

CONTRACT LABOUR AND THE RIGHT TO FREEDOM OF ASSOCIATION IN THE OIL AND GAS INDUSTRY IN NIGERIA

Rosemary A. Danesi

**Department of Industrial Relations & Personnel Management, University of Lagos,
Nigeria**

ABSTRACT

Contract labour is one of several terms, which are widely used to describe work arrangements, which do not fall within the traditional definition of employment. Contracting out services and getting employees through contractors have become widespread practice by many employers because it helps them to cut cost since these contractors could often supply these workers more cheaply and efficiently.¹

Labour rights and standards are sometimes seen as sacrificial lambs on the altar of competitive edge by companies due to the perception that they constitute 'costs' which if eliminated or reduced to the barest minimum, will impact positively on the ability of companies to compete favourably in the global market and consequent improvement of their balance sheets, to the joy of shareholders.

Contract work is increasingly becoming the norm in Nigeria's oil and gas industry as companies undergo restructuring, concentration on core activities and modifications in work organization and technology. These factors certainly affect traditional employment relations and the exercise of freedom of association and collective bargaining rights inherent in them. Contract workers now make up about 60% of the workforce in the industry and they are denied the right to organize into Unions. The denial of this right has resulted in exploitation of these workers.

A cornerstone of democratic governance and constitutional liberalism is the freedom of association. This freedom enables people who share similar interests to come together and form organizations that represent their interests and views. This is also applicable to workers who come together under the umbrella of a union to protect and promote their employment interests.

The Nigerian Constitution² guarantees the right to freedom of association. The constitutional guarantee covers workers in both the private and public sectors of the economy. Therefore it is clear that an employer who prevents or bars his employee from joining a trade union is

¹ Abraham, K.G., Taylor, S.K. 'Firms' Use of Outside Contractors: Theory and Evidence' (1996) *Journal of Labour Economics*, Vol.14, No. 3: Pp. 394-424

² Section 40 of the Constitution of the Federal Republic of Nigeria 2011 (As amended).

violating the constitutional right of her employee to freedom of association.³ The Constitution also provides for access to a court of law for remedy in the event that the right to freedom of association is being or has been breached.⁴

In the same vein the Labour Act,⁵ the Trade Unions Act,⁶ many ILO instruments and other international instruments guarantee the right to freedom of association.⁷ Trade Unions Act⁸ definition of a union indicates that workers no matter their status “*whether temporary or permanent*” have the right to join or form trade unions. In the only reported case concerning casual workers, *Patovilki Industrial Planners Limited v National Union of Hotels and Personal Services Workers*,⁹ the National industrial court held that both regular and casual workers have the right to form a trade union.

This paper seeks to examine the adequacy of labour law governing trade unionism in Nigeria in ensuring the right of contract workers to freedom of association, as well as its conformity to international labour standards. Though there are general provisions that guarantee the right to freedom of association for workers in Nigeria there are no specific provisions for contract workers. The law gives a general definition of a worker but does not define other forms of employment such as contract work. It is therefore this lack of clarity that has resulted in their exploitation. It is argued that Nigerian labour laws need to be enforced to ensure that this category of workers benefits from this right. In addition a proposal is made for a law reform which will define contract labour and provide a legal framework for the regulation and protection of contract workers in Nigeria in order to guarantee their right to unionize and enable them improve their rights at work.

³ Danesi, R.A., *Casualization and International Labour Standards: The Role of Trade Unions in Nigeria (2010)US-China Law Review*, Vol. 7, No. 2, p. 26.

⁴ Section 46 of the Constitution of the Federal Republic of Nigeria 2011 (As amended).

⁵ Cap L1 Laws of the Federation of Nigeria 2004.

⁶ Cap T14 Laws of the Federation of Nigeria 2004.

⁷ See Convention 87 and 98 of the ILO, the UDHR, African Charter on Human and Peoples' Rights etc.

⁸ CAP T14 LFN 2004.

⁹ Suit No. NIC/12/89, Digest of Judgments of National Industrial Court (1978-2006) pp.288-289

1. Introduction

The keen competition in the ever-growing industrialized market economy has led employers to devise various means of remaining competitive, one of which includes the use of contract labour. Providers of goods and services seek cheaper capital and labour in order to keep costs low. Since established labour rules and standards may not be readily compromised, employers continually seek innovative ways to get the job done more cheaply. Contract work through outsourcing has met this need, particularly as advances in technology have also re-defined the way work is done. The use of contract labour forms a large component of the labour force in the oil and gas industry in Nigeria¹⁰ and employers use agencies known as labour/service contractors through outsourcing to employ contract workers. According to some employers in the oil and gas industry, outsourcing is not necessarily adopted to cut costs, but instead to help them concentrate on their core areas, namely oil exploration and marketing, and to contract out ancillary services (such as, say, catering and security) to labour and service contractors who specialize in such services.¹¹ This, however, has not always been the case as many activities regarded as core in the industry, for instance oil and gas exploration, is also outsourced to labour and service contractors.¹²

The use of labour and service contractors has been a source of ongoing conflict between workers, unions and employers in the industry. In order to address the problem associated with contract labour in the oil and gas industry the Federal Ministry of Labour and Productivity has devised a set of guidelines with regard to staffing and outsourcing in the oil and gas industry.¹³ It is argued that, although the new guidelines are a step in the right direction, they still fall short of providing a long-term solution. Thus, there is still a need for 'hard' law to regulate and protect workers in casual and contract employment in Nigeria.

This paper seeks to examine the adequacy of labour law governing trade unionism in Nigeria in ensuring the right of contract workers to freedom of association, as well as its conformity to international labour standards. Though there are general provisions that guarantee the right to freedom of association for workers in Nigeria there are no specific provisions for contract workers. The law gives a general definition of a worker but does not define other forms of employment such as contract work. It is therefore this lack of clarity that has resulted in their exploitation. It is argued that Nigerian labour laws need to be enforced to ensure that this category of workers benefits from this right. In addition a proposal is made for a law reform which will define contract labour and provide a legal framework for the regulation and protection of contract workers in Nigeria in order to guarantee their right to unionize and enable them improve their rights at work.

2. The use of Contract Labour through Outsourcing in the Oil and Gas Industry in Nigeria

Rosemary Danesi is a Lecturer in the Department of Industrial Relations & Personnel Management, University of Lagos Nigeria. She holds a Bachelor's Degree in Sociology, a Masters Degree in Industrial Relations & Personnel Management, LLB, LLM, BL, PhD. (Essex, UK). She is a Labour & Employment Lawyer and Advocate of the Supreme Court of Nigeria. rosemarydanesi@yahoo.com

¹⁰ See Table 1.0. p. 4.

¹¹ Interview with Stella Momoh, a representative of management of ExxonMobil in Lagos, Nigeria (Lagos 22 January 2010).

¹² Interview with Bayo Olowoshile, Secretary General of PENGASSAN, in Lagos, Nigeria, (Lagos 26 January 2010).

¹³ *Guidelines on Labour Administration: Issues in Contract Staffing/Outsourcing in the Oil and Gas Industry*, issued on 25 May 2011 at Abuja, Nigeria.

Outsourcing has become an integral part of the oil and gas industry in Nigeria. Thus companies in the industry have in the past 15 years or so adopted the practice of outsourcing to labour and service contractors those jobs which they consider to be ancillary to their core operations (namely the drilling of oil and gas). They have chosen to do this for reasons of improved administration and to lower costs. Contract workers are used in the industry to meet short-term or part-time staffing needs, as well as to accomplish various tasks that the companies in the industry decide are better outsourced. However as have been shown above, over the years almost all jobs have become outsourced, even those which are considered core in the industry. A member of Chevron management¹⁴ stated, however, that saving money is not necessarily the sole consideration for employing a person on a temporary labour contract basis. He said that the use of labour contractors most importantly enables the company to use specialists and to focus on its core area, which is the exploration and production of oil. Thus, according to the company, cost-saving is not always the primary or sole motive for outsourcing. However, such a claim is open to question, because many of those tasks in the core area of oil exploration and production are also outsourced to contractors.¹⁵

In the past the companies in the industry employed contract workers directly however they no longer employ this category of employees directly. Instead, it is outsourced to labour and service contractors. Up until the early 1990's employees in the oil and gas industry comprised approximately 70% permanent employees and 30% temporary employees.¹⁶ However, these figures have now changed in that there has been a huge increase in the numbers of temporary employees, so that these significantly exceed the number of permanent employees. Thus, in 2010, for example, 40% of those employed in the industry were permanent employees and 60% temporary employees.¹⁷ In 2008, ExxonMobil had 1,650 contract workers hired through labour/service contractors and 1,927 permanent workers making a total of 3,577 workers.¹⁸ Therefore, the percentage of contract workers in the organization in 2008 was 46.13% and the percentage of permanent employees was 53.87%.¹⁹ However the figures which were given to me showed that in 2010 the number of contract workers working for ExxonMobil was 3,835 and the number of permanent workers were 2,118. In other words, permanent employees made up 36% of the entire workforce and contract workers 64%. These are interesting figures because they show that more than 60% of ExxonMobil's workers are on short-term contracts. These figures confirm that the incidence of casualization is very high in the industry.²⁰ In the same period Chevron had 2,400 contract employees and 2,000 permanent employees making a total workforce of 4,400 employees. 54.55% of the total workforce is contract employees

¹⁴ Interview with a manager of Chevron Nigeria Ltd, in Lagos, Nigeria, on 14 January 2008; and another manager of Chevron Nigeria Ltd, conducted via e-mail on 6 November 2009.

¹⁵ *Degradation of Work: Oil and the Casualization of Labour in the Niger Delta* (A Report by Solidarity Center, Washington DC. United States) p. 3.

¹⁶ *ibid.* See also figures in table 1.0.

¹⁷ *ibid.*

¹⁸ These figures were given by ExxonMobil management during an interview with an anonymous manager in the Human Resources Department on 10 December 2008. However, later figures provided by a member of the management staff of ExxonMobil in a questionnaire interview via e-mail in 2010 showed that contract workers represent 3,835 (64%) and permanent employees 2,118 (36%) of the workforce. Thus, a substantial part of the workforce in ExxonMobil is comprised of contract workers supplied by labour contractors.

¹⁹ *ibid.*

²⁰ See table 1.0 below on p. 4.

while 45.45% are permanent employees.²¹ This statistics means that more than half of Chevron’s employees have a temporary status.

