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Protecting Workers' Rights in a Labour Environment Dominated By Nonstandard Work Arrangements and Unfair Labour Practices: An Empirical Study of Nigeria

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Abstract: **This article undertakes an empirical examination of the Nigerian labour market dominated by Nonstandard Work Arrangements (NSWAs) and unfair labour practices of employers. It raises the issue of how protective of workers is our labour law in these circumstances and what possible options are available for the protection of workers' rights and guarantee of job security for the workers. The proliferation of NSWAs and unfair labour practices in work places in Nigeria has been a source of ongoing conflict among stakeholders in the Nigerian labour market. Globalisation and trade liberalisation have thrust on us the emergence of new forms of work arrangements, such as outsourcing, contract/agency work and casual work, which has contributed to the emergence of NSWAs. The paper contends that this form of employment relations and the prevalence of unfair labour practices in Nigeria have been exacerbated by the growing incidence of massive youth unemployment in Nigeria. The paper examines the adequacy of existing labour laws in Nigeria to checkmate NSWAs and unfair labour practices. It recommends proactive roles to be played by critical stakeholders in curbing NSWAs and unfair labour practices in Nigeria.**

Keywords: **Labour; Workers; Nonstandard; Unfair; Practices; Nigeria.**

1. INTRODUCTION

The use of Nonstandard Work Arrangements[1] now transcends the earlier scope and forms a large component of the labour force in Nigeria.[2] These forms of nonstandard employment relations have become a social phenomenon and a cankerworm in labour relations in various industries across the country.[3] Many organisations in Nigeria are known to have as much as 50 per cent of their workforce as either casual or contract employees.[4]

1 Nonstandard Work Arrangements is widely used to describe work arrangements which do not fall within the traditional understanding or definition of employment. This term is used globally but because of the variations in national law and practice, there is no internationally agreed definition of nonstandard work arrangements. But suffice it to say here that they are employments not permanent in nature. The employment contract is usually fixed or predetermined and short-term. Such labour is usually required for seasonal work or work that arises periodically and continues for a relatively short period. See Rojot (1998). **Statistics for Growth in Contract and Casual Labour**. In Rojot (Ed.), ***Working Time in Industrialized Countries: The Recent Evolution*** *(p. 452).* Comparative Labour Law and Industrial Relations in Industrialized Market Economies.

2 Much research to establish the categories of nonstandard work arrangements in Nigeria is yet to be done. However, various categories of such nonstandard employment relations as presently witnessed in the Nigerian labour market include part-time work, casual/temporary work, day work, outsourcing, subcontracting, etc. Cf in South Africa where research has been carried out to establish the categories of atypical employments and they include part-time work, temporary work, day work, outsourcing, sub-contracting, homework, self-employment and so forth. See Theron (2003). Employment is not What it Used to be. ***ILJ*** 1247 where a summary of all the available studies and surveys undertaken in South Africa is undertaken.

3 See for instance Kalejaiye, P. O. (2014). The Rise of Casual Work in Nigeria: Who Loses, Who Benefits? ***African Research Review***, *8 (1)* 156 at 157.

4 In Australia, in contrast, where the incidence of casualization is also high, casual employees are estimated to be around 20% of the total workforce and around a quarter of all employees. See for instance, Stewart, A. (2009). ***Stewart's Guide to Employment Law*** (2nd Ed.). Melbourne: The Federation Press p.57.

In developing societies like Nigeria, which is bedevilled by the crises of underdevelopment and where labour market is saturated,[5] most employers' intention to keep cost of labour as low as possible has resulted in the proliferation of NSWAs such as contract work, casual work or part-time work and outsourcing even though workers in these categories have the requisite skills to hold full-time jobs.

The issue of NSWAs is not an issue that is peculiar to developing and emerging economies like Nigeria but is also applicable to developed economies. However, a major difference may be that in the former, an individual's decision to engage in such employment may be driven by compulsion, while in the latter, it is driven by choice.[6] However, in developing and emerging economies like Nigeria, NSWAs has been exacerbated by rapid economic globalization and trade liberalization.

In this new era of globalisation and trade liberalisation, the theme running through many of the new approaches to management is the development of a more flexible workforce. This has therefore led employers to adopt flexible work arrangements in the form of NSWAs in the management of labour.

The keen competition in the ever-growing industrialised market economy has led employers to device means of remaining competitive. This means that cheaper yet qualitatively attractive goods and services are the goal of every organisation. Every provider of goods and services therefore seeks cheaper capital and labour in order to keep his or her costs low. Since established labour rules and standards may not be easily compromised, the user of labour continually seeks innovative ways to get the job done cheaper. NSWAs in the form of casual work, outsourcing and contract/agency work have met this need particularly as advances in technology have also re-defined the way work is done.

While NSWAs can improve flexibility, the argument for adopting this practice tends to focus on cost considerations.[7] Employers argue that outsourcing helps them minimise costs and investment and gives the flexibility to direct scarce capital where they hold competitive advantage. In addition to developing a more flexible workforce, employers use casual labour to avoid obligations imposed by employment laws and protection. Workers on NSWAs are usually denied the right attached to standard employment such as the right to organise and bargain collectively, social security benefits, leave, etc. Therefore, this allows employers to avoid the problems and costs associated with standard employment.

However, some employers in Nigeria argue that the use of outsourcing in some cases may not necessarily be to cut costs but to help them concentrate on their core services while contracting out the ancillary services to labour and service contractors who specialise in these areas. This practise also gives them the freedom to 'hire and fire' casual employees at will.

Furthermore, in developing and emerging economies like Nigeria, rapid globalisation and trade liberalisation has resulted in massive labour migration and penetration of multinational companies with capitalist inclinations to these regions. The national governments in an attempt to boost Foreign Direct Investment often overlook or lower some vital labour issues to encourage them to make profit.[8] This has escalated the proliferation of NSWAs in these regions.[9]

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[5] According to the National Bureau of Statistics, the National Unemployment Rates in Nigeria between 2000 and 2010 showed that the number of unemployed persons constituted 13.1% in 2000; 13.6% in 2001; 12.6% in 2002; 14.8% in 2003; 13.4% in 2004; 11.9% in 2005; 12.3% in 2006; 12.7% in 2007; 14.9% in 2008; 19.7% in 2009 and 31.1% in 2010. See National Bureau of Statistics (2010) *National Manpower Stock and Employment Generation Survey. Available online* at http://www.nigerianstat.gov.ng/labour/force/statistics/unemployment/rate.hml. See also Okafor, E. E. (2012). Nonstandard Employment Relations and Implications for Decent Work Deficits in Nigeria. *African Research Review 6 (3)* 93 at 95.

[6] See for instance Danesi, R. A. (2011) Nonstandard Work Arrangements and the Right to Freedom of Association in Nigeria. (Paper presented at the IIRA Regional Conference, Lagos, 2011) p. 3.

[7] See for instance Plunkett, S. (1991, November). Outsourcing: A New Way to Save. ***Business Review Weekly.*** Melbourne, Victoria. Pp. 8-10, 14. See also Danesi R A, above p. 3.

[8] For instance, national law does not fully apply in Export Processing Zones (EPZs) and the Nigeria Export Processing Zones Act Cap N107 Laws of the Federation of Nigeria (LFN) 2004 regulates many aspects of the zones' activities and relations. The Act states that disputes between employers and employees should be handled by the zones managing authorities and not through dialogue between employers' and workers' organizations. Furthermore, it is difficult for workers' representatives to gain access to EPZs to organize and inform workers of their rights, making establishing new unions in EPZs virtually impossible. The Act also prohibits strikes and lockouts for a period of ten years after a company begins its activities in a given EPZs. See for instance sections 1, 2, 4, 6, 8, 13 and 18 of the Act. All these negate the International Labour Standards set by the International Labour Organization (ILO) in Convention No. 87 on Freedom of Association and Protection of the Right to Organize 1948 (Articles 2, 3, 4 and 11) and Convention No. 98 on the Right to Organize and Collective Bargaining 1949 (Articles 1, 2 and 4). Nigeria ratified both Conventions in 1960.

[9] Okafor, E. E. (2010). Sociological Investigation of the Use of Casual Workers in Selected Asian Firms in Lagos, Nigeria. *Ibadan Journal of the Social Sciences. 8 (1)* 49 at 50; Oya, C. (2008). Greater African-China Economic Cooperation: Will this Widen Policy Space? ***Development Viewpoint***. 4 (1) 23; Umunna. I. (2006). African Goes East. *Africa Today* 14 at 16.

Nevertheless, the emergence of NSWAs in Nigeria has thrown up a category of work organisation that inherently challenges some of the basic assumptions of labour law.[10] This stems from the fact that employees under NSWAs are not given the same benefits (such as pension,[11] compensation for injuries arising out of, or in the course of, employment,[12] right to belong to union of their choice and bargain collectively,[13] leave[14] and other social security benefits) that accrue to permanent employees by virtue of their employment status.[15] In this regard, it brings to the fore a fundamental question: how protective of workers is the exiting labour law. Presently, there is no direct statutory provision defining or regulating NSWAs in Nigeria. NSWAs in Nigeria in the form of casual work, contract/agency work and outsourcing are permissible so far as the parties are ad idem, and the parties are at liberty to fix the term of the employment. There is no law regulating or stipulating the terms of these forms of employment relations.[16] It is as such subject to negotiation between the parties.[17]

The prevalence of NSWAs in Nigeria, the absence of law regulating these forms of employment relations coupled with the saturated labour market which has created various forms of unemployment,[18] have paved way for employers of labour to engage in different forms of unfair labour practices.[19] The Nigerian labour environment has gradually become a place where unfair labour practices and rights denial rule work places.[20] In the last two decades, there has been an

[10]Kanyip, B. B. Current Issues in Labour Dispute Resolution in Nigeria. (Paper presented at the Nigerian Institute of Advanced Legal Studies) available online at http://nicn.gov.ng/k2.php (last accessed 10 June 2014).

[11] Section 2(1) of the Pension Reforms Act 2014 provides that "the provisions of this Act shall apply to any employment in the public service of the Federation, the Public Service of the Federal Capital Territory, the Public Service of the States, the Public service of the Local Governments and the private sector." Will it be right to contend that the Act contemplates workers under NSWAs when it provides that it shall apply to "any employment?" However, under the schedule to the Act, the minimum year of qualifying service/employment is 5 years for the purpose of computation of retirement benefits. Workers under NSWAs have great disadvantage here due to their precarious/temporary employment status.

[12] The Employee's Compensation Act 2011 defines an "employee" as "a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary,
apprenticeship or casual basis and includes a domestic servant who is not a member of
the family of the employer including any person employed in the Federal, State and Local
Governments, and any of the government agencies and in the formal and informal
sectors of the economy." There is a similar provision under section 73 of the Employee Compensation Act (ECA) 2010. The National Industrial Court of Nigeria (NIC) in the case of ***Abel v. Trevi Foundation Nigeria Limited, Suit No: NIC/PHC/55/2013*** relied on the definition of an employee under section 73 of the ECA 2010 to hold that the claimant who was employed by the defendant as a "contract staff" is an employee of the defendant and therefore entitled to compensation for injuries sustained in the course of his employment with the defendant. The NIC held that the definition of who is an employee has been extended widely by the Act to include persons engaged temporarily or casual daily workers.

[13] This is contrary to the provisions of section 40 of the Constitution of the Federal Republic of Nigeria 1999, as amended and Article 10 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria (LFN) 1990, which guarantee every citizen of Nigeria right to freedom of association. Workers membership of trade unions and trade union activities are also protected under section 1 of the Trade Unions Act Cap 437 LFN 1990 and section 9 (6) (a) & (b) of the Labour Act Cap 198 LFN 1990.

