is what was done with the EU Directive on temporary agency work,¹⁷² which was adopted by the European Parliament and the Council of the European Union. It provides an example of how legislative reforms can be made to help a vulnerable group of workers.

¹⁷² Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on Temporary Agency Work. It should be noted that this Directive was finally approved in October 2008, after almost three decades of debate and failed attempts at regulation.