Table 1.0 Type of Employment Contract in the Oil and Gas Industry in Nigeria in 2010

s/no.	Name of Company	No. of Permanent Employees	Percentage	No. of Contract/Casual Employees	Percentage	Total
1.	Shell (SPDC)	3,625	17.58%	17,000	82.42%	20,625
2.	Chevron	2,000	45.45%	2,400	54.55%	4,400
3.	ExxonMobil	2,118	36%	3,835	64%	5,953
Total		7,743		23,235		30,978

Its contract workers work side by side with its permanent employees. However, although a visitor cannot distinguish a contract employee from a permanent employee because they work the same hours and perform the same tasks, there are significant differences in terms of remuneration, freedom of association and job security. According to Solidarity Center (An NGO based in the United States) skilled qualified casual workers work side-by-side with their full-time unionized colleagues with the same job descriptions and same responsibilities.²² Their jobs range from production technology to drilling, to mechanical services and instrumentation.²³ Their job could also include clerical support, computer services, transport, maintenance, flow station operations, fire fighting and shipboard maritime work.²⁴

In terms of working hours, contract workers work the same hours as permanent employees despite the fact that they are referred to as temporary or fixed-term employees.²⁵ However, the terms and conditions of service of contract staff are still less favourable than those of permanent employees employed directly by the companies in the industry despite the fact that they perform the same technical and professional tasks.

Concerning the right to join or form a union, contract workers since the mid 1990’s were denied the right to join or form unions as have been shown above which is a violation of section 40 of the Constitution.²⁶ Thus for more than a decade contract workers did not have a

²¹ *Degradation of Work: Oil and the Casualization of Labour in the Niger Delta* (A Report by Solidarity Center, Washington DC. United States) p. 3.

²² *Ibid.*, p. 18.

²³ *ibid.*

²⁴ Okpara, R., ‘Social Relations of Production in the Nigerian Petroleum Industry: A Study of Contract Labour,’ [1987] *African Journal of Political Economy*, Vol. 1, No.2, pp. 45-46.

²⁵ The two unions NUPENG and PENGASSAN had alleged this in my interviews with them in Lagos between 2009 and 2011. Management representatives interviewed also confirmed that working time for casual workers and permanent employees in the industry are the same.

²⁶ Constitution of the Federal Republic of Nigeria, 2011 (As amended).

platform to negotiate and improve their terms and conditions of employment hence their exploitation. NUPENG²⁷ and PENGASSAN²⁸ therefore took it upon themselves to campaign against contract labour in the industry as they deemed it a tool of exploitation in the hands of employers in the industry. This campaign through strikes and negotiation with the oil and gas companies and their labour contractors led to the formation of contract unions in the industry. However, many employers and their labour contractors did not accord them recognition as stipulated by section 24 of the Trade Unions Act.²⁹

3. The Reasons Employers and the Unions give for the use of Contract Labour in the Oil and Gas Industry in Nigeria

There are various reasons given by both management and the unions in the industry for the use of contract labour and they differ depending on the person or body concerned.

A. Reasons Given by Employers

The Employers in the oil and gas industry give varying reasons why they have adopted contract labour otherwise known as casualization in Nigeria, as a dominant form of employment in the industry and they are analyzed below:

1. Contract workers employed through an agency or a third party will have his or her records kept by the agency so the user company is spared that responsibility and cost.
2. Termination of employment costs of the contract worker will also be borne by the agency since the workers are employees of the agency or contractor. So this saves the employer the cost.
3. The consequences of labour turnover are likely to be less adverse if employers are using flexible staffing arrangements to screen workers for permanent positions.
4. Temporary workers are sometimes engaged to fill 'non-permanent positions' during peak periods pending the engagement of permanent employees into an established position or for the duration of a particular project. These workers are usually referred to as service contract staff or project staff. Their employment comes to an end as soon as the task is accomplished.
5. Contract workers are employed to accommodate fluctuations in demand or workload.
6. Contract workers are employed to temporarily replace employees on maternity leave or on vacation.
7. Contract workers are employed to cope with seasonal variations in demand while minimizing employment costs.
8. Contract workers are employed to reduce labour costs generally through downsizing, restructuring or redundancy. Sometimes some permanent employees have been known to have been declared redundant and a few months later have been re-engaged by the same company as a casual or contract employee.

²⁷ This is the union of workers below the level of Supervisor in the oil and gas industry in Nigeria.

²⁸ This is the union of workers from the level of Supervisor to lower cadre management staff in oil and gas industry in Nigeria.

²⁹ Cap T14 Laws of the Federation of Nigeria (LFN) 2004. The law states that, 'where there is a trade union of which persons in the employment of an employer are members, that trade union shall, without further assurance, on registration in accordance with the provisions of this Act, be entitled to recognition by the employer.' Note that not all contract workers are members of a contract union. There are still ongoing negotiations between the unions and labour contractors to ensure that all contract workers in the oil and gas industry are members of a contract union.

9. Contract workers are employed to avoid trade unionism. For more than a decade contract workers in the OGI were prevented from joining or forming trade unions. Usually when permanent workers went on strike, the contract workers were called in to take their places since they were not members of the union.

The reasons listed above *inter alia* are those reasons given by many employers in the industry for the use of contract workers. It could be argued that the very flexible nature of contract labour may in fact generate more jobs because they enable employers to hire core staff and then fill in the gaps for additional employees through the use of contract workers. This need will arise usually during peak production times or when some employees are away on leave. To justify this, they argue that globalization and increased international competition in the neo-liberal world economy have necessitated this development. This argument may be plausible but it does not justify the current situation in the oil and gas industry in Nigeria where casualization has become the dominant employment model. As have been shown above more than 50% of workers in the industry in Nigeria are employed by contractors under short-term contracts. For example, Shell has stated in 2009 that it has ‘approximately 102,000 employees and more than four times as many are contractors and suppliers’.³⁰ Although they perform the same tasks as regular employees and possess the same skills and work the same hours, their jobs are insecure and unstable as they can be laid off at anytime usually without notice.

B. The Unions’ View on the use of Contract Labour in the Oil and Gas Industry in Nigeria

The unions in the oil and gas industry in Nigeria namely, NUPENG³¹ and PENGASSAN³² believe that the use of contract labour through labour and service contractors by the OGI is basically to reduce costs and to discourage the unionization of workers. The unions argue that the claim of companies in the oil and gas industry that they use permanent workers for core areas and outsource non-core areas to contractors is not tenable because many jobs which are regarded as core (such as oil exploration and drilling) are also contracted out as casual jobs. According to Bayo Olowoshile, Secretary General of PENGASSAN,³³ core jobs are jobs such as petroleum engineering and geology. Olowoshile was of the view that the following three reasons were the main reasons for the adoption of casualization by employers in the industry:

1. To cut costs,
2. To maximize profits,
3. To stop the workers from exercising their right to organize and thereby impede the growth of trade unionism in the industry.

³⁰ ILO Note on the proceedings, Tripartite Meeting on Promoting Social Dialogue and Good Industrial Relations from Oil and Gas Exploration and Production to Oil and Gas Distribution (Geneva), para 22.

³¹ National Union of Petroleum and Natural Gas Workers.

³² Petroleum and Natural Gas Senior Staff Association of Nigeria.

³³ Interview with Bayo Olowoshile, Secretary General of PENGASSAN, in Lagos, Nigeria, (Lagos 26 January 2010).

4. Sources of the Right to Freedom of Association under Nigerian Labour Law

The right to freedom of association is a well protected right under Nigerian law as we shall see in this section. 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 (2007) 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'. Freedom of association in essence also implies that the right to organize must be without any interference from the State and the employer as enunciated in the International Labour Organization (ILO) Convention Nos. 87³⁴ and 98³⁵. The following are the sources of freedom of association in Nigeria:

1. Constitutional Protection 2011 as amended,
2. The Trade Union Act 1973,
3. The Labour Act 1974
4. The African Charter of Human and Peoples' Rights 1981.

A. The Nigerian Constitution and Freedom of Association

Section 40 of the Constitution of the Federal Republic of Nigeria ³⁶ guarantees the right to freedom of association. It provides that:

'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'.³⁷

From the above, it is clear that an employer who prevents or bars his employee from joining a trade union is violating the right of his or her employee.³⁸ The constitutional³⁹ right of workers to form or belong to a trade union of their choice is openly breached with impunity in the case of contract workers in Nigeria. These workers are denied the right to join a trade union or benefit from collective agreements. This is so, even though both private and public employers are bound by the Constitution by virtue of sections 1.⁴⁰

³⁴ Article 2 of the Freedom of Association and Protection of the Right to Organize Convention states that: 'Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization'.

³⁵ Article 2(1&2) of the Freedom to Organise and Collective Bargaining Convention states that: 'Workers' and employers' organization 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' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this article.'

³⁶ Constitution of the Federal Republic of Nigeria, 2011 (As amended).

³⁷ Section 40 of the Constitution of the Federal Republic of Nigeria 2011 (As amended).

³⁸ Uvieghara, E.E. Labour Law in Nigeria. (Malthouse Press limited 2001) p.321.

³⁹ Section 40 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999.

⁴⁰ Section 1 provides that, "This Constitution shall have the force of law throughout Nigeria and subject to the provisions of section 4 of this Constitution, if any other law (including the Constitution of a Region) is

The National Industrial Court (NIC)⁴¹ 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*,⁴² 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 amounted to a yellow dog contract which is a violation of section 9(6)(a)⁴³ of the Labour Act 1974.⁴⁴ Unfortunately, however, despite the ruling in this case, most workers employed in NSWAs in Nigeria are still continually denied this right by their employers.

The Constitution provides for access to a court of law for a remedy in the event that the right to freedom of association has been violated. Section 46⁴⁵ 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, contract 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. In fact, attempts by unions in the industry to organize contract workers and negotiate on their behalf are sometimes met with police violence.⁴⁶

inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void".

⁴¹ 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).

⁴² NIC/3/86, Digest of Judgments of National Industrial Courts (NIC) 1978-2006, p.187.

⁴³ Section 9(6)(a) of the Labour Act 1971 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'.

⁴⁴ The section states 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 – (i) by reason of trade union membership, or (2) because of trade union activities outside working hours or with the consent of the employer, within working hours.'

⁴⁵ Constitution of the Federal Republic of Nigeria 2011 (As amended).