[14] The Lagos State new leave regime which gives a female civil servant 24 weeks maternity leave with full pay in the case of her first two deliveries and 10 working days leave for a male civil servant to who a new baby (or babies in case of multiple births) is commendable. However, the new leave regime applies only to workers who are civil servants in Lagos State. It does not apply to workers in the private sector employment and those under NSWAs. See for instance Sesan Olufowobi (2014, July 17) Lagos Okays Six-Month Maternity Leave, 10 Days for Fathers. ***Punch Online Newspaper***. Available online at http://www.punchonline.com/news/lagos/okays/six/month/maternity/leave/10/days/for/fathers.hml (last accessed 20 November 2014).

[15] Danesi R A, above at p. 5.

[16] Ogunshote, O. & Ukejianya, E. (2007). ***Nigeria: Labour and Employment***. *Lagos:* Streamsowers and Kohn. P. 56; Ifedapo, A. (2011). The Diffusion of Employment Flexibility in Nigeria's Banking Industry: Its Nature, Extent and Causes. ***International Journal of Business and Management***, *6, 150 at 157.*

[17] Scholars have always expressed the view that the balance of bargaining power in the relationship between an employer and an employee tilts in favour of the employer as the economist Adam Smith observed, ""It is not, however, difficult to foresee which of the two parties must, upon all ordinary occasions, have the advantage in the dispute, and force the other into a compliance with their terms. The masters, being fewer in number, can combine much more easily; and the law, besides, authorizes, or at least does not prohibit their combinations, while it prohibits those of the workmen. We have no acts of parliament against combining to lower the price of work; but many against combining to raise it. In all such disputes, the masters can hold out much longer. A landlord, a farmer, a master manufacturer, a merchant, though they did not employ a single workman, could generally live a year or two upon the stocks which they have already acquired. Many workmen could not subsist a week, few could subsist a month, and scarce any a year without employment. In the long run the workman may be as necessary to his master as his master is to him; but the necessity is not so immediate." See for instance Adam, Smith (1776). ***An Inquiry into the Nature and Causes of the Wealth of Nations***. Book I, ch 8, p.12. See also Sidney and Beatrice Webb, who argued that because workers' inequality of bargaining power meant they could not contract for it themselves, law should create a "national minimum" of workplace rights, with trade unions to secure a living wage. See Sidney, Webb & Beatrice, Webb (1902) ***Industrial Democracy***. Longmans.

[18] The Nigerian labour market is not only saturated but characterized by massive youth unemployment of various forms such as seasonal, frictional, cyclical and structural unemployment. See Damachi, N. A. (2001). Evaluation of Past Policy Measures for Solving Unemployment Problems. ***Bullion***, *25 (4),* 6 at 8; Adebayo, A. (999). Youth Unemployment and National Directorate of Employment Self-Employment Programs. ***Nigeria Journal of Economic and Social Studies,*** *41 (1),* 81 at 83.

[19] Even though the concept of "unfair labour practice" is not defined in the Nigerian labour law, it constitutes "any conduct prohibited by state or federal law governing the relations among employers, employees and labour organisations." See the definition of "unfair labour practice" by the NIC in the case of ***Mr. Omage Johnson v. Supreme Pharmaceuticals Company & Another***, ***Suit No. NICN/LA/53/2013 delivered on 15th May 2014.*** Cf in South Africa [section 186(2) Labour Relations Act] and the United States of America [section 8 (a) and (e) National Labour Relations Act] where there are statutory definitions of what constitute unfair labour practices of employers.

[20] Victor Ahiuma-Young (2012, May 1). Unfair Labour Practices, Rights Denial Rule Work Places. ***The Vanguard Online Newspaper***. Available online at http://www.vanguardngr.com/2012/05/unfair-labour-practices-rights-denial-rule-work-places.php. (last accessed 15 December 2014).

unprecedented rise in unfair labour practices of employers such as restrictions on, and outright denial of, workers' rights to organise and bargain collectively,[21] discrimination against women in work places,[22] the use of child labour, forced labour and bounded labour,[23] criminalisation of strikes,[24] poor management of industrial conflicts,[25] abuse of managerial powers in declaring workers redundant,[26] etc.

Although the Federal Government through the Ministry of Labour and Productivity[27] and the Nigerian Labour Congress (NLC)[28] as the central labour organisation have made some effort to curb the menace, the incidences of unfair labour practices still remain prevalent in Nigeria. Furthermore, unfair labour practices in Nigeria have been escalated by inadequate legislations, weak enforcement of current legislations and government policy on employment and the attraction of foreign direct investments (FDI).

This paper examines the Nigerian labour market situation and the prevalence of NSWAs and unfair labour practices. There is currently no statutory protection for workers in NSWAs. The paper submits that this absence of statutory protection coupled with the saturated labour market, which has produced a mass of desperate job seekers, has paved way for employers to engage in various unfair labour practices in violation of International Labour Standards set by the ILO in its conventions which Nigeria has ratified. The author believes that it has become imperative for stakeholders to redouble efforts to ensure adequate protection of workers' rights because of the emergence of new work relations in the form of NSWAs and to effectively curb unfair labour practices of employers. The paper argues that it is time to give statutory protection to workers in NSWAs in order to protect their rights in the workplace and subsequently stop their exploitation by employers. In this vein, the paper recommends legislation that will provide for a minimum of workplace rights and benefits for both permanent workers and workers in NSWAs without discrimination.

2. CONCEPTUAL CLARIFICATIONS

2.1 Theoretical framework of nonstandard work arrangements:

The paper anchors the emerging NSWAs on neo-liberal theory. Neo-liberalism is a label for economic liberalism. It is both a body of economic theory and policy stance. The theory refers to a redefinition of classical liberalism, influenced by the Neo-classical theories of economics. Neo-liberalism is a very broad theory that usually refers to fewer government

[21] This contradicts ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize and ILO Convention No. 98 on the Right to Organize and Collective Bargaining. Nigeria ratified both conventions on 17th October 1960. See International Trade Union Confederation (ITUC) (2011, June 28 & 30). Internationally Recognized Core Labour Standards in Nigeria. Report for the WTO General Council Review of the Trade Policies of Nigeria. Geneva. P. 2.

[22] This is against the International Labour Standard set by the ILO in Convention No. 100 on Equal Remuneration ratified by Nigeria in 1974 and Convention No. 111 on Discrimination (Employment and Occupation) ratified by Nigeria in 2002.

[23] Nigeria has ratified Convention No. 138, the Minimum Age Convention and Convention No. 182, the Worst Forms of Child Labour Convention both in 2002. She has also ratified Convention No. 29, the Forced Labour Convention and Convention No. 105, the Abolition of Forced Labour both in 1960. The prevalence of child labour and forced labour in Nigeria violates the International Labour Standards set by the ILO in these conventions. It also negates the commitments Nigeria accepted in the ILO's Declaration on Fundamental Principles and Rights at Work and its 2008 Social Justice Declaration.

[24] The Nigerian government has renewed the state interest in criminalizing strikes, which attract 10,000 Naira fines or six months' imprisonment for each Striker. This renewed interest can be seen from the 2005 reform of the Nigerian labour law. See sections 6 and 9 of Trade Unions (Amendment) Act, 2005. The Nigerian government's regulation against strikes negates the global recognition of strikes as an essential tool in trade unionism.

[25] Reforms of industrial relations law have always been geared towards state control of the machineries for industrial conflict management in Nigeria. This is reflected in government's amendment of labour and industrial relations law without consultation with the organized labour. This continuous marginalization of the organized labour in the formulation and implementation of policies is a major factor that has made industrial conflicts uncontrollable in Nigeria. See Akeem, A. A. (2011). Labour Reform and Industrial Conflicts Management in Nigeria. (Paper presented at the Sixth IIRA African Regional Congress of Industrial Relations on Emerging Trends in Employment Relations in Africa: National and International Perspectives, Lagos, 24-28 January 2011). P. 8. See also Okene, O. V. C. (2007). Current Issues and Developments in Workers Freedom of Association in Nigeria. ***Journal of Commonwealth Law and Legal Education,*** *5 (7),* 49 at 58.

[26] Section 20 of the Labour Act which deals with redundancy is too vague and narrow in scope and it gives the employer unlimited power to declare workers redundant as the employer may deem fit. Similarly, section 10 of the Act which deals with transfer of undertakings only emphasize consent of the workers without meaningful protection in terms of continuity of employment and security. See Professor Worugji, I. N. E. (2013) Labour and Legal Challenges in Redundancy, Casualization and Outsourcing of Labour in Nigeria. (Paper delivered at a 3-day workshop Organized by PENGASSAN on Global Trends and emerging Issues in the Nigeria Oil and Gas Industry: Critical Challenges and Prospects from all Stakeholders' Perspectives, Uyo, 10th May 2013). P. 5.

[27] The Minister of Labour and Productivity, Chief Emeka Nwogu set up a panel in June 2012 to investigate incidences of unfair labour practices in the beverages industries. See for instance News Agency of Nigeria Reports, 27th June 2012, 07:15. Also in 2014, the Ministry of Labour and Productivity in collaboration with the Human Capital Providers Association of Nigeria and the ILO designed a code of conduct for private recruiters in the country.

[28] The NLC brought the issue of casualization to the public in 2000 when it set up an "Anti-Casualization Committee" whose mandate was to fight against casualization in the country. The NLC saw casualization as an "unfair labour practice" even though this is not defined in our labour law. See also Danesi, R. A., above p. 26.

regulations and restrictions in the economy, in exchange for greater participation of private entities; the theory is associated with economic liberalisation.

The liberal school of economics became famous in Europe when Adam Smith, a Scottish Economist, published a book in 1776 called **The Wealth of Nations.** He and others advocated the abolition of government intervention in economic matters. In their view, there should be no restrictions on manufacturing, no barriers to commerce, no tariffs and free trade was the best way for a nations economy to develop. These ideas were "liberal" in the sense that they permit no controls. This application of individualism encouraged "free enterprise," "free competition"-which came to mean free for the capitalist to make huge profits as they wished.

Neo-liberalism refers to the desire to intensify and expand the market, by increasing the number, frequency, repeatability and formalisation of transactions.[29] The ultimate, though unreachable, goal of Neo-liberalism is a universe where every action of every being is a market transaction, conducted in competition with every other being and influencing every other transaction. According to Isamah,[30] Neo-liberalism is against state intervention and the entire notion of state regulation and state economic policymaking. Therefore, Neo-liberalism seeks to transfer the control of the economy from public to the private sector under the belief that it will produce a more efficient government and improve the economic indicators of the nation.

A Neo-liberal government pursues policies designed to make the nation more attractive as an investment location. These policies are generally pro-business. The main features of Neo-liberalism include economic globalisation, free markets, cutting public expenditure for social services, deregulation, privatisation and elimination of the concept of "the public good" or "community."[31] Neo-liberalism assumes that higher economic freedom has a strong correlation with higher living standards; higher economic freedom leads to increased investment, technology transfer, innovation, and responsiveness to consumer demand.[32]

Organisations operating in a typical Neo-liberal economic environment may prefer nonstandard employment which in effect grants them the flexibility to review the terms of engagement depending on the dynamism of labour market and competitive nature of socio-economic environment. This kind of flexibilisation reduces cost of production, boosts profit[33] but at the same time minimizes or cheapens workers' quality of working lives.[34] In essence, globalisation and spread of information technology have created new kind of rational organisations that emphasize flexibility in the labour market and in employment relations.[35] In most countries, these influences have resulted in the prevalence of NSWAs and by extension rise in unfair labour practices of employers.

However, to the developing countries, Neo-liberalism refers more to economic liberalization or further "opening up" of their respective economies to foreign capital and investments. An important point to note here is that neo-liberals believe that state intervention has been the main reason responsible for the retarding economic development in the Third World. Therefore, to avert these economic problems, there is the need to unleash the market forces.