⁴⁶ *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

B. The African Charter on Human and Peoples' Rights

It is important to mention the African Charter here because it has been enacted as an Act of the National Assembly and has therefore become part of Nigerian law.⁴⁷ The African Charter is another instrument that guarantees freedom of association for workers in Nigeria.⁴⁸ Article 10 of the Charter provides that 'Every individual shall have the right to free association provided that he abides by the law'. Nigeria has ratified this Charter and has indeed made it part of its national law by way of enactment through section 12(1) of the Constitution⁴⁹ which states that 'No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly'. Therefore the African Charter has become part of Nigerian *Corpus juris*. The decision of the Supreme Court in the case of *Gani Fawehinmi v. Abacha* (2000)⁵⁰ affirms the binding effect of the African Charter. In delivering the leading judgment, Ogundare JSC stated *inter alia*:

'I would think that if there is a conflict between it and another statute, its provisions will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation'.⁵¹

Thus, where a treaty is enacted into law by the National Assembly, as was the case with the African Charter which is incorporated into our municipal law it becomes binding and the Nigerian courts must give effect to it like all other laws falling within the judicial powers of the court.⁵² Therefore, 'the provisions of the Charter shall have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons in Nigeria'.⁵³ By virtue of this decision, a contract worker can therefore plead article 10 of the African Charter which guarantees the right to form or belong to a trade union.

C. The Trade Unions Act 1973 and Freedom of Association

Section 1 of the Trade Unions Act 1973⁵⁴ defines a 'trade union' as:

'Any combination of workers or employers, *whether temporary or permanent*,⁵⁵ the purpose of which is to regulate the terms and conditions of employment of workers'. [Author's emphasis]

The above definition indicates that workers no matter their status 'whether temporary or permanent'⁵⁶ have the right to join or form a trade union. An employer is mandated by section 24 of the Act⁵⁷ to automatically recognise a trade union on registration, and this

⁴⁷ The African Charter on Human and People's Right (Ratification and Enforce) Act. CAP 10, Laws of the Federation of Nigeria (LFN) 1990.

⁴⁸ *ibid*.

⁴⁹ Constitution of the Federal Republic of Nigeria 2011 (As amended).

⁵⁰ [2000] 6 NWLR (Part 660) 228 (SC) pp. 177-359.

⁵¹ *Abacha v Fawehinmi* [2001] 51 WRN 1 at 83-85.

⁵² Per Ejiwunmi J.S.C. p. 289, para. B-C in *Gani Fawehinmi v Abacha* [2000] 6 N.W.L.R (part 660).

⁵³ Per Uwaifo J.S.C. at p. 245 in *Gani Fawehinmi v Abacha* [2000] 6 N.W.L.R (part 660) p. 245.

⁵⁴ CAP 437 LFN 1990

⁵⁵ Emphasis is mine.

⁵⁶ Emphasis is mine.

⁵⁷ 1973 Cap 437 LFN 1990. 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

recognition is interpreted to be for the purpose of collective bargaining. 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. A minimum of 50 members are required to form a trade union in Nigeria.⁵⁸

In a case concerning the organization 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*, (1989)⁵⁹ the National Industrial Court (NIC) 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 Act 1973 (*ibid.*) allowed workers, whether permanent or temporary, to form a trade union and that a relevant trade union could unionize 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 unionize 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)⁶⁰ 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 above case has created a precedent whereby casual and contract employees have the right to unionize, not only as a constitutional right⁶¹ but by virtue of section 1(1) of the Trade Unions Act (*supra.*). 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 organize them.

Two decades after the above case, 2012, the National Union of Petroleum and Natural Gas workers⁶² declared a trade dispute between it, Shell and its labour contractors.⁶³ The dispute was taken to the IAP⁶⁴ for settlement. The union accused Shell Petroleum Development Company (SPDC) and its labour contractors of the following:

1. 'Refusal of the management to allow contract workers to join NUPENG even after they had applied to do so;
2. Arbitrary sacking of contract workers as a result of their participation in union activities;

registered pursuant to the provision of subsection (10) of this section, he shall be guilty of an offence and be liable on summary conviction to a fine of N1,000."

⁵⁸ Section 3 1(a) of the Trade Unions Act Cap 437 LFN 1990 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".

⁵⁹ Suit No. NIC/12/1989, Digest of Judgments of National Industrial Court (1978-2006) pp.288-289

⁶⁰ 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).

⁶¹ 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.

⁶² NUPENG.

⁶³ *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.

⁶⁴ Industrial Arbitration Panel.

3. Refusal to pay contract workers' salaries, allowances, and bonuses for 2-14 months;
4. Threats, victimization, harassment and intimidation of union members and non-compliance with minimum labour standards'.

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

'The first party (*i.e.* NUPENG) having proved all its allegations against the second parties (*i.e.* SPDC and its contractors), the tribunal hereby gives award to the first party and others as follows:⁶⁵

- (a) All the employees of the labour contractors working on SPDC/NPDC oil and gas facilities should be unionized by NUPENG forthwith if they fall within the junior and intermediate staff categories and should have freedom of association and the right to organize 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'.

By virtue of section 12 (4) of the Trade Disputes Act 1976⁶⁶ an IAP judgment is binding on both workers and employers as from the date of the award.⁶⁷ However, in this case, SPDC and its labour contractors refused to be bound by the award by not implementing the above judgment as required by the tribunal.⁶⁸ The union wrote to the Ministry of Labour to enforce the judgment but up till time of writing, the judgment has still not been enforced.⁶⁹ It should be noted that, although this judgment came over two decades after the *Patovilki's* case above, there is still resistance on the part of employers in the oil and gas industry to treat contract workers equally with permanent employees. Even the Minister of Labour whose job it is to set up the arbitration panel and enforce judgment⁷⁰ has not been able to compel the concerned employers to implement the award. The ongoing violation of the right of contract 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 Association,⁷¹ a critic of casualization, there is no future for contract workers. He posits

⁶⁵ The award of the Industrial Arbitration Panel (IAP) April 2011.

⁶⁶ Cap 432 Laws of the Federation of Nigeria (LFN) 1990.

⁶⁷ "... 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)".

⁶⁸ Source: Nigerian Union of Petroleum Gas Workers [NUPENG]. The documents were received on 14 September 2011 from NUPENG.

⁶⁹ *ibid.*

⁷⁰ See sections 8 and 12 of the Trade Disputes Act 1976 Cap 432 LFN 1990.

⁷¹ Former Executive Secretary of Food, Beverages and Tobacco Senior Staff Association of Nigeria.

that, if trade unions are not permitted to organize, then the prospect of effective trade unionism demands in future will be very slim.⁷²

To resolve the issue of denial of freedom of association for contract workers the current realities of globalization have to be considered. The only way forward will be for the Nigerian government to review and reform current labour laws so that contract workers can have 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 work⁷³ adopted by the European Parliament and the Council of the European Union.⁷⁴ It provides an example of how legislative reforms can be made to help a vulnerable group of workers.

Many employers in Nigeria believe that unionization 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, as was argued above, it is a serious infringement of the right to organize and does not promote the principle of democracy in the workplace. It is submitted here that the Nigerian policymakers and the legislature should be alive to the responsibility of enacting laws to protect vulnerable employees from exploitation and also to put in place appropriate enforcement machinery to enforce the current law.⁷⁵

D. The Labour Act and Freedom of Association

Another law that protects the rights of workers to associate for trade union purposes is the Labour Act.⁷⁶ Workers membership of 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
 - (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'.

The yellow-dog contract⁷⁷ as was stated above is a practice in violation of sections 9(6) (a) and (b) of the Labour Act⁷⁸ which provide that no employer should make its employees sign a

⁷² Interview with Sola Iji former Executive Secretary of the Food, Beverages and Tobacco Senior Staff Association in Lagos, Nigeria (Lagos 8 January 2009).

⁷³ 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.

⁷⁴ See chapter 3, p. 90 of thesis for full analysis of the European Union Directive on Temporary Agency Work.

⁷⁵ See pp. 130-131 of chapter 3, chapter 5 and chapter 6 for details of formulated criteria and measures adopted for the protection of casual workers in Nigeria.

⁷⁶ 1974 Cap L1, Laws of the Federation (LFN) 2004.

⁷⁷ A yellow-dog contract is an agreement between an employer and an employee in which the employee agrees not to be a member of a trade union as a condition of employment.

⁷⁸ 1974 Cap L1 LFN 2004.

contract not to belong to a trade union or dismiss an employee based on his or her trade union membership or activities. Therefore, any company that makes its employees sign a ‘yellow dog’ contract or dismiss an employee for his or her trade union membership and activities is acting unlawfully. This position was held by the Industrial Arbitration Panel in *NUPENG v. SPDC & its Labour Contractors* (2011) above. 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 NIC has applied and upheld the provision of sections 9(6) (a) and (b) in many of its decided cases. Thus, for example, in *Management of Harmony House Furniture Company Limited v. National Union of Furniture, Fixtures and Wood Workers* (1986)⁷⁹ 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, were illegal. Also, in *Management of Atlas (Nigeria) Limited v. Shop and Distributive Trade Senior Staff Association* (2001)⁸⁰ the NIC held that, where the court finds that dismissed workers are victimized on account of their trade union activities, monetary compensation is payable to the dismissed staff. In the instant case, the court ordered that severance pay be made to each of the 11 dismissed workers.

The NIC held in *National Union of Food, Beverage and Tobacco Employers v. Cocoa Industries Ltd. Ikeja* (2004)⁸¹ 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* (1985)⁸² where the employer terminated the employment of the three employees because of their trade union activities, it was held that the termination was contrary to section 9(6)(b)(ii) of the Labour Act 1974.

Another case where the NIC held that the termination of appointments of union officials by an employer on account of union activities amounted to victimization of the union officials was that of *Stadium Hotel v. National Union of Hotel and Personal Services Workers* (1978)⁸³. The court held that the termination of their appointments amounted to victimization and was therefore unjust. In *Nigerian Tobacco Company Ltd. v. National Union of Food and Tobacco Employees* (1981)⁸⁴ the NIC held that the only reasonable inference that could be drawn from the circumstances surrounding the termination of Mr. Odetade the respondent’s appointment was that he had been victimized for his trade union activities. His summary dismissal was therefore, unfair and unjustified.⁸⁵

It is important to note, however, that the cases above only involved *permanent* employees. Thus, as has already been said, there is no reported case where a contract worker has challenged an employer with regard to the denial of the right to join or form a trade union.

⁷⁹ Suit No. NIC/3/86, Digest of Judgments of National Industrial Courts (NIC) 1978-2006, p.187.

⁸⁰ Suit No. NIC/1/2001 Digest of Judgments of National Industrial Courts (NIC) 1978-2006, pp. 167-168.

⁸¹ Suit No. NIC/1/2001, pp. 486-489.

⁸² Suit No. NIC/8/85, pp. 235-236. Digest of Judgments of National Industrial Courts (NIC) 1978-2006.

⁸³ Suit No. NIC/3/1978, pp. 32-32. Digest of Judgments of National Industrial Courts (NIC) 1978-2006.

⁸⁴ In *Nigerian Tobacco Company Ltd. v. National Union of Food and Tobacco Employees* (1981) NIC/6/1981, pp. 111-114.

⁸⁵ *Ibid* pp. 352-354, paras H-B.

Reported cases are usually brought on by union members and officials.⁸⁶ The reason for this has been adduced to the fact that contract workers risk losing their job if they bring court proceedings against their employer. However, it is submitted here that if a contract 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 organize⁸⁷ as was done in the recent case of *NUPENG v SPDC & Their Labour Contractors* (2011) (*ibid*).

5. The Recognition of Trade Unions

By virtue of section 24(1) of the Trade Unions Act 1973,⁸⁸ an employer must recognize a trade union of which persons in his or her employment are members, on registration in accordance with the provisions of the Act, provided the union comprises 50 or more members.⁸⁹ An employer who fails to recognize any trade union registered pursuant to the provision of section 24(1) is guilty of an offence and can be liable on summary conviction to a fine of 1,000 Naira.⁹⁰ This provision was upheld in the case of *The Austrian – Nigerian Lace Manufacturing Company Limited v. National Union of Textile, Garment and Tailoring Workers of Nigeria* (1981).⁹¹ The National Industrial Court (NIC) held that section 24 of the Act confers automatic recognition on registered trade unions, and an employer's refusal to deal with the representatives of a registered union is unlawful. The same approach was taken in *Management of Harmony House Furniture Company Limited v. National Union of Furniture, Fixtures and Wood Workers* (1985)⁹² where the NIC held that section 24 stipulates that recognition of a trade union in an organization is obligatory, and that non-recognition attracts a fine of N1, 000.⁹³ Section 24(1) was also upheld in *Metallic and Non-Metallic Mines Senior Staff Association v. Metallic and Non-Metallic Mines Workers Union and Nigerian Mining Corporation* (1985).⁹⁴ It was also upheld in *Mix and Bake Flour Mill Industries Limited v. National Union of Food, Beverage and Tobacco Employees (NUFBTE)* (2000).⁹⁵ See also *Corporate Affairs Commission v. Amalgamated Union of Public Corporations, Civil Service Technical and Recreational Service Employees* (2003).⁹⁶

⁸⁶ Usually Unions representing permanent employees.

⁸⁷ 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 unionize workers who are casual daily paid workers. See the facts of this case in 4.3 on page 16 of this chapter.

⁸⁸ 1973 Trade Union Act Cap T14 LFN 2004.

⁸⁹ Section 3(1) (a) of the Trade Unions Act 1973 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".

⁹⁰ Section 24 (2) Trade Unions Act 1973 Cap T14 LFN 2004.

⁹¹ Suit No. NIC/1/81 Digest of Judgments of National Industrial Courts (NIC) 1978-2006, p. 104.

⁹² Suit No. NIC/1/85 Digest of Judgments of National Industrial Courts (NIC) 1978-2006, p. 187.

⁹³ See section 24(2) of the Trade Unions Act, CapT14 LFN 2004.

⁹⁴ Suit No. NIC/17/85 Digest of Judgments of National Industrial Courts (NIC) 1978-2006, pp. 198-199

⁹⁵ Suit No. NIC/4/2000, p. 528, Digest of Judgments of National Industrial Courts (NIC) 1978-2006. Here the court held that, by section 5(7)⁹⁵ of the Trade Unions Act 1973, which provides thus: 'Notwithstanding anything contained in this Act to the contrary, the Registrar, shall on the coming into effect of this section, register without any conditions whatsoever, the trade unions specified in Part A and Part B of the third Schedule to this Act; and on such registration, the said trade unions shall have all the powers and duties of a trade union registered under this Act.' Therefore, notwithstanding anything contained in the Act (and this includes section 24 (1)), all unions specified in Schedule 3 to the Act have automatic registration and recognition with the full powers and duties of trade unions accorded to them. The respondent union is listed as No. 11 in both Parts A

It should be noted, however, that, despite the above court decisions, employers in the oil and gas industry still prevent contract workers from joining or forming unions. For instance the recent case involving Nigerian Union of Petroleum and Natural Gas Workers (NUPENG), SPDC and all its labour contractors above is a case in point. Furthermore, the Solidarity Centre a non-governmental organization, based in Washington D.C, in its recent report on casualization in the Niger Delta in Nigeria⁹⁷ reported that there was a dispute between the contract workers and their employer the Nigerian Liquefied Natural Gas company, on who was responsible for recognizing the workers union and bargaining with them. The dispute revolves around whether the Nigerian Liquefied Natural Gas (NLNG) Bonny Island terminal (owner/operator) or its many small third party contractors (who according to law should recognise the union)⁹⁸ should recognise and bargain with them.⁹⁹

6. The International Labour Organization

A. The Formation of the International Labour Organization and Historical Antecedents

The ILO from the very beginning of its existence has sought to influence labour laws and standards in the various countries that make up the comity of nations. The ILO is a specialized agency of the United Nations which seeks the promotion of social justice and internationally recognized human and labour rights. The ILO was founded in 1919¹⁰⁰ and it is the only surviving major creation of the Treaty of Versailles which brought the League of Nations into being, and it became the first specialized agency of the United Nations in 1946.

B. The Aims and Objectives of the ILO and the Philadelphia Declaration

The ILO Philadelphia Declaration in its 26th session in 1944¹⁰¹ sets down a number of specific objectives of the ILO which shows its aims and purposes and principles which should guide its Member States in their labour policies and legislations include the following:

- Full employment and the raising of living standards.
- Facilities for training policies in regard to wages, hours of work and other conditions of work, calculated to ensure a just share of the fruits of progress to all.
- The effective recognition of the rights of collective bargaining.

and B of Schedule 3 to the Trade Unions Act. That means it has automatic registration and recognition under the Act with all the rights accruing to a trade union.

⁹⁶ Suit No. NIC/1/2003, Digest of Judgments of National Industrial Courts (NIC) 1978-2006, p. 478.

⁹⁷ *The Degradation of Work: Oil and Casualization of Labor in the Niger Delta* (Solidarity Centre Washington DC, 2010).

⁹⁸ See section 48 (2) of the Labour Act 1971 Cap 198 Laws of the Federation of Nigeria, 1990.

⁹⁹ *The Degradation of Work: Oil and Casualization of Labor in the Niger Delta* (Solidarity Centre Washington DC, 2010) p. 15.

¹⁰⁰ Olsson, P. H., 'The ILO Acquis and EU Labour Law' in Ronnmar, M., (ed) *Labour Law, Fundamental Rights and Social Europe: Swedish Studies in European Law* (Vol. 4, Hart Publishing Oxford and Portland, Oregon 2011) p. 28.

¹⁰¹ The Philadelphia Declaration was adopted at the 26th Conference of the International Labour Organisation (ILO) in Philadelphia, United States of America on 10 May 1944. The declaration is a restatement of the traditional objectives of the ILO in addition to the importance of human rights to social policy.

- The continuous improvement of productive efficiency and the collaboration of workers and employers in the preparation and application of social and economic measures.
- The extension of social security measures to provide basic income to all in need of such protection and comprehensive medical care.

The 1995 World Summit for Social Development, held in Copenhagen, addressed the social dimension of globalization for the first time at the highest political level and gave full recognition to the social component of sustainable development.¹⁰² At the summit, governments recognized the importance of safeguarding and promoting respect for workers' rights and committed themselves to promoting respect for workers' basic rights.¹⁰³ Thus the summit identified core labour standards for the first time and agreed on the universality of the same by making them the responsibility of all governments, not just those that had ratified the relevant conventions.¹⁰⁴

Furthermore in 1998 the ILO came up with a Declaration on Fundamental Principles and Rights at Work. With this Declaration the ILO seeks to ensure that there is a universal recognition and application of the Core Labour Standards below.¹⁰⁵ This Declaration reiterated the Core Labour Standards previously stated at the Copenhagen Summit as follows:

1. Freedom of association and the effective recognition of the right to collective bargaining;
2. Elimination of all forms of forced or compulsory labour;
3. Effective abolition of child labour;
4. Elimination of discrimination in respect of employment and occupation.

The first point above is relevant to this paper and is incorporated into Conventions 87,¹⁰⁶ 98,¹⁰⁷ of the ILO.

C. Core Labour Standards

The Core Labour Standards are international instruments defining a range of human rights at work and which provide a guide to a civilized, dignified and sustainable workplace. They are universally applicable regardless of stage or nature of national development, and, as such, provide an important focus on the workplace and the conditions of work in the process of sustainable development. In particular, the standards are considered fundamental to workers'

¹⁰² Report of the World Summit for Social Development (Copenhagen 6-12 March 1995) <<http://www.un.org/documents/ga/conf166/aconf166-9.htm>> accessed 2 June 2009.

¹⁰³ 'Safeguarding and promoting respect for basic workers' rights, including the prohibition of forced labour and child labour, freedom of association and the right to organize and bargain collectively, equal remuneration for men and women for work of equal value, and non-discrimination in employment, fully implementing the conventions of the international labour organization in the case of State parties to those conventions, and taking into account the principles embodied in those conventions in the case of those countries that are not states parties to thus achieve truly sustained economic growth and sustainable development'.

¹⁰⁴ Report of the World Summit for Social Development (Copenhagen 6-12 March 1995) <<http://www.un.org/documents/ga/conf166/aconf166-9.htm>> accessed 2 June 2009.

¹⁰⁵ Olsson, P. H., 'The ILO Acquis and EU Labour Law' in Ronnmar, M., (ed) *Labour Law, Fundamental Rights and Social Europe: Swedish Studies in European Law* (Vol. 4, Hart Publishing Oxford and Portland, Oregon 2011) p. 30.

¹⁰⁶ Convention Concerning Freedom of Association and Protection of the Right to Organize, 1948. Adopted: 09-07-1948, Came into Force: 04-07-1950.

¹⁰⁷ Convention Concerning Right to Organize and Collective Bargaining, 1949. Adopted: 01-07-1949, Came into Force: 18-07-1951.

abilities to engage in concrete workplace actions to implement sustainable development targets.¹⁰⁸ It should be noted that Nigeria haven ratified many ILO Conventions must therefore respect and uphold the various international instruments and incorporate the principles enunciated in them into its own national laws.