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[29] Okafor, E. E. (2012b) Emerging Nonstandard Employment Relations and Implications for Human Resource Management Functions in Nigeria. ***African Journal of Business Management,*** *6 (26),* 7612 at 7617; Kalejaiye, P. O., above p. 163.

[30] Isamah, A. N. (2007) **New Directions in Sociology of Development**. In Abanihe U., Isamah, A. N. & Adesina, J. O. (Eds), ***Current and Perspective in Sociology*** *(128-130). Lagos:* Malthouse Press.

[31] Isamah, A. N, above p. 129; Okafor, E. E. (2012b), above p. 7617-7618; Kalejaiye, P. O., above p. 163.

[32] Martinez, E. & Garcia, A. (2000).***What is Neo-liberalism? A Brief Definition***. The New Press.

[33] According to Professor Worugji, I. N. E., above p. 13, "there is no doubt that companies deliberately adopt NSWAs to avoid responsibilities to the worker and to avoid payment of decent wages. It is a mere capitalist attempt to maintain profit and certain other objectives at the expense of labour. In effect, economic risk is shifted to the worker through casualization, and outsourcing arrangements in employment relations."

[34] Friedman, D. (1988). ***The Misunderstood Miracle: Industrial Development and Political Change in Japan***. *Cornell University Press;* Roper, J., Ganesh, S. & Inkson, K. (2010) Neo-liberation and Knowledge Interest in Boundryless Career Discourse. ***Work, Employment and Society***, *24 (4), 661-678.* Despite these findings, some scholars are of the view that using nonstandard workers is not always beneficial for organizations. See for instance, Kalleberg, A. (2000). Nonstandard Employment Relations: Part-time, Temporary and Contract Work. ***Annual Review of Sociology***, *26,* 341-365. Geary found that the use of nonstandard workers by three US firms operating in Ireland led to considerable conflict between permanent and temporary workers as well as between management and labour. Nollen & Axel found that the use of nonstandard workers is not always cost effective, since the productivity of these workers may be lower than that of regular workers. See Geary, J. F. (1992). Employment Flexibility and Human Resource Management: the Case of Three American Electronics Plants. ***Work, Employment and Society***, *6 (2), 251-270;* Nollen, S. D. & Axel, H. A. (1996) Managing Contingent Workers: How to Reap the Benefits and Reduce the Risks. ***American Management Association***.

[35] Porter, M. (2002). ***The Competitive Advantage of Nations***. Free Press*;* Stiglitz, J. (2002). ***Globalisation and its Discontent.*** Norton.

2.2 Defining unfair labour practices:

There is no direct statutory provision covering or defining unfair labour practice[36] in Nigeria. However, this term has been clearly defined by statute in other jurisdictions. In South Africa, for instance, in terms of the 2002 amendments to the Labour Relations Act (LRA), section 186(2), an unfair labour practice amounts to any unfair act or omission that arises between an employer and an employee involving-

i. Unfair conduct of the employer relating to the promotion or demotion of an employee;

ii. Unfair employer conduct with reference to the training of an employee;

iii. Unfair employer conduct relating to employee benefits;

iv. The unfair suspension of employee;

v. Disciplinary action short of dismissal which is unfair; and

vi. Failure or refusal by employer to reinstate or re-employ a former employee in terms of an agreement.[37]

Similarly, in the United States, the National Labour Relations Act (NLRA), 1947, section 8(a) and (e) outlines certain practices of the employer as unfair labour practices. According to the Act, the specific unfair labour practices of the employer are:

i. Interfering with, restraining or coercing employees in the exercise of their rights to organise and bargain collectively;

ii. Dominating or interfering with the formation or administration of any labour organisation or contributing financial or any other support to it;

iii. Discriminating on hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labour organisation;

iv. Discharging or otherwise discriminating against an employee because he/she filed charges or gave testimony under the NLRA; and

v. Refusing to bargain in good faith with representatives of their employee.[38]

In Nigeria, the first reference to the concept of unfair labour practice to be found in legislation is in the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010. Section 254C (f) of the Constitution provides as follows:

"*254C(1)* Notwithstanding the provisions of Sections 251, 257, 272[39] and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court (NIC) shall have and exercise jurisdiction to the exclusion of any other court in civil cases and matters; (f) Relating to or connected with unfair labour practice or international best practice in labour."

What constitutes unfair labour practice was not specified by the above constitutional provision, although it empowers the NIC to adjudicate on issues bordering on same. However, the NIC in the case of ***Mr. Omage Johnson v. Supreme Pharmaceuticals Company & Another***[40] in defining the concept of "unfair labour practice," had recourse to the meaning ascribed to same by the Black's Law Dictionary,[41] where it was defined to mean "any conduct prohibited by state or federal law governing the relations among employers, employees and labour organisations. Examples of an unfair labour

[36] This concept originated in the United States as a "handy description for a clutch of statutory torts designed to curb employer action against trade unions organising." See Landman (2004). Fair Labour Practices – The Wiehahn Legacy. ***ILJ*** . *P*. 805. The English Law version of "unfair labour practice" centres on unfair dismissals. See Brassey et al (1987) ***The New Labour Law***. *P*.369. However, the English unfair dismissal cases are helpful in developing the concept of "unfair labour practice" in Nigeria since the Nigerian common law has commonalities with the English common law.

[37] However, this definition of unfair labour practice is limited. Firstly, it is limited with reference to what an unfair labour practice entails and; secondly, it is limited in the scope of its application since not everyone can rely on the provision for protection. See section 213 of the LRA which defines an employee as : "(a) any person excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and (b) any other person who in any manner assists in carrying on or conducting the business of an employer."

[38] See Raza and Anderson (1996) ***Labour Relations and the Law***. *Pp*. 4-12.

[39] Sections 251, 257 and 272 of the Constitution provide for the jurisdictions of the Federal High Court, High Court of the Federal Capital Territory and the High Court of a State respectively.

[40] ***Suit No. NICN/LA/53/2013 delivered on 15th May 2014.***

[41] Bryan, A. Garner (Ed.) (2004). ***Black's Law Dictionary***. (8th Ed.). P.1564.

practices by an employer include (1) interfering with protected employees rights, such as the right to self-organisation, discriminating against employees, against union related activities..."

In the ***Omage Johnson's case,*** it is the practice in the 1st defendant's company that employees should surrender their certificates to the company as part of condition for securing employment with the company. The claimant deposited his Educational B. Pharmacy Certificate and his National Youth Service Corps (NYSC) Certificate with the 1st defendant company when he was employed. When his employment was terminated, the company ceased the certificates and refused to return them to the claimant. The claimant sued the 1st defendant company that the deposit of the certificate before employment and withholding of same after termination is, among other things, an unfair labour practice. The NIC agreed with him and held that the withholding of the claimant's Educational B. Pharmacy Certificate and NYSC Certificate by the defendants is an unfair labour practice.

Furthermore, the NIC in the case of ***Adenuga v. Lagos State Govt. Civil Service Commission & Ors***[42] held that holding over a staff file is an unfair labour practice. In addition, it was the decision of the NIC in ***Mrs Abdulrahman Yetunde Mariam v. University of Ilorin Teaching Hospital Management Board & Anor,***[43] that an unlawful, vindictive suspension and vindictive denial of a deserved promotion amount to an unfair labour practice.

The International Labour Organisation and its member states, of which Nigeria is one, have been able to built up a body of labour jurisprudence that member states are often enjoined to apply in their respective domestic settings. This could be seen from the ILO's numerous standard setting conventions, recommendations, together with the opinions of the Committee of Experts on the Application of Conventions and Recommendations.[44] There is also the Declaration on Fundamental Principles and Rights at Work 1998, which all member states of the ILO have an obligation to respect, promote and realize whether they have ratified the fundamental conventions or not. International Labour Standards developed by the ILO in its Conventions, Recommendations, Declarations, Resolutions and Codes of Practice together with labour, employment and industrial relations practices in other jurisdictions constitute best international labour practices in Nigeria.[45] Presently, Nigeria has ratified 40 ILO Conventions.[46] Current labour laws in Nigeria equally reflect and embody the International Labour Standards set by the ILO and the member states.[47] It is therefore submitted that practices of employers that are contrary to International Labour Standards set by the ILO and its member states in Conventions ratified by Nigeria, and the provisions of extant labour laws in Nigeria, constitute unfair labour practices.

My take here is that the time has come to develop a general theory of unfair labour practice in Nigeria. In doing this, it will be necessary to some extent to have recourse to best international labour practices and foreign sources.[48] The chief advantage of this general doctrine of unfair labour practice is that it becomes available where existing legal doctrines do not cover given circumstances.

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[42] ***(2012) 29 NLLR (pt.83) p. 300 at 327 paras. G-H.***
[43] ***Suit No. NICN,LA/359/2012***
[44] Agomo, C. K. (2011). ***Nigerian Employment and Labour Relations Law and Practice***. Lagos: Concept Publications Ltd. P. 331.
[45] Hon. Justice A. Ibrahim (2013). The Effect of the Application of International Best Practices on the Common Law Principles of Master and Servant in Employment Relationships. (Paper presented at the Annual Conference of the Nigerian Bar Association (NBA) Section on Legal Practice , Makurdi Benue State, 18th-20th November, 2013). P. 5.
[46] These include 8 fundamental conventions, 2 governance conventions and 30 technical conventions. Out of 40 conventions ratified by Nigeria, of which 30 are in force, 10 conventions have been denounced.
[47] See for instance, Mbah, S. E. & Ikemefuna, C. O. (2011) Core Conventions of the International Labour Organisation: Implications for Nigerian Labour Laws. ***International Journal of Business Administration****, 2 (2),* 129 at 134, where the authors state that the recent review of labour laws in Nigeria was based on the need to bring the existing labour laws in line with ratified conventions which had not been passed into law by the National Assembly. See also Aturu, B. F. : ILO to Battle HIV/AIDS in Places of Work. (2008, August 15). ***Guardian Newspaper****. P.* 18, who stressed the need for states to be familiar with the work of the ILO by virtue of its constitution and the necessity of the member states to constantly respect some fundamental principles on the constitution which specifically deals with labour matters.
[48] Although such development might be enriched by taking cognizance of what is happening overseas on this specialized field, too much reliance on foreign sources should be discouraged because in undertaking comparative studies, one should not lose sight of the fact that different legislations might have different underlying policies and objectives and national and socio-economic circumstances might also differ. See for instance in South Africa in the case of ***Mahlangu v. CIM Deltak 1986 7 ILJ 346 (IC) at 354 C-D*** where it was stated: the decisions of foreign jurisdictions ought to have a strong persuasive influence on the industrial court's decision and serve as guidelines in the absence of any relevant South African case law.