D. The Freedom of Association and the Protection of the Right to Organize Convention

As Casale (2005) has recognized, the sound and harmonious industrial relations system of any country is based on the full recognition of freedom of association and the right to collective bargaining.¹⁰⁹ Convention 87¹¹⁰ deals with the right of workers and employers to establish and join organizations of their own choosing without prior authorization from an administrative body.¹¹¹ Public authorities are urged to refrain from any interference, dissolution or suspension of these bodies.¹¹² The ILO also recognizes that, in exercising these rights, workers' organizations as well as employers' organizations must respect the law of the land.¹¹³

E. The Right to Organize and Collective Bargaining Convention

The Convention on the right to organize and collective bargaining¹¹⁴ is complementary to Convention 87 above. Convention 98 seeks to guarantee that 'workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment'.¹¹⁵ Such protection shall apply more particularly in respect of acts calculated to: (a) 'make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership';¹¹⁶ (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.'¹¹⁷

F. The ILO Committee on Freedom of Association

One of the founding principles of the ILO is freedom of association and collective bargaining. Conventions Nos. 87¹¹⁸ and 98¹¹⁹ came into force in 1948 and 1949 respectively. The ILO, in order to ensure compliance by countries that had ratified and those that had not

¹⁰⁸ Howard, J. and Gereluk, W., – *Core Labour Standards and Human Rights in the Workplace*. p.1.

¹⁰⁹ Casale, G., 'Globalization, Labour Law and Industrial Relations: Some Reflections' in Blanpain, R. (ed) *Confronting Globalization: A Quest for a Social Agenda*. Bulletin of Comparative Labour Relations. Geneva Lectures. (Kluwer Law International, 2005) p.47.

¹¹⁰ Freedom of Association and Protection of the Right to Organise Convention. Adopted on 9 July 1948 by the General Conference of the International Labour Organisation at its thirty-first session. Entry into force 4 July 1950, in accordance with Article 15.

¹¹¹ Article 2 of Convention 87.

¹¹² Articles 3 and 4 of the ILO Convention 87.

¹¹³ Article 8 of ILO Convention 87.

¹¹⁴ Convention No. 98 The Right to Organise and Collective Bargaining Convention. Convention (No. 98) Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively. Adopted on 1 July 1949 by the General Conference of the International Labour Organisation at its 32nd Session. Entry into force 18 July 1951, in accordance with Article 8.

¹¹⁵ Article 1 of Convention 98.

¹¹⁶ Article 2(a) ILO Convention 98.

¹¹⁷ Article 2(b) ILO Convention 98.

¹¹⁸ Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise. Adopted on 9 July 1948 by the General Conference of the International Labour Organisation at its thirty-first session. Entry into force 4 July 1950, in accordance with article 5.

¹¹⁹ Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively. Adopted on 1 July 1948 by the General Conference of the International Labour Organisation at its thirty-second session. Entry into force 18 July 1951, in accordance with article 8.

ratified the relevant conventions, decided that these principles would be promoted by a supervisory procedure. Thus, in 1951, the ILO Committee on Freedom of Association (CFA) was born. The CFA was set up to examine complaints brought before it with regard to violations of freedom of association and collective bargaining whether or not the country reported had ratified the relevant conventions.¹²⁰ These complaints may be brought against a member state by employers' and workers' organizations.¹²¹ By 2005 the CFA had dealt with more than 2,500 complaints of infringement of freedom of association submitted to it by governments and workers' organizations since its formation 55 years ago.¹²² In its report in March 2011 the CFA stated it had 145 cases before it in which complaints have been submitted to the governments concerned for their observations.¹²³ At that meeting the CFA examined 31 cases on merits reaching conclusions in 17 cases and interim conclusions in 14 cases. The remaining cases were adjourned. The following are some of the relevant complaints brought before the ILO's CFA:

1. The Complainants brought by the International Confederation of Free Trade Unions against the Government of Indonesia

In 1994, a complaint was brought against the government of Indonesia by the International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL) for violations of trade union rights, the denial of the workers' right to establish organizations of their own choosing, the persistent interference by government authorities, the military and employers in trade union activities, and restrictions in collective bargaining and strike action. There were also serious allegations concerning the arrest and harassment of trade union leaders and the disappearance and assassination of workers and unionists. Many trade union leaders were also detained during this period. The CFA campaigned vigorously for the release of these trade unionists. According to an ILO statement, 'Since then Indonesia has taken significant steps to improve protection of trade union rights and has ratified all eight fundamental conventions making it one of the few nations in the Asia-Pacific region to have done so'.¹²⁴

2. Complaint against the Government of Canada

Another case brought before the ILO's CFA was a complaint against the Government of Canada (New Brunswick) in April 2000 by the following three unions:¹²⁵

- (a) The Canadian Labour Congress (CLC);
- (b) The Canadian Union of Public Employees (CUPE); and

¹²⁰ <<http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang-en/index.htm>> accessed 5 June 2010.

¹²¹ ILO Committee on Freedom of Association <<http://www.ilo.org/global/standards/applying-and-promoting-international>> accessed 3 July 2011.

¹²² Freedom of association – Digest of decisions and principles of the freedom of association committee of the governing body of the ILO. 5th (revised) edition, 2006. Summarizes the decisions and principles of the Committee on Freedom of Association up to its 339th report (November 2005) <<http://www.ilo.org/global/standards/information-resources-and-public>> accessed 3 July 2011.

¹²³ 359th Report of the Committee on Freedom of Association (8th item on the agenda), International Labour Office 310th Session, March 2011 Geneva.

¹²⁴ ILO Press release, Tuesday 26 May 1998 (ILO 98/21) <<http://www.ilo.org/global/standards/applying-and-promoting-international>> accessed 3 July 2011.

¹²⁵ Ruling of the International Labour Organization (ILO) on the Complaint by the CLC, CUPE and the ICFTU. 324th Report of the Committee on Freedom of Association (CFA) Case No. 2083. <<http://nb.cupe.ca/casuals/ruling-of-the-international-labour-organization>> accessed 04 July 2011.

(c) The International Confederation of Free Trade Unions (ICFTU).

The allegations in this case were the violation of the right to freedom of association and collective bargaining of casual workers in the public sector. It should be noted that Canada had ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), but not the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) the Labour Relations (Public Service) Convention, 1978 (No. 151) and the Collective Bargaining Convention, 1981 (No. 154).¹²⁶

The complaint was that the Public Service Labour Relations Act, R.S.N.B. 1973, Ch. P-25 (PSLRA) violated the ILO Convention on Freedom of Association because it excluded certain workers, including casual workers, from the definition of ‘employee’ under the Act.¹²⁷ The effect of these provisions was that casual workers were excluded from coverage of the PSLRA and were therefore denied the right to join a trade union or to bargain collectively, unlike those workers who were deemed to be ‘employees’ under section 25 of the Act.¹²⁸

The second complaint was that casual workers did not usually attain employee status after six months of employment. Many of them had worked for many years without the right to unionize and being covered by collective agreements even though they worked side by side with those who had attained employee status.¹²⁹ The complainants also referred to a series of court cases which had shown how the legislation had made it very difficult for casual workers to obtain employee status under the PSLRA (*ibid.*). The courts in Canada had made it clear that, in order for casuals and other workers in similar situations to enjoy the rights and protections of the PSLRA and collective agreements, the statutory definition of ‘employee’ would have to be amended.¹³⁰ Employees not covered by the PSLRA or other statutes regulating collective bargaining were governed by Canadian common law.¹³¹ As a result, without statutory protection, such workers were vulnerable to penalties including that of dismissal. The complainants therefore submitted that the PSLRA contravened ILO Conventions Nos. 87, 98, 151 and 154.¹³²

(III) The ILO Committee on Freedom of Association Conclusion and Recommendations

The ILO Committee of Freedom of Association (CFA) concluded as follows: It noted that the case was concerned with the exclusion of casual workers from the definition of ‘employee’ in the PSLRA which entailed a number of consequences for the said workers as regards, for instance, status, tenure, pay and benefits, pensions and disciplinary regime; and raised two

¹²⁶ Ruling of the International Labour Organization (ILO) on the Complaint by the CLC, CUPE and the ICFTU. 324th Report of the Committee on Freedom of Association (CFA) Case No. 2083. pp. 1-2 <<http://nb.cupe.ca/casuals/ruling-of-the-international-labour-organization>> accessed 04 July 2011.

¹²⁷ Excludes certain workers from the definition of “employee” under the Act, namely those persons “not ordinarily required to work more than one-third of the normal period for persons doing similar work” Section 1 (C.1) and those “employed on a casual or temporary basis unless the person has been so employed for a continuous period of six months or more” section 1(e).

¹²⁸ Ruling of the International Labour Organization (ILO) on the Complaint by the CLC, CUPE and the ICFTU. 324th Report of the Committee on Freedom of Association (CFA) Case No. 2083. p.2. <<http://nb.cupe.ca/casuals/ruling-of-the-international-labour-organization>> accessed 4 July 2011.

¹²⁹ *ibid.*

¹³⁰ *ibid.*

¹³¹ Ruling of the International Labour Organization (ILO) on the Complaint by the CLC, CUPE and the ICFTU. 324th Report of the Committee on Freedom of Association (CFA) Case No. 2083. p.3. <<http://nb.cupe.ca/casuals/ruling-of-the-international-labour-organization>> accessed 4 July 2011.