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3. THE NIGERIAN LABOUR MARKET SITUATION AND PREVALENCE OF NONSTANDARD WORK ARRANGEMENTS AND UNFAIR LABOUR PRACTICES

Unemployment and underemployment are the main features of the Nigerian labour market with weak economy unable to absorb all those willing to be engaged productively.[49] Unemployment is a global trend but it occurs mostly in developing countries of the world, with attendant social, economic, political and psychological consequences. Thus, massive youth unemployment in any country is an indication of far more complex problems. ILO Report[50] shows that the proportions of world unemployment are steadily increasing and that the number of those without jobs remained at all time high of more than 195 million, or 6.3 per cent in 2007. For instance, during that period (2007), the Middle East and North Africa were the regions with the highest unemployment rate in the world at 12.2 percent, followed by sub-Saharan Africa at nearly 10 percent. East Asia's unemployment rate of 3.6 percent remained the lowest. The Report affirmed that population growth, especially in South Asia, the Middle East, North Africa and sub-Saharan Africa, was putting a lot of pressure on job creation. The Report concluded that half of all workers in the world- some 1.4 billion working poor- lived in families that survived on less than USD 2 a day per person. These people worked in the vast informal sector- from farms to fishing, from agriculture to urban alleyways- without benefits, social security or healthcare. Some 550 million working poor lived on USD 1 or less per day. In absolute terms, it is estimated that there are about 122 million youth on the African Continent.[51] Therefore, projections of the population growth into the 21st Century indicated that the proportion of youth, in relation to the overall population, will continue to grow. Moreover, it has been argued that on the African Continent, the high rate of unemployment is as a result of continuous transfer of economic activities, especially the youth from rural to urban areas.[52]

In Nigeria, although accurate unemployment rates are difficult to access, Oyebade[53] posits that Nigeria's unemployment can be grouped into two categories: first, the older unemployed who lost their jobs through retrenchment, redundancy, or bankruptcy; and second, the younger unemployed, most of whom have never been employed. Awogbenle and Iwuamadi[54] states that statistics from the Nigeria Manpower Board and the Federal Bureau of Statistics in 2010 showed that Nigeria has a youth population of 80 million, representing 60 percent of the total population of the country. Also, 64 million of them were unemployed, while 1.6 million were underemployed. Data on youth unemployment in Nigeria, from 1990-2000, showed that the largest group of unemployed was the secondary school graduates. Also, 40 percent of the unemployment rate was among urban youth aged 20-24 and 31 percent of the rate is among those aged 15-19. In addition, two-thirds of the urban unemployed were ranged from 15-24 years old. Moreover, the educated unemployed tended to be young males with few dependants. There are relatively few secondary school graduates and the lowered job expectations of primary school graduates. The authors, however , admitted that there was no consistent trend of unemployment rates in Nigeria. An increase in one or two years was sometimes followed by a decline in subsequent years.

The National Bureau of Statistics survey in 2010[55] reveals that the national unemployment rates for Nigeria between 2000 and 2010 shows that the number of unemployed persons constituted 13.1 percent in 2000; 13.6 percent in 2001; 12.6 percent in 2002; 14.8 percent in 2003; 13.4 percent in 2004; 11.9 percent in 2005; 12.3 percent in 2006; 12.7 percent in 2007; 14.9 percent in 2008; 19.7 percent in 2009 and 21.1 percent in 2010.[56] **Figure 5.1.10** shows the trend of unemployment rates from year 2000 to 2010. Specifically, as regards unemployment rate by educational level, sex and

[49] See for instance Adebayo, A. (1999) Youth Unemployment and National Directorate of Employment Self Employment Programmes. ***Nigerian Journal of Economic and Social Studies***, 41 (1), 81-102; Damachi, N. A., above pp 6-12; Onyeonoru, I. P. (2008). Labour Market in the Context of Economics Sociology: Bringing Society Back to the Economy. ***Ibadan Journal of the Social Sciences***, 6 (1), 55-67; Okafor, E. E. (2011). Youth Unemployment and Implications for Stability of Democracy in Nigeria. 13 (1) 358-373.

[50] International Labour Organisation (ILO) (2007). Global Employment Trends. ***International Labour Office***. Geneva.

[51] See for instance Chigunta, F. (2002) The Socio-Economic Situation of Youths in Africa: Problems, Prospects and Options. (Paper presented at the Youth Employment Summit, Alexandria, Egypt, 2002). Pp 1-13; Echebiri, R. N. (2005). Characteristics and Determinants of Urban Youth Unemployment in Umuahia, Nigeria: Implications for Rural Development and Alternative Labour Market Variables. (Paper presented at the ISSER/Cornel/World Bank Conference on Shared Growth in Africa, Accra, Ghana, July 21-22, 2005).

[52] Todaro, M. (1992). ***Economics for a Developing World***. (2nd Ed.). Longman Group, UK Limited).

[53] Oyebade, S. A. (2003). Education and Unemployment of Youths in Nigeria: Causes, Impacts and Suggestions. *National Economic Empowerment Development Strategy (NEEDS) Document. P. 94.*

[54] Awogbenle, A. C. & Iwuamadi, K. (2010) Youth Unemployment: Entrepreneurship Development Programme as an Intervention Mechanism. ***African Journal of Business Management***, *4 (6),* 831-835.

[55] National Bureau of Statistics (2010, July). National Manpower Stock and Employment Generation Survey. Available online at http://www.nigerianstat.gov.ng.hml. (Last accessed 21 August 2014).

[56] For the national unemployment rates for Nigeria between 2000 to 2009, see National Bureau of Statistics (2010) Social Statistics in Nigeria. ***The National Bureau of Statistics Publication Abuja****;* National Bureau of Statistics (2010) Statistical News: Labour Force Statistics Abuja. ***The National Bureau of Statistics Publication*** . p. 476.

age group data provided by the National Bureau of Statistics[57] further showed that as at July 2010 in Nigeria, distribution of unemployment rate by educational qualification showed that the rate was highest among BA/B.sc/HND holders with a figure of 24.6 percent, followed by those who had bellow primary education (22.7 percent) and those with NCE/OND/Nursing Certificate (22.2 percent). The rates of unemployment for those who had primary and secondary education are 18.7 percent and 22.1 percent respectively. **Figure 5.1.11** shows unemployment rate by educational level in Nigeria in 2010. In addition, distribution of unemployment rate by age showed that, as at July 2010, unemployment rate was highest among the youth in the age group 15 – 24 years with a figure of 35.9 percent, followed by those aged 25 – 34 years (23.3 percent) and the age group 35 – 44 years (16.8 percent). With regard to unemployment rate by sex, the National Bureau of Statistics Survey showed that as at July 2010, there were more unemployed females (24.9 percent) than their male counterpart (17.7 percent).[58]

This precarious situation in the Nigerian labour market has given rise to tremendous increase in NSWAs in many work establishments in Nigeria and has produced a mass of desperate job seekers as most unemployed especially the youth make desperate efforts to survive. Workers in Nigeria are forced by the realities of excruciating unemployment to sign any contract of employment just to have a job. In most cases, the agreements were never entered on equal terms but were forced down the throat of the workers by the realities of the country's labour market. In Nigeria, the problem of NSWAs is very common in many establishments whether in indigenous, transnational or multi-national firms, either public or private industry, including telecommunications, oil and gas, power sector, banking,[59] education sectors and so on.[60] The prevalent NSWAs in Nigeria manifest in various categories of work such as casual work, contract staff, outsourcing/agency work, part-time work and other temporary employments.[61]

For instance, 1st and 2nd Quarter 2014 Job Creation Survey Report[62] reveals that in the 1st Quarter of 2014, out of the 4,265 jobs created in the Food, Beverage and Tobacco Sector, 1,342 are on part-time basis.[63] In the 2nd Quarter of 2014, out of

[57] National Bureau of Statistics (2010). National Manpower Stock and Employment Generation Survey. Available online at http://www.nigerianstat.gov.ng.hml (last accessed 21 August 2014).

[58] Disaggregated by States, the unemployment rates were highest in Yobe (39.0%), Zamfara (33.4%), Sokoto (32.4%), Imo (29.9%), Bauchi (29.7%), Jigawa (28.6%), and Delta (27.2%). Lagos had the lowest unemployment rate of 7.6%, followed by Oyo (8.8%) and Ogun (9.9%). Considering the location of the unemployed, the rate was higher in the rural area (24.2%) than in the urban area (15.2%). See National Bureau of Statistics (2010). National Manpower Stock and Employment Generation Survey. Available online at http://www.nigerianstat.gov.ng.hml.

[59] Balogun and Adeagbo after their study of employment flexibility in the banking industry in Nigeria, posits that:
"There has indeed, been a departure in the employment pattern of Nigerian banks. Nearly all banks now leave the hiring of hands like cleaners, messengers and drivers to outsourcing. The curious addition is the outsourcing of hiring of tellers, hitherto regarded as professional bankers in their own rights. Not anymore. These workers are now employed on contract agreement through outsourcing firms… In all cases, the companies save huge cost paying the contract staff wages that are far below what would have been paid for permanent employment." See Balogun, F. & Adeagbo, P. (2007, February 12). Glorified Slavery. ***The News***. Available online at http://www.thenewsng.com/modules/news. Also, Ifedapo, Adeleye, in his study of the diffusion of employment flexibility in Nigeria's banking industry however posits that the use of NSWAs in Nigeria's banking sector is not limited to relatively low- and mid-level jobs (such as secretaries, clerks, customer relations, telephone operators, office assistants, administrative assistants, bank tellers, cleaning, catering, security and transport officers) but that NSWAs in banks extend to relatively high-skill jobs as well, and this is particularly common in non-core, business support services such as human resources, legal and technology services. See Ifedapo, Adeleye (2011). The Diffusion of Employment Flexibility in Nigeria's Banking Industry: Its Nature, Extent and Causes. ***International Journal of Business and Management***, *6 (4)*, 150 at 153.

[60] See for instance, Okougbo, E. (2004). *Strategic Issue on the Dynamic of Industrial Relations: Theory and Practice.* Wepoapo Enterprises Ltd; Idowu, M. K. (2010). Job Satisfaction Among Contract Workers in Intercontinental and First Banks in Ibadan. (MIPR Unpublished Dissertation, Department of Sociology, University of Ibadan, Ibadan, September 2010); Aduba, O.: Government to Absorb 12,000 Casual Workers in Power Sector.(2012, February 2). ***The Guardian*** *(*Nigeria), p. 15; Josef Omorotionmwan (2014, November 3). As Casualization Kills Nigeria. ***Vanguard Online Newspaper***. Available online at hptt://www.vanguardngr.com/news/as-Casualization-kills-nigeria/php. (Last accessed 20 November 2014); Linda Eroke (2014, November 3). Casualization, Precarious Threat to Decent Employment. ***Thisday Live***. Available online at www.thisdaylive.com/news/Casualization/precarious/threat/to/decent/employment/php (last accessed 23 December 2014).

[61] In the last three years, Nigerian Government has taken various steps to tackle NSWAs among which was to review the guidelines, conditions and issuance of licences to outsourcing firms in order to ensure the creation of decent employment and adoption of best practices in workplaces. A fundamental review of labour laws in Nigeria was undertaken by the Minister of Labour and Productivity pursuant to section 88 (1) (e) of the Labour Act, Cap. L1 Laws of the Federation of Nigeria 2004 which empowers him to make regulations by "*prescribing anything which is to be prescribed under the Act and is not otherwise provided for"* and to further make regulations "*containing such procedural or ancillary provisions as he considers necessary or convenient to facilitate the operations of the Act."* Consequently, the Minister of Labour and Productivity issued Guidelines on Labour Administration Issues in Contract Staffing/outsourcing in the oil and gas sector dated 25th May 2011. The Guidelines lay down industrial relations principles and set out additional basic terms and conditions of employment to be observed by stakeholders in the sector. See also Godwin Tom-Lawyer, (2014). Contract Employment and the Guidelines on Contract Staffing/Outsourcing. Available online at http://www.ainergy-group.com (last accessed on 20 December 2014); see also Linda Eroke (2012, November 12). Protecting Workers Rights in an Outsourced Environment. ***Thisday Live***. Available online at http://www.thisdaylive.com/articles/protecting-workers-rights-in-an-outsourced-environment/130332/ (last accessed 19 December 2014).

[62] 1st and 2nd Quarter 2014 Job Creation Survey Report (A collaborative Survey between National Bureau of Statistics, the Office of the Chief Economic Adviser to the President, Federal Ministry of Labour and Productivity, Central Bank of Nigeria and National Directorate of Employment), September 2014. Available online at http://www.nigerianstat.gov.ng. (Last accessed 20 December 2014).