¹³² *Ibid.*, p.4.

issues in respect of freedom of association: the right of casual workers to organize; and their right to bargain collectively. Regarding the first issue, the CFA noted that the government declared, in direct contradiction with the complainants' allegations that the PSLRA did not restrict in any way the freedom of casual employees to join unions of their choosing, without substantiating that statement in any way, *e.g.* by providing examples of such workers being members of trade unions.¹³³ The Committee seriously questioned this assertion, in view of the interplay of the various PSLRA definitions where the term 'employee' appeared in article 1, and which had the effect of excluding casual workers from the right to join organizations of employees'.¹³⁴ The CFA observed that the statutory definition made it impossible for casual workers to join public service employee organizations because they were not 'employees' within the PSLRA. The CFA therefore concluded, on the basis of the available evidence before it, that casual workers could not join organizations of their own choosing and enjoy the various related rights. The CFA reiterated that all workers without distinction whatsoever, whether employed on a permanent basis, for fixed term, or as contract employees, should have the right to establish and join organizations of their own choosing.¹³⁵

Concerning the second issue of collective bargaining, the CFA noted that the government did not challenge the complainants' allegation that casual workers in the public service did not enjoy collective bargaining rights, but rather argued that their terms of employment were so fundamentally different from those of regular employees that this justified the existing distinction in the PSLRA. The CFA reiterated that all public service workers, other than those engaged in the administration of the State, should enjoy collective bargaining rights¹³⁶ and that, according to the principles of freedom of association, staff having the status of contract employee should enjoy that right.¹³⁷ The CFA thus invited the government body to approve the following recommendations:¹³⁸

- (a) That the government would take appropriate measures in the near future to ensure that casual and other workers, currently excluded from the definition of employees in the PSLRA, would have the right to establish and join organizations of their own choosing and to bargain collectively in conformity with the principles of freedom of association, and to keep the CFA informed of developments in this respect.
- (b) That the CFA would draw the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

¹³³ Ruling of the International Labour Organization (ILO) on the Complaint by the CLC, CUPE and the ICFTU. 324th Report of the Committee on Freedom of Association (CFA) Case No. 2083. p.5. <<http://nb.cupe.ca/casuals/ruling-of-the-international-labour-organization>> accessed 4 July 2011.

¹³⁴ *ibid.*, p.6.

¹³⁵ See Digest of decisions and principles of the Freedom of Association Committee, 4th edition, 1996, para. 236.

¹³⁶ Ruling of the International Labour Organization (ILO) on the Complaint by the CLC, CUPE and the ICFTU. 324th Report of the Committee on Freedom of Association (CFA) Case No. 2083. P.6 <<http://nb.cupe.ca/casuals/ruling-of-the-international-labour-organization>> accessed 4 July 2011. See also Digest of decisions and principles of the Freedom of Association Committee, 4th edition, 1996 para. 793.

¹³⁷ Ruling of the International Labour Organization (ILO) on the Complaint by the CLC, CUPE and the ICFTU. 324th Report of the Committee on Freedom of Association (CFA) Case No. 2083. P.6 <<http://nb.cupe.ca/casuals/ruling-of-the-international-labour-organization>> accessed 4 July 2011. See also Digest of decisions and principles of the Freedom of Association Committee, 4th edition, 1996. para. 851

¹³⁸ Ruling of the International Labour Organisation (ILO) on the Complaint by the CLC, CUPE and the ICFTU. 324th Report of the Committee on Freedom of Association (CFA) Case No. 2083. P.7 <<http://nb.cupe.ca/casuals/ruling-of-the-international-labour-organization>> accessed 4 July 2011.

From this decision of the ILO's Committee on Freedom of Association, it can be shown that the right to belong to a trade union is a fundamental right which every worker whether permanent or temporary should enjoy. With regard to Nigeria, it can be inferred by way of analogy that the decision of the CFA in the case above is applicable to contract workers as they face the same problems faced by the casual workers in the above case in Canada. In as much as there is no specific legislation protecting the rights of contract workers in Nigeria there is no legislation also barring them from forming or joining trade unions. However, employers usually argue that the practice of employing contract workers helps to create jobs for the growing number of the unemployed. However, this is not a plausible argument and denying workers the fundamental right to freedom of association is a violation of the Nigerian Constitution 2011¹³⁹ as well as a violation of international labour standards.

8. The ILO's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

It is recognized globally that multinational enterprises (MNEs) play an important role in the economies of most countries. This role has been of increasing interest to governments, employers and workers alike.¹⁴⁰ They are a source of Foreign Direct Investment (FDI) to many countries around the world, contributing to capital, technology and labour.¹⁴¹ According to the ILO, MNEs ought to promote economic and social welfare, improve living standards, satisfy basic needs, create employment opportunities, and foster the enjoyment of basic human rights, including the right to freedom of association.¹⁴² The ILO, in order to ensure that workers employed by MNEs enjoy the right to freedom of association and the right to organize drew up a set of principles in its Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.¹⁴³ However, despite this Declaration's emphasis on the need to ensure that workers enjoy these rights, this has not happened in the oil and gas industry which has for a long time been dominated by Multinational Corporations such As Shell BP, Exxon Mobil and Chevron.

Using John Ruggie's¹⁴⁴ international Principles in his work on The International Guidance on Social Responsibility, labour practices (2010)¹⁴⁵ as a basis for analyzing labour practices, an

¹³⁹ Section 40 provides that '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'.

¹⁴⁰ ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (3rd edn. 2001) International Labour Office Geneva. (Adopted by the Governing Body of the International Labour office at its 204th session (Geneva, November 1977) as amended at its 279th session (Geneva, November 2000). Official Bulletin, Vol. LXXXIII, 2000, Series A, No. 3, p.2. <http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_101234.pdf > accessed 20 August 2009.

¹⁴¹ *Ibid.*, p. 3.

¹⁴² *Ibid.*, p.3.

¹⁴³ Adopted by the Governing Body of the International Labour Office at its 204th Session (Geneva, November 1977) as amended at its 279th Session (Geneva, November 2000).

¹⁴⁴ John Ruggie served as the United Nations special representative for business and human rights from 2005 - 2011. His mandate was to propose measures to strengthen the human rights performance of the business sector around the world. In 2008, the UN Human Rights Council welcomed a policy framework he proposed for that purpose and extended the mandate for a further three years provide concrete guidance to government and businesses. The end result was the Guiding Principles on Business and Human Rights, drafted by John Ruggie and unanimously endorsed by the UN Human Rights Council in June, 2011.

¹⁴⁵ Ruggie J.G., 'The International Guidance Standard on Social Responsibility, Labour Practices' (Final Draft 2010) p. 33, The International Organisation for Standardisation (ISO/FDIS 26000) p. 33.

organization must include all policies and practices related to work performed within, by or on behalf of the organization, including subcontracted work in its labour policies.¹⁴⁶ In other words, organizations are responsible for the actions of their subsidiaries and contractors and should take due care to ensure that they comply not only with their own standards but also those labour standards laid down in local law and international law.¹⁴⁷ Organizations should not benefit from the unfair, exploitative or abusive labour practices of their partners, suppliers or subcontractors. Organizations should therefore ensure that their subsidiaries, intermediaries and contractors adopt responsible labour practices and exercise due diligence in supervising them.¹⁴⁸

Where local laws are adequate, an organization should be seen to abide by the law even if government enforcement is inadequate or non-existent.¹⁴⁹ In the event that there are no local labour laws, organizations should be guided by the principles of international instruments and standards.¹⁵⁰ Although employers are enjoined under Ruggie's Principles not to circumvent the obligation placed on them by the law by disguising relationships that would otherwise be recognized as employment relationships under the law,¹⁵¹ it is suggested that employers in the oil and gas industry in Nigeria use contract labour to avoid their labour law obligations in violation of the above principle. Ruggie also stated that employers should not overlook the importance of secure employment to both the individual worker and to society.

The use of casual and contract labour should not be the dominant form of employment but should be used where the nature of the work is genuinely short-term or seasonal.¹⁵² There should be no discrimination in any labour practice including discriminatory dismissal practice¹⁵³ which is currently the practice in the industry. Ruggie's Principles should be guiding rules for the oil and gas industry in Nigeria and the Nigerian government should take the initiative of enforcing existing laws as well as enact new ones in order to ensure the regulation of contract labour and the protection of workers engaged in such form of employment.

It can be concluded here that MNEs ought to obey national laws and regulations, give due consideration to local practices, and also respect relevant international standards. However, in the case of the MNEs in the oil and gas industry in Nigeria, it has been an uphill task getting them to comply with international labour standards with respect to a range of matters relating to contract workers, such as equal pay, the terms and conditions of employment, the right to form or belong to a trade union and the right to collective bargaining.

¹⁴⁶ *ibid.*, p. 33.

¹⁴⁷ Related Actions and Expectations, 'The International Guidance Standard on Social Responsibility, Labour Practices' (Final Draft 2010) p. 35. "An organisation should take steps to ensure that work is contracted or sub-contracted only to organisations that are legally recognised or are otherwise able and willing to assume the responsibilities of an employer and to provide decent working conditions. An organisation should use only those labour intermediaries who are legally recognised and where other arrangements for the performance of work confer legal rights on those performing the work".

¹⁴⁸ *ibid.*, p. 35.

¹⁴⁹ Ruggie J.G., 'The International Guidance Standard on Social Responsibility, Labour Practices' (Final Draft 2010) p. 33. The International Organisation for Standardisation (ISO/FDIS 26000) p. 35.

¹⁵⁰ *Ibid.*, p. 34.

¹⁵¹ Ruggie J.G., 'The International Guidance Standard on Social Responsibility, Labour Practices' (Final Draft 2010) p. 33. The International Organisation for Standardisation (ISO/FDIS 26000) Related Actions and Expectations, p. 35.

¹⁵² *ibid.*, p. 35.

¹⁵³ *ibid.*, p. 35.

9. Casualization Practices in the Oil and Gas Industry in Nigeria and Freedom of Association

Casualisation practices in the oil and gas in Nigeria discriminates against contract workers in terms of pay and other terms and conditions of employment including violations of their right to join or form trade unions as have been stated earlier. These violations are reported every day from different industries in the private sector. During a book-launch in Nigeria of a book on casualization,¹⁵⁴ Rufus Olusesan¹⁵⁵ drew attention to some instances of employer violations of the democratic right of workers to organize. For instance, at Parco Nigeria Limited, 35 workers were sacked for demanding their right to form a trade union in the company.¹⁵⁶ Anyawu, the General Secretary of the Nigerian Union of Food and Beverages (NUBIFIE)¹⁵⁷ has also drawn attention to the casualization practices in the banking industry and the anti-union posture of employers in the banking industry.

There have been increasing waves of agitation by Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and Nigerian Union of Petroleum and Natural Gas Union (NUPENG) over the growing trend of casualization in the Nigerian oil and gas industry over the last decade. This led to the convocation of an industry seminar on the issue and where a tripartite agreement was reached.¹⁵⁸ The unions drew attention to the moves then by the Schlumberger Group to force all its employees to resign from the company and be paid off only to be re-engaged as contract workers without the right to belong to a union in the same company although they would become employees of a new company known as Schlumberger services (a labour contractor).¹⁵⁹ Such an arrangement whereby workers are asked to resign and are reengaged as contract workers, and with no right to organize, violates their right to organize. According to the unions¹⁶⁰ there was no collective agreement reached on this matter between the Schlumberger Group and the workers. Instead, it was a unilateral decision by the management.