[63] 1st and 2nd Quarter 2014 Job Creation Survey Report, above, pp. 43-46.

11,220 jobs created in the Telecommunications and Information Services Sector, 2,283 are on part-time basis. In addition, out of the 3,168,675 jobs created in all sectors of the economy in the 2nd Quarter of 2014, 152,042 are part-time jobs.[64]

Data on workers in NSWAs is quite alarming. In some companies in Nigeria, it is possible for one to get as many as over one thousand five hundred workers on contract appointment out of a total of two thousand workers in the industry. In some local industries in the informal sector, it is possible to get situation whereby virtually all the employees are either casual or contract staff. This category of staff may have either professional or administrative skills.[65] Taking the oil and gas industry in Nigeria as a unit of analysis, NSWAs has been a long outstanding issue in the industry. Specifically, in 2001, there were an estimated 14,559 casual/contract workers as against 23,065 junior workers on permanent job positions in the oil and gas industry in Nigeria.[66] Most of the casual/contract workers have various qualifications such as certificates, diplomas and degrees in relevant disciplines that would warrant permanent jobs in the oil and gas industry. Some of the permanent jobs where casual/contract workers were being utilized in the industry include security, clerical jobs, plant operations, flow station operations, computer services, rig drilling operations, maintenance services, transportation, flow station guards, deck-hands, fork lifting operations, secretarial duties and fire services.[67] The scope of the pervasiveness of NSWAs in the oil and gas industry in Nigeria can be seen from the fact that in 1980 in the oil sector, Mobil Oil Nigeria Limited (Marketing) had 195 permanent junior employees. However, by 1991, there were only 28 of them. Furthermore, Mobil Producing Nigeria (producing crude oil) had over 400 permanent junior employees in 1980. This figure declined to 80 by 1991 and with most of the jobs undertaken by casual/contract workers. With respect to Shell Nigeria Ltd, in the Western Division (that is Warri Area) of its operation alone, there were 110 labour contractors in 1991 employing 1,329 casual/contract workers. Moreover, by 2002, there was no single junior staff who was a direct employee of Mobil Oil PLC.[68] These were in flagrant violation of existing labour laws in Nigeria.[69]

The banks in Nigeria are the worst culprits in employing workers under NSWAs. These workers are engaged by the banks as casual/contract staff right from the very beginning and are expendable at will. Ifedapo Adeleye,[70] after his study of the diffusion of employment flexibility in Nigerian banks, concludes that there is widespread use of NSWAs by banks in Nigeria. He argued that the embeddedness of these banks in the relatively "weak" or liberal Nigerian industrial relations system- where there is minimal enforcement of basic terms and conditions of employment- facilitated the widespread diffusion of such practices. He further argued that the situation in the banking sector, where less than 7 per cent of the banks were unionized had made it particularly difficult for the sectoral unions to exert any meaningful influence on employers. Four of the five banks in his study were non-unionized workplaces, and in the one bank where unions existed, they were being de-recognized. This relative weakness and diminishing power and influence of unions at both the national and sectoral level resulted in a situation where there was little, and in most cases, no resistance to managerial autonomy, and that this partly contributed to the progressive adoption of NSWAs by banks in Nigeria.

It is on record that since 2000, trade unions in Nigeria led by the Nigeria Labour Congress (NLC) have continued to oppose NSWAs against the employers disregard for the dignity, integrity and rights of workers which are protected by the nations labour laws, constitution and ILO's conventions. Due to persistent pressure from central labour body, a meeting

[64] 1st and 2nd Quarter 2014 Job Creation Survey Report, above, pp. 39-42.
[65] Adenugba, A. A. (2003). Globalisation and Trade Unionism in Nigeria: A case Study of the Nigerian Labour Congress. (A PhD Pre-field Seminar Paper Presented to the Department of Sociology, University of Ibadan, Nigeria).
[66] The multinational companies in the oil and gas industry usually state that it is the Nigerian Oil and Gas Industry Content Development Act 2010 that mandates them to outsource most of their jobs. However, a fundamental provision under section 7 of the Act is that before carrying out any project in the oil and gas industry, an operator shall submit a Nigerian Content Plan to the Nigerian Content Development and Monitoring Board demonstrating compliance with the Act. The plan is to contain a description of how the operator intends to ensure the use of locally manufactured goods and/or services and personnel where these meet the specifications of the industry. The main object of the Act is to enhance job creation and the development of indigenous human and technical expertise. There is no provision under the Act that requires operators to outsource their project(s). See also Ejiofor, Alike (2014, November 20). Implementation of Nigerian Content is Working, Says Alison-Madueke. ***Thisday Live***. Available online at http://www.thisdaylive.com/news/implementation/of/nigerian/content/is/working/says/alison/madueke.php (last accessed 23 December 2014).
[67] Okafor, E. E. (2012), above p. 7615.
[68] See for instance, Okafor, E. E. (2007), above pp. 160-179.
[69] See for instance, Onyeonoru, I. P., above p. 58. Although there is no legislation presently defining, and protecting the rights of, nonstandard workers in Nigeria, section 7 (1) of the Labour Act stipulates that not later than three months after the beginning of a workers period of employment with an employer, the employer shall give to the worker a written statement specifying the terms and conditions of the employment. Therefore, the practice whereby employers employ workers as casual/contract and keep them for a period beyond three months without regularising their appointment contravenes the provisions of the Labour Act.
[70] Ifedapo, Adeleye, (2011). The Diffusion of Employment Flexibility in Nigeria's Banking Industry: Its Nature, Extent and Causes. ***International Journal of Business and Management***, *6 (4),* 157 & 158.

was facilitated among ILO, the NLC and Nigeria Employers Consultative Association (NECA), which reached an agreement on 2 May 2000. The agreement, in part, specified that:

"Employers who still have casuals will regularize their employment; in regularizing their employment, the rates to be paid will be in accordance with prevailing procedural and substantive collective agreements in the industry, which will also be taken into account in protecting the rights of the workers. It is expected that any current agreement in respect of the regularization, which does not conform with the above, will also be regularized with immediate effect."[71]

According to Odu,[72] the above agreement led to little respite for workers in nonstandard employment as some multinational companies regularized the appointments of their casual staff. For *Paterson Zachonis* (PZ) Industries regularized the appointment of 247 out of the 495 casual workers, *Wahum Group of Companies* regularized 278 out of the 556 casual workers while *Wempco Group of Companies* regularized 654 of the 1,004 workers. Also, *Sona Breweries* confirmed 136 of its 227 casual workers on May 20 2002, while 91 others were regularized later. The *Drugfields Pharmaceutical*, *Sunplast Industries* and *May Farm Agro-Allied Nigeria Limited* allowed workers to unionize on May 20, June 28, and August 15, 2002 respectively. In addition, in *Ai Liquid Nigeria Plc*, nine out of the 11 casual workers were regularized on August 2 2002.[73]

Despite this modest achievement, employers in Nigeria still engage workers as casual/contract staff for periods ranging from five to twenty years in clear violation of the provisions of section 7 (1) of the Labour Act[74] which stipulates thus:

"(1) Not later than three months after the beginning of a worker's period of employment with an employer, the employer shall give to the worker a written statement specifying-

a. The name of the employer or group of employers, and where appropriate, of the undertaking by which the worker is employed;

b. The name and address of the worker and the place and date of his engagement;

c. The nature of the employment;

d. If the contract is for a fixed term, the date when the contract expires;

e. The appropriate period of notice to be given by the party wishing to terminate the contract

f. The rates of wages and methods of calculation hereof and the manner and periodicity of payment of wages

g. Any terms and conditions relating to-

   i. hours of work; or

   ii. Holidays and holiday pay; or

   iii. Incapacity for work due to sickness or injury, including any provisions for sick pay; and

h. Any special conditions of the contract.

However, this fundamental provision of the law is only observed in breach by employers of labour and employment agencies who are increasingly filling positions in their organizations that are supposed to be permanent with casual/contract employees.[75]

NSWAs in the form of casualisation and contract jobs is a worldwide phenomenon[76] and has always existed for particular jobs, therefore, it is not a new development. However, it is the form that it has taken in the last two decades that is

[71] See for instance, Odu, O. (2011). Slaves in their Fatherland. ***The Source,*** 30 (9) 16-18.
[72] Odu, O., above p. 18.
[73] Ibid, p. 19 and 20.
[74] Cap. L1 Laws of the Federation of Nigeria 2004.
[75] Fapohunda, T. M. (2012). Employment Casualization and Degradation of Work in Nigeria. ***International Journal of Business and Social Science,*** 3(9), 167.
[76] Studies done in New Brunswick, United States (Lebreton, 2000), Canada (Baumann and Blythe, 2003), South Africa (Mosoeta, 2001), India (Jenkins, 2004) and Australia (Buchler, Haynes and Baxter, 2009) showed that Casualization of workers is a worldwide phenomenon that cuts across various genders and professions. See Lebeton, S. (2000). Labour Market Annual Averages for New Brunswick. ***Human Resource Development,*** *p.* 9; Baumann, A. and Blythe (2003). Nursing Human Resource: Human Cost Versus Human Capital in the Restructured Healthcare System. ***Health Perspectives***, 3 (1), 27-34; Mosoeta, S. (2001). The Manchester Road: Woman and the Informalization of Work in South Africa's Footwear Industry. ***Labour, Capital and***

different and problematic. In the past, such labour was required for seasonal work or work that arises periodically and continues for a relatively short period. This work arrangement was predominant in the construction industry and agricultural sector and it was mainly for the unskilled in Nigeria.[77] However, today both the skilled and the unskilled are engaged as casual workers in the informal sector, the organized private sector and the public sector of the economy. The practice of engaging casual workers in Nigeria for permanent positions has been referred to as "casualisation"[78] and this practice abounds in the manufacturing industry, banking industry and the oil and gas industry.

The saturated Nigerian labour market, predominance of NSWAs, inadequate legislation and lack of enforcement of current legislations have paved way for employers of labour to engage in various sorts of unfair labour practices. The dehumanization of Nigerian workers through unfair labour practices of employers has continued unabated in clear violation of extant labour laws, the Constitution of Nigeria and ILO Conventions ratified by Nigeria. Workers under both NSWAs and full-time work are victims of unfair labour practices of employers in Nigeria. Abideen and Osuji[79] narrate the experiences of a male casual worker who joined a metal industry owned by Indians and operates in Ikeja Lagos. He sustained injury in the course of working for the company. He related:

"I am a factory worker. I was employed as a casual worker since 2008. Factory work is generally a tedious job. Here we work from 6 am to 6 pm and from 6 pm to 6 am. Our salary as casual workers for a month is just N15, 000. At times, they pay us N16,000 and we do two shifts, day and night duties….The management is harsh. If one comes to the factory late any day or absents oneself from work for any reason, money will be deducted from the person's salary. And even when I sustained industrial accident while working in the company, there was no compensation for me and my salary for the period I was receiving treatment…were not paid….When the factory machine cut off my fingers the company then took me to …hospital which is their retainership medical centre. They took responsibility for the hospital bill but nothing more. No other compensation, no feeding allowance while in hospital and up till now, I am still wallowing in self pity. Any time I look at my hand, I feel sad. It is a pity that I sacrificed my fingers for a meager salary of N15,000. The company has no mercy as I have been pressing for compensation since June this year when the accident occurred but all to no avail…hundred of us have been working without being staffed. Our situation is so pathetic that these firms hire and fire us at will…. Many casual workers cannot speak out because they are afraid of being sacked."