10. The New Government Guidelines on Outsourcing and Contract Labour in the Oil and Gas Industry in Nigeria

In order to stop the exploitation of contract workers in the industry, a new document entitled *Government's Guidelines on Labour Administration: Issues in Contract Staffing/Outsourcing in the Oil and Gas Industry* 2011 has finally heralded the new and much awaited government policy on casualization and contract labour in the oil and gas industry in Nigeria. The guidelines¹⁶¹ on outsourcing and contract labour in the industry was brokered between employers, unions and the Nigerian government after years of negotiation through strikes,

¹⁵⁴ Casualization: Modern Day Slavery in Disguise". <www.nigeriasolidarity.org> accessed 6 March 2008

¹⁵⁵ Chairman for Campaign for Democratic and Workers' Rights in Nigeria (CDWR) and NUSDE Vice-President.

¹⁵⁶ This is a blatant breach of section 9 (6) (a&b) of the Labour Act (1971) Cap 198 LFN 1990. See further analysis in chapter 3. See also the case of *Management of Harmony House Furniture Company Limited v National Union of Furniture, Fixtures and Wood Workers* where the NIC held that the dismissal of the chairman of the workers' union for his union activities contravened the provisions of this section. See chapter 3 for detailed analysis of this case.

¹⁵⁷ The National Union of Banking and Financial Institutions, Nigeria.

¹⁵⁸ Ahiuma-Young, V. "PENGASSAN Comments on Nigeria Oil and Gas Industry" [2003] Alexander's Gas & Oil Connections. News & Trends Africa, Vol. 8, Issue 18, p. 1. <<http://www.gasandoil.com/goc/new/nta33814.htm>> accessed 30 July 2008.

¹⁵⁹ *ibid.*, p.1.

¹⁶⁰ Interview with Bayo Olowoshile, Secretary General of PENGASSAN (Lagos 26 January 2010). And Adamson Momoh an official of NUPENG (Lagos 16 January 2010).

¹⁶¹ Issued on 25 May 2011 at Abuja, Nigeria.

picketing and other forms of industrial actions by the unions to stop the continued violation of the right of contract workers to join unions. The last strike by the unions to compel the government to introduce a policy to check what it dubbed ‘unfair labour practices associated with contract and agency labour in the oil and gas industry’¹⁶² culminated in the stoppage of fuel supplies to Abuja (the capital and seat of power of the Federal Government of Nigeria) and its environs. The impact of this strike must have been the catalyst in the Minister of Labour setting up of a 16 members strong Technical Working Group (TWG) to look into the issue of casualization of labour in the oil and gas industry.¹⁶³ The TWG was comprised of representatives of all stakeholders in the oil and gas industry including NUPENG and PENGASSAN.

The *Guidelines on Labour Administration: Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector* (hereinafter referred to as the *Guidelines*) resulting from the report of the TWG are not meant to replace extant labour laws on the subject-matter but are supplementary to them and must be read in conjunction with all the relevant national legislations.¹⁶⁴ The terms and conditions of employment set out in the *Guidelines* must be observed by all stakeholders in the industry.

Six issues are addressed in the *Guidelines* under the following headings, however only the issue of unionization and collective bargaining shall be analyzed below:

1. Differences between permanent and fixed contract jobs.
2. Migration from contract to permanent employment.
3. Unionization.
4. Collective bargaining.
5. Dispute resolution.
6. Job security and capacity building for contract staff.

A. Unionization

Every worker has a right to join a trade union and to bargain collectively. No employer whether third party contractor (labour/service contractor) or principal (user) company must hinder overtly or covertly the unionization of workers.¹⁶⁵ All contract staff under a manpower/labour contract must belong either to the union of NUPENG or PENGASSAN as appropriate.¹⁶⁶ The principal oil companies must endeavour to facilitate unionization and collective bargaining by streamlining labour contractors especially where there are large numbers of such contractors.¹⁶⁷ For all service contracts, trade union membership must be

¹⁶² On 2 August 2010 the two unions PENGASSAN and NUPENG in the oil and gas workers embarked on a strike action to compel the government to create a legal framework for the regulation and protection of nonstandard work arrangements.

¹⁶³ On 13 August 2010 the Minister of Labour and Productivity set up a Committee to look into the issue of casualization of labour in the oil and gas industry and come up with ways to stop the exploitation of casual and contract staff and ensure their rights in the workplace.

¹⁶⁴ *Guidelines on Labour Administration: Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector*, (A Document of the Federal Ministry of Labour and Productivity), p.1, 25 May 2011.

¹⁶⁵ *Guidelines on Labour Administration: Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector*, (A Document of the Federal Ministry of Labour and Productivity), p.3, 25 May 2011.

Part 3.1 at p.5.

¹⁶⁶ *ibid.*, Part 3.2.

¹⁶⁷ *ibid.*, Part 3.3.

determined by the economic activities of the contractor company and in line with extant labour laws as contained in the Third Schedule Part B of the Trade Unions Act.¹⁶⁸

Where a contractor supplies only personnel, it is deemed to be a labour contract.¹⁶⁹ Where the contractor supplies personnel with equipment, it is deemed to be a service contract.¹⁷⁰ All contract bid documents must clearly indicate whether a contract is a service or a labour contract.¹⁷¹

The issue of freedom of association has been the biggest issue so far for contract workers in the industry. These *Guidelines* have now made it mandatory for all contract workers to exercise the freedom to join a trade union. No employer must violate this right, and, in addition, the user company must ensure that contractors comply. This is in consonance with Ruggie's principles dealt with above which state that an organization is responsible for the actions of its subsidiaries and contractors and that it should take diligent care to ensure that its subsidiaries and contractors comply with the standards set by it and by municipal laws and international labour standards.¹⁷²

B. Collective Bargaining

Collective bargaining must be between the relevant trade union and the workers' direct employers or the contractors' forum and not the principal company.¹⁷³ Contract agreements between the user company and contractor companies must include a clause which empowers the user company to deduct from the contract sum whatever is owed to the contract staff by the contractor in cases of default in the payment of wages and/or other agreed entitlements of the worker.¹⁷⁴ Employers and employees alike must respect and uphold the sanctity of collectively bargained agreements.¹⁷⁵ Contract agreements between the user company and the contractor must make collective bargaining between contractors and their employees mandatory. This provision must be included in the scope of the contract.¹⁷⁶ Prior to the *Guidelines* contract workers could not negotiate their terms and conditions of service with their employers. In other words, it was a 'take it or leave it' situation. This guideline now makes it mandatory for contract workers to bargain only with the contractor who is their employer and not with the user company.¹⁷⁷ Furthermore, the user company must ensure on its part that the contractor bargains with its staff by inserting this condition in their contract agreement.

9. Factors Affecting the Right to Freedom of Association of Contract Workers in Nigeria

The violation of the constitutional rights of contract workers to join or form trade unions by employers have been argued extensively in this paper and it has been submitted that the

¹⁶⁸ *ibid.*, Part 3.4.

¹⁶⁹ *ibid.*, Part 3.6.

¹⁷⁰ *ibid.*, Part 3.7.

¹⁷¹ *ibid.*, Part 3.8.

¹⁷² ISO/FDIS 26000, *Guidance on Social Responsibility. Related Actions and Expectations*, p.35.

¹⁷³ *ibid.*, Part 4:1, at p.7.

¹⁷⁴ *Guidelines on Labour Administration: Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector*, (A Document of the Federal Ministry of Labour and Productivity), p.3, 25 May 2011, Part 4.2, p. 7.

¹⁷⁵ *ibid.*, Part 4.3, p. 7.

¹⁷⁶ *ibid.*, Part 4.4, p.7.

¹⁷⁷ This is in line with section 48(2) of the Labour Act 1974, Cap L1 Laws of the Federation of Nigeria 2004, which provides that the labour contractor is the employer of the contract worker.

government and its agencies must monitor and ensure compliance of employers to this provision of the Constitution.¹⁷⁸ The following factors are adduced as being the reasons why the right of contract workers to freedom of association is being violated by some Nigerian employers:

1. Inadequate legislation.
2. Lack of enforcement of the current legislation
3. Employment policy and attracting foreign direct investment in Nigeria

A. Inadequate Legislation

It is clear from what has been argued above that the definition of the term ‘worker’ in Nigerian labour legislation is inadequate because it does not specifically define the broad range of various types of workers. It is the lack of clarity or ambiguity of the term ‘worker’ that has left the contract worker in Nigeria vulnerable to exploitation. It is submitted that the current definition¹⁷⁹ should be complimented with a clear and qualitative definition of all categories of employees including those in contract employment. This is what has been done in developed and developing economies of the world including, for instance, Ghana and South Africa where labour legislation clearly mentions and defines different categories of workers.¹⁸⁰ To adopt such an approach in Nigeria would remove the inadequacy of the current Nigerian Labour Act. Thus, a clear definition of contract employment relationship and the rights that go with them should be the focus of the legislature in remedying unfair labour practices especially in the area of freedom of association. The right to freedom of association is crucial to attaining other rights in the workplace because it offers workers the platform of collective bargaining which is the gateway to negotiating improved terms and conditions of their employment. The courts would also have a significant role to play in monitoring these remedies through the process of adjudication. Such reforms would ensure that contract workers in Nigeria are duly identified and given the protection and rights at work which they deserve.

B. Lack of Enforcement of the Current Legislation

From the foregoing discussions about the sources of the right to freedom of association, it is clear that Nigeria has ratified many international instruments. Nigeria is therefore bound by these international instruments on labour law standards, which guarantee various labour law rights including the right to freedom of association. In addition, Nigerian laws, including the 2011 Constitution of the Federal Republic of Nigeria, also guarantee the right to freedom of association.

¹⁷⁸ Section 40 of the Nigerian Constitution provides that “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”.

¹⁷⁹ The current definition of a worker in section 91 of the Labour Act cap L1 Laws of the Federation of Nigeria 2004 states that, ‘worker means any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour...’.

¹⁸⁰ Department of Labour 1996 27 November. Minimum Standards Directorate Policy Proposals for New Employment Standards Statute Green Paper, February 1996, ch C. < <http://www.info.gov.za> > accessed 3 December 2011.

The issue here, as has been seen from the foregoing, is not the lack of Nigeria law or the lack of international instruments guaranteeing the right to freedom of association and the right to organize, and other labour law rights, but rather the lack of enforcement of these laws by the Nigerian government and its agencies with regard to contract workers. Therefore, the problem is that of enforcement and the fact that employers often breach these laws with impunity.

C. Employment Policy and Attracting Foreign Direct Investment in Nigeria

One of the Nigerian government's employment policies is to ensure that more jobs are created through the process of attracting foreign direct investment(FDI). It is concerned with economic growth and development as well as with compliance with the requirements of the World Trade Organization (WTO). This, in my view, has made the Nigerian government complacent in failing to ensure those companies investing in the Nigerian economy operate lawfully. Although the international oil companies provide FDI and employment there is also a need for them to operate lawfully within the ambit of Nigerian labour law and international labour standards. In addition, contractors should also be monitored to ensure that they do not exploit contract workers or deny them the right to organize because it is a right that is guaranteed by the Nigerian Constitution, the Nigerian Trade Unions Act and the Labour Act, as well as by international labour standards as shown above. Any breach amounts to a violation of this right.

Employment creation and labour rights as a result of the global growth in temporary work has been the subject of debate for over a decade. The argument that the use of contract labour provides the flexibility that is needed in the current competitive neo-liberal market environment,¹⁸¹ in order to create jobs, remain competitive and help many employees meet personal needs, may be a tenable argument. However, it is also necessary to balance the need for employees to come together to promote and protect their rights and interests at work through unionization. This they can only do if they are guaranteed the right to organize and the right to collective bargaining.

10. Some Thoughts on the Way Forward

By outsourcing and using contract labour the oil and gas industry employers can 'escape' from the labour laws which apply to 'standard' work arrangements¹⁸² and 'standard' workers. Thus the use of contract labour through outsourcing gives employers in the oil and gas industry and in other industries too, some degree of immunity from the obligations of labour laws in Nigeria. Also with regard to the way forward, it is submitted that the approaches adopted by employees through their trade unions are also perhaps rather too rigid and extreme. In other words they want the total implementation and enforcement of the current labour laws as well as amendments offering better and more protection to workers. The rigid aspect of the unions' view is the total eradication of contract labour as they want a legislation to make contract labour and all forms of temporary employment illegal in Nigeria. The unions also believe that their existence and power is being threatened by the de-unionization policy of most employers in the industry. They consider that the only way they can remain

¹⁸¹ Blanpain, R., 'The World of Work and Industrial Relations in Developed Market Economies of the XXIst Century. The Age of the Creative Portfolio Worker' in Blanpain, R. and Biagi, M.(eds) Non-Standard Work and Industrial Relations (Kluwer Law International, The Hague, The Netherlands, 1999) p. 4, 12-14.

¹⁸² This is traditional employment where work is done full-time with the expectation of pension at retirement. Termination of this kind of employment is either through notice by the employer or employee.

relevant and powerful is their ability to gain more members and secure for them higher wages and benefits.

The State, on its part, wishes to promote employment generation, in order to make the economy attractive for foreign direct investment (FDI), and economic growth and development. As things stand currently, there is a visible clash of interests among the various stakeholders who are all important in the tripartite industrial relations environment. Capital cannot stand on its own without labour and *vice versa*. Both capital and labour need the State to regulate the terms and conditions of employment as well as industrial relations through policy and legislation and also provide the conducive and enabling environment for both capital and labour to thrive and usher in economic growth and development.

The economic need of workers effectively places them in a weak position from which to negotiate improved terms and conditions. For workers faced with the need for economic survival contract work is better than unemployment. Therefore many opt for this work arrangement because it is the only option available. The availability of workers actively seeking contract employment in Nigeria in recent times has encouraged employers to adopt unfair labour practices. In addition, the lack of enforcement of current labour laws with respect to contract workers by the government's monitoring agencies¹⁸³ has further worsened the situation. Contract labour is also seen as a way of generating more jobs for the ever-increasing labour market. Employment generation through contract labour is a positive development in the sense that it helps to keep more people in employment despite their temporary nature. However, because of their temporary nature, the growth rate is high and as such may increase job turnover. In other words because of the temporary nature of contract work more people may be out of work in the long term. Therefore only short-term casual jobs are created in the short term resulting in job insecurity for contract workers in the oil and gas industry.

It can be deduced from the arguments of employers that the need for competitiveness and profitability seems to be the driving motive for the use of contract labour to which employers add the argument that it stimulates employment creation and sometimes provides a probationary employment and 'on-the-job' screening for movement into permanent employment.¹⁸⁴ It also helps to spread the costs and risks of labour to labour and service contractors or recruitment agencies. The precariousness of contract labour cannot be over-emphasised in terms of compensation, working time, job security and working conditions. Also affected are training and development, health and safety at work, access to full-time employment, and membership of a trade union. It is clear that most flexible work arrangements are associated with less job stability even though it is fairly easy to get a job as a contract worker. In developed economies such as that of the United States, workers in flexible work arrangements are more inclined to move either by changing jobs or as a result of unemployment.¹⁸⁵ On the other hand, in the case of developing countries such as Nigeria many workers employed in flexible work arrangement remain in position for as long as the

¹⁸³ Nigerian monitoring agencies such as National Petroleum Investment Management Services (NAPIMS) and Department of Petroleum Resources (DPR).

¹⁸⁴ Houseman, S.N. and Polivka, A.E., *The Implications of Flexible Staffing Arrangements for Job Stability* (Upjohn Institute of Staff Working Paper No. 99-056. May 1999), pp.10-11.

¹⁸⁵ Houseman, S.N. and Polivka, A.E., *The Implications of Flexible Staffing Arrangements for Job Stability* (Upjohn Institute of Staff Working Paper No. 99-056. May 1999), pp.10-11.

contract between the company and the contractor subsists or for as long as their services are needed.¹⁸⁶ This in effect leads to the permanent casualization of workers.

The publication of the 2011 *Guidelines* on outsourcing and contract staffing in the oil and gas industry (see above) is a welcome development and the *Guidelines* should, if monitored and enforced by the responsible agencies, help in minimizing unfair labour practices in the industry. In addition, it provides a sound basis for legal reform. However this does not deviate from the fact that the Nigerian government must provide a legal framework through proper amendment of the law for the regulation and protection of contract workers in Nigeria.

11. Conclusion

In the oil and gas industry in Nigeria the motive for casualisation of the workforce is that it cuts costs, increases profits and also provides a means of circumventing the obligations required by labour legislation. However, the Nigerian government is seen to have abdicated its duty of enacting protective legislation for contract workers in the industry as well as in Nigeria generally as casualization has become the predominant form of employment in the industry. Employers turn to labour and service contractors to obtain cheaper and non-unionized labour. In essence the employer dictates the terms and conditions of employment without negotiating with the worker. It is a matter of ‘take it or leave it’.

The fight for the regulation and protection of employment of employees engaged in contract work has been left solely in the hands of trade unions. The unions see it as a means of undermining trade union organization and of avoiding collective bargaining, leading to a downturn in worker’s representation, democracy and social partnership.¹⁸⁷ The new developments, whereby some contract workers in the oil and gas industry have formed contract unions, have not improved their terms and conditions of employment to the same level as those of permanent employees. There is still discrimination with regard to pay and other terms and conditions of employment. Furthermore, many contractors and IOCs have refused to give recognition to these contract unions.

The new *Guidelines* to regulate outsourcing and contract staffing in the industry which came into effect in May 2011 were discussed above and were considered to be a ‘step in the right direction’. However, there is still a need for law reform in the form of legislation to deal with the problems associated with outsourcing and contract staffing. The unions have alleged that the international oil companies (IOCs) and their contractors are yet to implement the *Guidelines*.¹⁸⁸ Thus, it seems that problems in the industry still exist. However, it may be too early to judge whether the *Guidelines* will have any impact, and it may be necessary to wait to see whether there will be any positive changes in the industry.

It has been shown in this paper that subsisting labour laws in Nigeria which guarantee the right to organize and to collective bargaining have not been extended to cover contract workers. The government must understand that there is need to address this issue in order to protect this category of workers from exploitation and the violation of their constitutional right to freedom of association. This can only be achieved by the Nigerian government

¹⁸⁶ Interview with Bayo Olowoshile, Secretary General of PENGASSAN, in Lagos, Nigeria (Lagos, Nigeria 26 January 2011)

¹⁸⁷ Celia Mather, *Contract/Agency Labour: A Threat to Our Social Standards* (International Federation of Chemical, Energy & Mine & General Workers Union (ICEM) October 2004) p. 20, <<http://www.icem.org>> accessed 5 May 2008.

¹⁸⁸ Phone interview with Chris Akpede of NUPENG from the UK to Nigeria, 19 September 2011.

enforcing its own laws through its relevant agencies with regard to contract workers. The analysis of the current law also showed some of the inadequacies. For instance there is no specific definition of the various forms of employment and employment statuses and the law makes no provision for the regulation and protection of contract employment. There is therefore a need for clear definitions of different types of worker in the labour legislation, rather than merely a generic term 'worker', in order to provide employment protection not just for workers engaged in standard permanent employment but also for those workers engaged in contract labour. In this way, these workers will be protected from unfair labour practices such as the lack of a right to organize.

The standard neo-liberal argument used to rationalize the indecency of casualization has been that contract workers should 'count themselves as lucky' in a regime of worsening unemployment. The official complicity where employers are permitted to continue to flout labour laws and international labour standards with regard to contract labour tends to be hidden under this laissez-faire blanket of reasoning. Even the most successful of capitalist countries still admit that the right of qualified and able-bodied human beings to work is one of the greatest challenges of economic management. Protection of decent jobs is crucial for an administration that claims poverty alleviation as an economic goal. The first sustainable step in alleviating the poverty of a man of working age is to provide him with a decent job, and decent job means observing the four fundamental principles on which the International Labour Organization was built which was restated at the Declaration of Philadelphia on 10 May 1944.¹⁸⁹

The Government can help protect the vulnerable in the job market by taking the policy of protecting jobs more seriously. In the case of Nigeria, the government can begin to do this by enforcing the current laws and international standards and by ensuring that the legislature enacts laws which will protect workers engaged in contract labour. The government must also set up administrative machinery to ensure that its laws are not breached by both employers and employees. Those companies in Nigeria which have virtually replaced full-time work with contract labour are doing so in violation of not only Nigerian labour law, but also the Nigerian Constitution and international labour standards, in particular the ILO Conventions of which Nigeria is signatory.

¹⁸⁹ The Declaration Concerning the Aims and Purposes of the International Labour Organization, adopted at the 26th session of the International Labour Organization (ILO) Philadelphia, 10 May 1944. At the Philadelphia Conference of the ILO the four fundamental principles were stated, that: Labour is not a commodity; Freedom of expression and of association are essential to sustained progress; Poverty anywhere constitutes a danger to prosperity everywhere; All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