Honourable Justice B. B. Kanyip[80] narrates the story of a young lady employed by one of the commercial banks in Nigeria. A young lady was employed as a marketing officer by a new generation bank. She was given a loan to buy a car, rent a house and furnish same. She was told to always dress well and look good. She was then given a target of deposits she must bring into the bank within a given time frame. As collateral for the loan advanced to her, her certificates were seized by the bank. The catch in all of this was that if she defaulted in the deposits drive, she was liable to be relieved of her job that is, her employment will be terminated; and because she will not have paid up the loan advanced to her, it meant she would not be entitled to get her certificates back. And if she cannot get her certificates back, she cannot then get another job. A classic case of the devil's alternative.

The scenario that this story represents today comes in varying ways, the most notorious being the encouragement of ladies by financial institutions to source for funds at all cost and by any means, thus encouraging what is now aptly described as "corporate prostitution." Salaries in banks are now being tied to how much an employee brings into the bank. Promotion is also being tied to the amount of funds brought into the bank. The more money one brings in, the more rapid the promotion.

The third story is that told by Mrs. Ayo Atsenuwa of the faculty of law, University of Lagos at the Jurisprudence of Equality Workshop organized by the National Judicial Institute in Abuja. Her client applied for job and was interviewed

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Society, 34 (2) 184-206; Jenkins, R. (2004). Labour Policy and Second Generation of Economic Reform in India. ***Indian Review***, 3 (4), 333-363; Buchler, S. M., Haynes, M., & Baxter, J. (2009). Casual Employment in Australia: The influence of Employment Contract on Financial Wellbeing. ***Journal of Sociology,*** 45 (3), 271-289.

[77] Danesi, R. A., above p. 6.

[78] Kwabena Yarko Otoo of Ghana Trade Union Congress referred to the phenomenon in Ghana as "permanent casuals" which is now a status that has been conferred on many casual workers who have been working continuously for more than one year and upward of three or more years. Despite the fact that the Ghana Labour Act No. 651 of 2003 clearly defines categories of workers such as casual and temporary workers and afforded them protection, many studies and critics have shown that casual and temporary employment in Ghana has taken on a permanent form like the situation in Nigeria. See Barrientos J., Anarfi N., Lamhauge A., Castaldo N., & Anyidoho N. A. (2009, September). Social Protection for Migrant Labour in the Ghanaian Pineapple Sector. (Working paper T-30) pp. 5 and 31.

[79] Abideen, O. & Osuji, C. (2011). We are Slaves in our Fatherland – a Factory Worker. ***The Source,*** 30 (9), 20-21.

[80] Honourable Justice Kanyip, B. B., above p. 6.

for it. She did well at the interview and was asked to start work while undergoing a medical check-up. She was found to be HIV positive and so was relieved of her job.

There are many similar and other stories representing varying unfair labour practices in our labour regime. The law in Nigeria recognizes the right to organize and to collectively bargain; however, several restrictions limit collective agreements' coverage and union membership.[81] Unions frequently experience violent attacks[82] and there is little protection from anti-union discrimination. In practice, anti-unionism is common and ranges from employers' interference in union affairs and anti-union clauses in contracts to deadly attacks against unionists. For example in January 2010, the Nigeria Union of Teachers in Oyo State accused the State government of interfering in the affairs of civil service unions. The state government decided to withhold statutory union funds, because state-supported candidates were not elected in the union elections. In the financial sector, the Association of Banks, Insurance and Financial Institutions (ASSBIFI) reports anti-union attitudes including non-union clauses in the employees' term of employment.[83]

In Nigeria, women, ethnic groups, disabled persons and others face discrimination in becoming employed, in achieving promotion and in other aspects of employment.[84] The gender pay gap stands at 68 per cent and the majority of women are employed in precarious and informal economic activities.[85] In practice, women face discrimination in access to employment, promotions and remuneration. Many employers reportedly dismiss women who get pregnant. Demanding sexual favours in exchange for employment and employment-related benefits is common in Nigeria.

In Nigeria, the number of working children is extremely high.[86] Although reliable data is not available, an ILO study has estimated there to be 15 million working children under the age of 14. In rural areas, children can be found performing hazardous work in mines, fisheries and agriculture, particularly tobacco and cassava, dealing with pesticides and dangerous tools. In urban settings, children are most often street vendors, scavengers and beggars. It is estimated that most children in rural areas and many in urban areas have experienced work accidents and injuries.[87]

Parents cannot always afford the education of their children, and children often work in order to pay their fees, or do not attend school at all and work instead to pay for their siblings' education or the household's budget. Many rural children are sent to the cities in order to study in Koranic schools, however, many children called "almajiri" end up in beggary and

[81] Workers have the right to join or form trade unions but there are several restrictions, including the excessive requirement of a minimum of 50 workers to establish a union. The law establishes a union monopoly on various levels; consequently, when a union already exists in a sector, a second cannot be organized and legally register. Also, the Minister of Labour has power to deregister a union and order its administrative dissolution. Again, collective bargaining rights are restricted by the requirement that every agreement on wages has to be registered with the Ministry of Labour, which decides whether the agreement becomes binding. The right to strike is restricted by the Trade Unions (Amendment) Decree 1996 that makes check-off payments conditional on a "no strike" clause during the lifetime of a collective or individual agreement, stipulating that employers will not pay fees to the union office unless a union agrees not to call for a strike. The Trade Unions (Amendment) Act of 2005 did not change this, and further introduced a general prohibition of strikes, including strikes called for special economic issues and government policies, with few exemptions detailed in the law. See generally sections 1, 2, 3 and 9 of the Trade Unions Act Cap. T14 LFN 2004 and sections 3 and 18 of the Trade Disputes Act Cap. T8 LFN 2004. See also ITUC 2011, above at 2 & 3.

[82] In Nigeria, police rarely give permission for public demonstrations to be held and routinely use force to disperse protestors. Thus when doctors at public hospitals in Lagos went on strike in May 2009 to protest over poor pay and working conditions, they were subjected to vicious attacks, which left at least one doctor in critical condition. See for instance, International Trade Union Confederation. Annual Survey of Violations of Trade Union Rights-Nigeria, 2010 and 2011. Available online at http:// www.ituc-csi.org/ituc-annual-survey.html (last accessed 21 December 2014); Human Rights Watch (2011, January 24). World Report 2011-Nigeria. Available online at http://www.unhcr.org/refworld/docid/4d3e80220.html (last accessed 21 December 2014).

[83] In the oil and gas industry, the National Union of Petroleum and Natural Gas Workers (NUPENG) reports that transnational oil and gas companies awarded contracts designed ostensibly to reduce unionised workers and create disaffection among trade unions. NUPENG and the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) have protested over the replacement of union members by contractual staff for saving costs and for de-unionising the sector. See International Trade Union Confederation. Annual Survey of Violations of Trade Union Rights-Nigeria, 2010 and 2011. Available online at http://www.ituc-csi.org/ituc-annual-survey.html (last accessed 21 December 2014).

[84] See ITUC 2011, above p. 6. This is in spite of the fact that Nigeria has ratified Convention No. 100 on Equal Remuneration in 1974, and Convention No. 111 on Discrimination (Employment and Occupation) in 2002. Furthermore, the Constitution of the Federal Republic of Nigeria 1999 includes "equal pay for equal work without discrimination on account of sex, or any other ground whatsoever." See the Constitution of the Federal Republic of Nigeria 1999, section 42.

[85] See for instance, World Economic Forum (2010). The Global Gender Gap Report. Available online at: http://www3.weforum.org/docs/WEF_GenderGap_Report_2010.pdf (last accessed 23 May 2011); United States Department of State (2010, April 8). 2010 Country Reports on Human Rights Practices-Nigeria. Available online at http://www.unhcr.org/refworld/docid/4da56d9e98.html (last accessed 21 December 2014). Also, the National Minimum Wage Act Cap. N61 LFN 2004 excludes many workers, in particular those in companies with less than 50 employees and does not apply to workers under NSWAs and those paid on commission or on a piece-rate basis and seasonal workers in agriculture. And the National Minimum Wage (Amendment) Act 2011 did not correct this. See section 2 of the National Minimum Wage Act Cap. N61 LFN 2004.

[86] This is in spite of the fact that Nigeria has ratified Convention No. 138, the Minimum Age Convention and Convention No. 182, the Worst Forms of Child Labour Convention, both in 2002.

[87] See UNICEF Nigeria (2006). Information Sheet on Child Labour. Available online at http://www.unicef.org/wcaro/Nigeria/factsheets/child/labour.pdf (last accessed 23 December 2014); United States Department of Labour (2010, December 15). 2009 Findings on the Worst Form of Child Labour-Nigeria. Available at http://www.unhcr.org/refworld/docid/4d4a680dd.html (last accessed 23 December 2014).

child labour in order to pay their teachers, or are not provided with shelter and food by their schools and are eventually homeless.[88]

Forced and bonded labour continues to occur in Nigeria in spite of the fact that it is prohibited in Nigeria.[89] Trafficking of women and children from and within Nigeria for the purpose of forced labour, forced prostitution or forced domestic work is a serious problem.[90]

In all of the scenarios represented by the stories of unfair labour practices of employers and violations of International Labour Standards in ILO conventions ratified by Nigeria, the common denominator is the poor state of our labour laws to grapple with them and provide remedies. It is therefore, imperative for all stakeholders to redouble efforts to ensure protection of workers' rights in the Nigerian labour market dominated by NSWAs and unfair labour practices.

4. RECOMMENDATIONS

The current labour market in Nigeria has many forms of employment relationships that differ from full-time employment.[91] These include part-time employees, employees supplied by employment agencies, casual employees, home workers and workers engaged under a range of contracting relationships. These are described as workers under NSWAs in this paper. Most of these employees are particularly vulnerable to exploitation because they are unskilled or work in sectors with little or no trade union organisation or little or no coverage by collective bargaining. Frequently, they have less favourable terms of employment than other employees performing the same work and have less security of employment. Often, they do not receive "social wage" benefits such as medical and/or pension, or provident funds. These employees therefore, depend upon statutory employment standards for basic working conditions. Most have, in theory, the protection of current legislation,[92] but in practice, the circumstances of their employment make the enforcement of rights extremely difficult.[93] Legal policy must, therefore, be put in place to determine the rights, privileges and obligations of this category of work organisations.

Much therefore, depends on legislative intervention. Most legal systems are quite at home with the distinction between work under an employment contract and self employment given that they are structured on the binary model of subordinate employment and self-employment with the basic distinguishing factor being that while the protective stance of labour applies to subordinate work, self-employment is generally left to the dictates of contracting parties to determine the allocation of risks in the relationship. The interposition of NSWAs (the third option, which incidentally is not legally recognised as such) has, however, blurred the distinction given that the legal framework in this regard is scant and fragmented. The policy choices available here are four: whether to maintain the status quo; or recognise a third type of work between subordinate work and self-employment (in which event the classification model becomes ternary); or expand the concept of work under an employment contract to cover NSWAs; or create a minimum threshold of rights[94] that make no reference to the designation of the relationship because they are common to all forms of work.

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[88] Ibid.

[89] Nigeria has ratified Convention No. 29, the Forced Labour Convention, and Convention No. 105, the Abolition of Forced Labour, both in 1960. Furthermore, the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act of 2005, sections 11,12,13,14, &22 amongst other things prohibit all forms of human trafficking. The Childs Right Act 2003 prohibits Child Trafficking. See sections 27, 28, 29 & 30 of the Childs Right Act 2003.

[90] See for instance, United States Department of State (2010, June 14). Trafficking in Persons Report 2010- Nigeria. Available online at http://www.unhcr.org/refworld/docid/4c1883d22d.html (last accessed 20 December 2014).

[91] Presently, in the Nigerian labour market, good jobs are falling prey to corporate cost-cutting moves at the expense of working families. Too many jobs are being outsourced, contracted out, or reclassified under a barrage of legal definitions designed to keep pay down, benefits low, and the unions out. See for instance Linda, Eroke (2013, April 2). Nigeria: Casualization, Precarious Threat to Decent Employment. ***Thisday Live***. Available online at http://www.thisdaylive.com/nigeria/Casualization/precarious/threat/decent/employment/html (last accessed 10 June 2014).

[92] Such legislations include section 40 of the Constitution of the Federal Republic of Nigeria and Article 10 of the African Charter on Human and Peoples Rights which grant every citizen of Nigeria the right to associate freely with other persons and to form or belong to any trade union or association of their choice for the protection of his interests; section 1 of the Trade Union Act and sections 9 (6) (a) & (b) and 24 (1) of the Labour Act also guarantee workers the right to form or belong to trade unions of their choice.

[93] It has always been a contentious issue whether nonstandard employees such as agency workers should have a claim against the end-employer, the agency, or both or neither. This is yet to be tested in court in Nigeria. Cf in UK, while the dominant view is that an agency worker will always qualify as an employee when they work for a wage and are the more vulnerable party to the contract, the English Court of Appeal has issued conflicting judgments on whether an agency worker should have an unfair dismissal claim against the end-employer, the agency, or both or neither. See *Dacas v Brook Street Bureau (UK) Ltd* [2004] EWCA Civ 21 and *James v Greenwich LBC* [2008] EWCA Civ 35).

[94] For instance, people at work in the UK benefit from a minimum charter of employment rights-See K. W. Wedderburn (1986). ***The Worker and the Law*** (3rd Ed.). P. 6, referring to a "floor of rights", and *Gisda Cyf v Barratt* [2010] UKSC 41, [37]. This includes the right to a minimum wage of £6.31 for over 21-year-olds under the National Minimum Wage Act 1998, 28 paid holidays and no longer than 48 working hours unless one consents under the

Adalberto Perulli[95] a leading commentator on the subject, in reviewing these four options, concluded that the fourth option is preferable. To him, the first option, maintaining the status quo must be rejected as some form of regulation is essential and the decisions cannot be left to the marketplace; otherwise, there is the risk of creating or intensifying social inequalities and discrimination. He also ruled out the second option, which is creating a new category of employment relationship given that this would lead to legal problems (especially as to classification of the relationship) and social risks. As for the third option, that is, expanding the concept of work, he reasons that it will not be very realistic for it follows a "maximalistic" rational in advocating for almost a full extension of labour laws to cover workers under NSWAs who would become, basically, workers. It is the fourth option, creating a minimum threshold of rights applicable to all forms of employment that he supports on the basis that it is more realistic.

Some writers in Nigeria have recommended legislative intervention where the term "worker" should be expanded to include all categories of workers including workers in NSWAs such as casual and contract workers.[96] Some writers have also recommended legislation where there will be a clear definition of these forms of employment relationship and the rights that go with them.[97]

With regard to a legislation where the term worker should be expanded to include all categories of workers, this will not be realistic. Presently, NSWAs in Nigeria is characterised by informality, uncertainty and irregularity in employment and this makes it very doubtful the extent to which existing labour laws would apply to this type of work arrangement. Again statutory definition of the various forms of NSWAs have been done in other jurisdictions and many studies and critics have shown that in spite of this, NSWAs have persisted in this countries and had even taken permanent form in some countries.[98]

A legislation that is based on a minimum of general principles, universally applicable to every employment contract without discrimination will be preferred. It is more realistic and will eliminate the present discrimination against workers under NSWAs. The new legislation should provide for such rights as equal rights and the right not to be discriminated against; health and safety in the workplace; protection against sexual harassment in the workplace; fair pay for work; protection in the event of unfair dismissal; the right of mothers and fathers to protection and support; the right to family care and to a fair division of working time and leisure time; the right to freedom and the right to join a union including freedom to negotiate and bargain collectively; the right to receive a pension; the right to pregnancy, maternity parental leave or training; the right to social security; the right to be given notice in permanent contracts and the right to join an occupational union.

The Ministry of Labour and Productivity has a critical role to play in strengthening labour standards and practices in all sectors of the economy in order to ensure minimum floors of protection for vulnerable groups.[99] However, this position can only be achieved if international labour standards contained in ILO conventions ratified by Nigeria are fully implemented and monitored for compliance by the Ministry. Primarily, the Ministry of Labour and Productivity has the duty to present bills prepared in line with ILO conventions to the legislature for enactment into law, and domestication[100]

Working Time Regulations 1998, enrolment in a pension plan, and the right to equal treatment and anti-discrimination, the right to leave for child care, and the right to request flexible working patterns under the Employment Rights Act 1996-ERA 1999 s 130.

[95] Adalberto Perulli. Economically Dependent/Quasi-subordinate (Parasubordinate) Employment: Legal, Social and Economic Aspects. Available online at http://ec.europa.eu/employment_social/labour_law/docs/parasubordinate_report_en.pdf (last accessed 2 June 2013).

[96] See for instance Danesi, R. A. above p. 28.

[97] See for instance Prof. I. N. E. Worugji, above pp. 11, 12 & 14.

[98] See for instance in Ghana where in spite of the fact that the Ghana Labour Act No. 651 of 2003 clearly defines categories of workers such as casual and temporary workers and afforded them protection, casual and temporary employment persists and have taken on a permanent form like the situation in Nigeria. See Barrientos J., Anarfi N., Lamhauge A., Castaldo N., & Anyidoho N. A. (2009, September). Social Protection for Migrant Labour in the Ghanaian Pineapple Sector. (Working paper T-30) pp. 5 and 31.

[99] See for instance Fajana who posits that the implementation of ratified conventions has not always been effective owing to capacity challenges in ensuring compliance with such commitments and lack of awareness of the provision of the conventions. See Fajana, S. "Vice Chancellor Bewails Poor Labour Standards in Nigeria". (2011, August 8). ***Vanguard Newspaper***, p. 18.

[100] Section 12 of the Constitution of the Federal Republic of Nigeria 1999 as amended requires a further domestication of a convention, treaty or protocol of which Nigeria has ratified for it to be binding in Nigeria. However, section 254C (2) of the Constitution of the Federal Republic of Nigeria (Third Alteration Act) 2010 provides that:

"Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith." Then the question is whether such ratification alone as provided under section 254C (2) the Constitution of the Federal Republic of Nigeria (Third Alteration Act) 2010 can be said to be sufficient for such a convention, treaty or protocol to be binding in Nigeria. It is submitted that going by the wording of the subsection which states that 'notwithstanding anything to the contrary...' there would not be any additional need for domestication of a convention, treaty or protocol for it to be binding in Nigeria. This is because a

of ratified conventions. The Ministry should constantly provide relevant information to the National Assembly of the instruments adopted from international labour conferences for effective deliberation.

Outsourcing has become a global phenomenon to which no country is immune. The infiltration of this new work arrangement into the Nigerian labour market and its widespread within a very short period of time, calls for serious efforts so as to protect the rights of workers being supplied by employment agencies. In this regard, the role of the Ministry of Labour and Productivity also becomes very pertinent. The Federal Ministry of Labour and Productivity is statutorily responsible for regulating and enforcing legal provisions regarding work conditions and protection of workers in Nigeria as spelt out in the relevant ILO Conventions, the Constitution of Nigeria and extant labour laws. It is noteworthy that in order to check abuses of working conditions emerging from outsourcing of labour arrangements, the labour ministry adopted Convention No. 181 on Private Employment Agencies of 1997. Convention No. 181 of 1997 recognises private employment agencies as capable of playing a role in a well functioning labour market and also recognises the need for effective monitoring of the agencies o protect workers against abuses. Specifically, in 2007, the labour ministry, in fulfilment of section 23 of the Labour Act, put in place a system of licensing and certification of labour contractors/private employment agencies for identification, regulation and streamlining of the labour recruitment business. Although this provided some element of in-built mechanism for control and monitoring of employment agencies by the Ministry, it has not been adequately enforced by the Ministry to ensure compliance. It is therefore recommended that the Ministry should ensure periodic monitoring of the activities of employment agencies through both scheduled and impromptu visits by officers of the Ministry to ascertain compliance by employment agencies. Defaulters should have their licences revoked by the Ministry or denied renewal when the issued ones expire. It is also pertinent to note that section 25(5) of the Labour Act empowers the Ministry to suspend or withdraw license granted if the licensee is convicted of any offence under the Labour Act or any other law or has conducted himself as in the opinion of the Minister to be no longer a fit and proper person to undertake recruitment operation.

In addition to licensing and certification of labour contractors, the Ministry should ensure formulation, issuance and constant review of general or sector-specific guidelines on labour administration issues in contract staffing/outsourcing.[101] This will help lay down good industrial relations principles and set out additional basic terms and conditions of employment to be observed by stakeholders in the various sectors.

The NIC also has a crucial role to play in checkmating NSWAs and unfair labour practices in Nigeria. I am not unmindful of the fact that much may depend on legislative intervention. But where this is not forthcoming, as it seems to be the case at the moment, the courts must brace up and provide a lead on how to grapple with the problem. In this regard, it may be worthwhile to note that the ILO in dealing with the issue of NSWAs encourages that emphasis be placed on employment relationships as against whether what is in issue is simply a contract of employment.[102] For instance, a 2002 decision of the labour court of Israel in the case of Tzadka v. Gallai Izahal, the Army Radio Station[103] held that certain freelancers are into contracts of service (and not independent contractors) thus entitling them to rights under the protection of labour law.

The current legal framework under section 254C (1) (a)-(m), (2), (3), (4), (5) and (6) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 and section 7 (1) (a) – (c), (2), (3), (4), (5) and (6) of the NIC Act 2006 gives the NIC jurisdiction over employment, labour, industrial relations, occupational health and safety, employees compensation and many other work related matters. In particular, section 254C (1) (a) of the Constitution of Nigeria

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proper construction of section 254C (2) of the Constitution of the Federal Republic of Nigeria (Third Alteration Act) 2010 clearly shows that the further requirement of domestication of any convention, treaty or protocol provided in section 12 of the Constitution of the Federal Republic of Nigeria 1999 as amended would not be necessary. See also B. B. Kanyip. The National Industrial Court of Nigeria: the Future of Employment/Labour Disputes Resolution (paper presented at the Nigerian Institute of Advanced Legal Studies, Jos, Nigeria). Available online at http://www.cicn.gov.ng/spdf.id=17 (last accessed 17 November 2013). See further Honourable Justice A. Ibrahim, above at 4; Bimbo, Atilola. Legal Redress for Wrongful Termination of Contract of Employment: What Lawyers Must Note. Available online at http://www.hybridconsults.com (last accessed 20 May 2014).

[101] The guidelines should address such issues as differences between [permanent and fixed contract jobs, migration from contract to permanent employment, unionisation, collective bargaining, dispute resolution, job security and capacity building for contract staff. This is important while waiting for legislative intervention to protect the rights of workers under NSWAs.

[102] In *Gisda Cyf v Barratt* [2010] UKSC 41, [37], Lord Kerr emphasized that the process of construction of employment contracts should be one that must be "intellectually segregated" from the general law of contract, because of the relation of dependency an employee has. In this case, Ms Barratt was told her employment was terminated in a letter that she opened 3 days after its arrival. When, 3 months and 2 days after arrival, she lodged an unfair dismissal claim, the employer argued it was time barred on the ground that in ordinary contract law one is bound by a notice when a reasonable person would have read a message. The Supreme Court held that Ms Barratt was in time for a claim because she was only bound by the notice when she actually read it. The application in employment was different, given the purpose of employment law to protect the employee. From formation to termination, employment contracts are to be construed in the context of statutory protection of dependent workers.

[103] Unreported but excerpted in Honourable Justice B. B. Kanyip, above.

(Third Alteration) Act 2010, as amended captures clearly the extent of the jurisdiction of the NIC in terms of the main heads of employment, labour and industrial relations. It provides that:

"254C (1) Notwithstanding the provisions of sections 251, 257, 272[104] and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the NIC shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

(a) Relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith."

Furthermore, section 7 (6) of the NIC Act 2006 expressly provided the NIC with the enabling power to consider International Best Practices (IBPs) in appropriate cases in arriving at decisions in cases before it. In addition to the NIC Act 2006, the Constitution of Nigeria (Third Alteration) Act 2010 has made provision in section 254C (2) that:

"Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith."

This provision apparently further strengthens the position of the NIC in matters that pertain to the application of international best practices in employment, labour and industrial relations matters. The chief advantage of sections 7 (6) of the NIC Act 2006 and section 254C (2) of the Constitution of Nigeria (Third Alteration) Act 2010 is that it permits the NIC to be part of the global world of industrial relations law and practice where the experience of other jurisdictions can be brought to bear in the adjudication of labour disputes in Nigeria.

More so, section 13 of the NIC Act 2006 mandates the NIC to administer law and equity concurrently; however, section 15 of the same Act goes on to assert that where there is conflict between the two, the rules of equity shall prevail. Section 19 of the NIC Act 2006 empowers the NIC to award damages far beyond the common law provision of salary in lieu of notice in cases of wrongful termination. My take here is that even within the current structure, much can be done by the courts given that many of the rules in issue are common law rules that can simply be reinterpreted to accommodate the novel situation posed by NSWAs. In any event, the constitutional provisions and the NIC Act 2006 contain provisions that can be used to advance the cause of justice, fairness, equity and harmonious industrial relations climate in the country. The provisions permit the introduction and utilization of an equity jurisprudence regarding the issues that continually plague the world of work. To my mind therefore, the provisions represent a new and refreshing chapter in the resolution of labour disputes in the country. If appropriately used, they have salutary provisions that come in handy even in very knotty cases such as NSWAs and unfair labour practices in Nigeria.

With the NIC now the final arbiter in employment, labour and industrial relations issues, it is expected that workers under NSWAs will take matters that concern their status, rights and privileges and unfair labour practices of employers against them to the NIC for adjudication and justice.

The role of the organised labour in checkmating the prevalence of NSWAs and unfair labour practices cannot be undermined.[105] The organised labour must wake up to the challenge. It is no longer enough for labour unions to watch on and only call their members on strike if the salary arrived late. The organised labour must be interested in the full structure and welfare of workers under both NSWAs and permanent employment. The organised labour should ensure that they have constant engagements with lawmakers to ensure that laws reflect and afford fair and sufficient compensation as well as good welfare packages for all categories of workers through unrestricted legitimate rights to union activities, collective bargaining and other statutory benefits.

Much effort is needed to curb unfair labour practices such as discrimination in workplaces, anti-union discrimination, child labour and forced and bonded labour highlighted in this paper.

[104] Sections 251, 257 and 272 of the Constitution provide for the jurisdictions of the Federal High Court, High Court of the Federal Capital Territory and the High Court of a State respectively.
[105] See for instance, Professor Worugji, I. N. E., above p. 16.

Law reform is a desirable way to tackle problems of inequality of sexes through progressive reform of labour law to reflect current realities in the social, economic and political arena. The realities or assumptions upon which labour law developed have changed. Increased accesses to education and training, industrialization with consequent change in production model, globalization and modernization have all combined to enhance the entrance of women into wage employment. This is why labour law and other laws of the land should be reformed or reviewed to reflect current realities and incorporate global best practices in labour, employment and industrial relations.

In particular, the maternity rights of women must be enhanced. The truth is that raising a family is a cherished value. Yet, pregnancy and childcare make working women vulnerable to discriminatory actions of employers. Pregnant and nursing mother need adequate protection so that they can have enough time to give birth, recover and to nurse their children without the fear of losing their jobs or remunerations due to pregnancy or maternity responsibilities. It may be particularly useful for Nigeria to borrow from the experiences of other countries that have more elaborate constitutional provisions to guarantee equality of status to women. Let us take India for illustrative example. With respect to equality of opportunity in matters of public employment, the Constitution of India provides in Article 16 that:

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

One other solution lies in ensuring that our laws are strictly enforced.[106]. No useful laws no matter how good serve any useful purposes in the absence of enforcement. This is why I seriously urge that enforcement of relevant laws should be stepped up so that we can move to equality of sexes in our national life. Proper enforcement of laws is a significant antidote to non-functionality of legislation. It is also compelling for the various women oriented groups to re-strategize and key into the activities of UN Women, a body that has been at the fore-front of evolving social strategies, plans and practices to enhance the status, worth and position of women all over the world.

The trio of the Labour Act, Trade Disputes Act and the Trade Unions Act should be amended and their provisions aligned with international best practices. The excessive requirement of a minimum of 50 workers to establish a union, union monopoly and automatic membership expiration under the Trade Unions Act should be abolished. The law should be amended to limit the Registrar's and the Minister's broad powers on registering trade unions and collective bargaining agreements.

The Trade Disputes Act should be amended so that it promotes collective bargaining between employers, employers' and workers' organizations, and mediation instead of compulsory arbitration. The Trade Unions Amendment Act of 2005 should be reformed in order to prohibit "no strike" clauses and lift the general prohibition of strikes.

The national minimum age for employment should be consistent with the ILO Convention 138 and should not be below the age for finishing compulsory schooling, which is fifteen years of age. The Labour Act's exception to the minimum age, which permits children of any age to perform light work, should be repealed. The Labour Act's permission for children above 16 years of age to perform certain hazardous works and tasks should be repealed. The Government has to conclude a list of hazardous occupations and tasks together with the trade unions and employers' organizations. In addition, the penalties established in the Labour Act on child labour should be strengthened.

[106] Economic research has confirmed with empirical evidence that forced labour, child labour and discrimination are major obstacles to economic development and contribute to the persistence of poverty. In 2004, for instance, an ILO–IPEC study demonstrated that the economic benefits of eliminating child labour would be nearly seven times higher than the costs required for its elimination. See for instance, ILO (2004). Investing in every Child: An Economic Study of the Costs and Benefits of Eliminating Child Labour. Geneva. Similarly, the World Bank has repeatedly emphasized how gender discrimination hinders economic development. See for instance, World Bank (2001). Engendering Development through Gender Equality in Rights, Resources and Voice. Washington DC.

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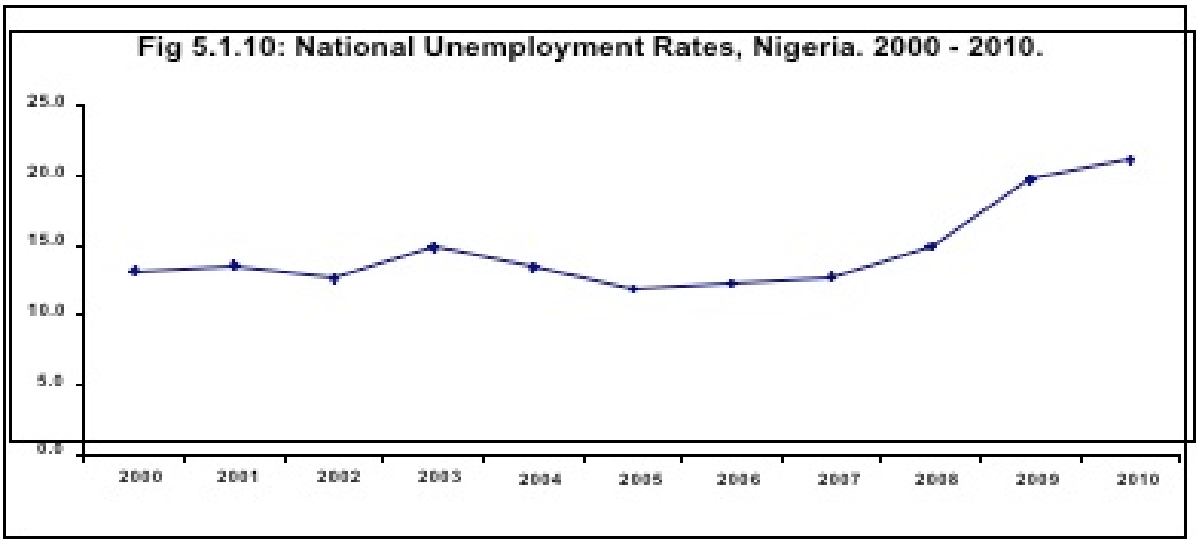
More so, government should build up its law enforcement and judicial capacities in order to monitor and enforce labour laws, including legislation on violations of trade union rights, child labour, forced labour and trafficking, and start punishing those who commit such crimes.

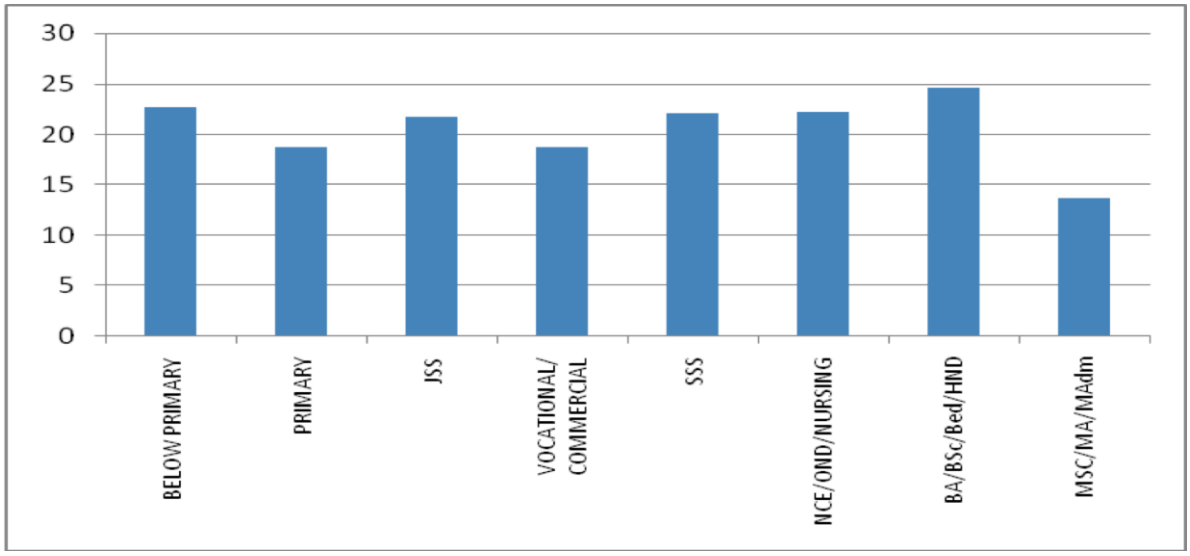
5. CONCLUSION

This paper has examined the Nigeria labour market situation and the prevalence of NSWAs and unfair labour practices. The paper observed that the Nigerian labour market is characterized by massive youth unemployment of different categories. The paper further observed that the saturated labour market in Nigeria has escalated the predominance of NSWAs. The paper posits that the saturated labour market in Nigeria, predominance of NSWAs coupled with the weak enforcement of labour laws have paved way for employers of labour to engage in various forms of unfair labour practices. The paper recommended law reform to streamline the Nigerian labour and industrial relations law with best international labour practices. The paper also recommended enforcement of current legislations on labour and industrial relations by government and its agencies.

6. FIGURES



Source: National Bureau of Statistics, Nigeria



Source: National Bureau of Statistics, Nigeria.

Figure 5.1.11 National Unemployment Rate by Educational Level, 2010