

Casual Work Arrangements (CWAs) and Its Effect on Right to Freedom of Association in Nigeria

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ABSTRACT

Casual work is increasingly becoming the norm of a global economy as companies undergo restructuring, privatization, concentration on core activities and modifications in work organization and technology. These factors certainly affect traditional employment relations and the exercise of freedom of association and collective bargaining rights inherent in them. Flexible work patterns are now becoming dominant in developing countries and this makes it more difficult to organize workers for collective representation. A fall-out of globalization in Nigeria is the increase in CWAs. Workers in this form of work arrangements are subject to insecurity and little or no protection as labour legislation can seldom be effectively applied to them. Globalization is said to provoke the deterioration of working conditions in developing countries like Nigeria. According to the International Labour Organization (ILO) statistics union membership though still significant in large work places, has decreased in almost all parts of the world in the last decade. The relevance of collective representation is not always obvious when work places are small or in activities where there is little experience of collective organization and representation of interests. These factors are leading to a widening representational gap in the world of work. Based on these assertions, this study tends to examine casual work arrangements and freedom of association in Nigeria. A labour market segmentation theory provided the conceptual framework.

Keywords: Casual workers, globalization, International Labour Organization (ILO), Freedom of association, Casual work arrangements (CWAs)

INTRODUCTION

In Nigeria, casual workers are in major industries; where firms have workers to the tune of two thousand, about one thousand five hundred may be casual workers. In the local industry in the informal sector virtually all the employees are casual staff (Okougbo, 2004). The casual workers have either professional or administrative skills. In the oil and gas industry, for example, many casual workers are graduates or skilled technicians, experienced drivers with long years of service, clerical and auxiliary staff with administrative skills and so on. They spend long years on a particular job and remain in employment for five, ten or more years. Yet they are referred to and treated as casual workers (Rasak, 2011).

In manufacturing companies owned by Asians, casual workers are locked up like prisoners in their factories so that no external person can gain access to them (Okafor, 2010).

The absence of a factory inspector does not help issues. Some oil and gas companies, especially those owned by indigenous entrepreneurs; in spite of the fact that their casual staffs are qualified to be made permanent staff, are made to remain casual workers on a slave wage (Okafor and Rasak, 2014). Manufacturing companies owned by Nigerians are no exemptions either. They adopt the philosophy of hire and fire and exhibit crude management style unimaginable in personnel administration. All these are with a view on maximizing super normal profits at the barest minimum labour cost (Okafor, 2010).

Attempts are made genuinely to unionize these contract workers in order to give them a new lease of life apart from making them to have a sense of belonging. At a time efforts to de-casualize them are resisted by employers. Such manufacturing companies constitute themselves into cartels. Sometimes, the jobs of the casual staff are terminated, under abnormal conditions without any consideration for ILO conventions or any existing labour laws.

As earlier highlighted, the principle is that of hire and fire without any norm or established conditions of service. However, in recent times, some casual staff members have been unionized and conditions of service negotiated for them. Some characteristics of casualization according to the National Union of Petroleum and National Gas Workers (NUPENG), as quoted by Okougbo, (2004) include: abysmal low wages; absence of medical care and allowances; no job security or promotion at work; no gratuity and other severance benefits; no leave allowance; jeopardized freedom of association; no death benefit or accident insurance at work; and no negotiation or collective bargaining agreement.

The existence of labour law 21 of 1974 to regulate labour contract, appears not to have helped the situation enough (Okougbo, 2004). The law provides that every contract worker should be confirmed after three months' service. The law became ineffective either because the military government then, could not enforce the law or because the ministry of labour officials were indifferent to enforce the law against very rich and powerful employers. It may also be as a result of the state of development of the nation's industrial culture (Anugwon, 2007).

The effect of globalization has led to a lot of job losses through downsizing, outsourcing and rationalization. In developed economies, casual labour is well paid for in cash even better than permanent jobs in some cases, except that a casual worker is not placed on pension at the end of his service (Rasak, 2011). Ironically, the same employers in those developed economies come to Nigeria to perpetrate the payment of low wages to casual workers (Okougbo, 2004). In seasonal job, casual labour may be justified but in durable jobs there is no justification.

Casual labour is an acceptable phenomenon in industry in developed economies because it is properly managed. The absence of a regulatory law has not helped labour unions and workers in Nigeria to fight exploitation to enable them to enjoy the dignity of labour like their counterparts in Europe, America and Japan (Okougbo, 2004).

Casual Workers' and International Labour Organization (ILO) Conventions

Different scholars have focused attention on the casual worker who is employed by a primary employer known as "The Labour Contractor" and supplied to the secondary employer (The Company requiring the services of the casual worker). Their item of trade is the worker who is supplied to the secondary employer at a fee not known to the worker. In some cases, the worker does not even know the primary employer. Thus, the terms of employment is never negotiated as he/she is faced with a "take it or leave it" situation. The implication is that the labour contractor exploits the worker by negotiating for his/her pay at a price for which he must make a profit.

The ILO convention concerning fee-charging employment agencies came into force on the 8th of July 1951 (ILO, 2001). Article 3 of the convention states that all fee-charging employment agencies conducted with a view to profit shall be abolished with a limited period of time determined by a competent authority. Article 1 of the same convention on "fee-charging employment agencies" means employment conducted with a view to profit, that is any agency or organization which acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker.

It is important to note that Nigeria did not ratify this convention or the Private Employment Agencies Convention of 1997 (No.181). The second type of casual, although employed directly by the company

requiring his/her services has, salaries fixed solely by the “benevolent” employer. As observed in the first case, the worker does not negotiate his salary, and consequently is not entitled to benefits like leave period, pension and sick pay, even though he/she is affected directly by convention No\96.

Closely associated with the above is the ILO convention concerning freedom of association and protection of the rights to organize. Article 5 states that “workers organization shall have the right to establish and join federations and confederations and any such organization; federation and confederation shall have the right to affiliate with international organizations of workers” (ILO, 2000).

By Article 11, it is imperative for member countries to “take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize”. This right is enshrined in the provisions of section 40 of the 1999 Constitution of the Federal Republic of Nigeria. The fact remains that casual workers are not allowed the freedom of association and protection, and the right to organize themselves (Okafor and Rasak, 2015).

Clearly associated with the above is the convention No. 98 concerning the application of the principles of the right to organize and bargain collectively, which came into force on 18th July 1951 (ILO, 2000). Article 1, it states that “workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment”. Such protection shall apply more particularly in respect of acts calculated at the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership, dismissal of or other wide prejudice a worker by reason of union membership or because of participation in union activities outside working hours or with the concern of the employer within hours.

By Article 2, workers organizations shall enjoy adequate protection against acts of interference by each other or each other’s agents or members in their establishment, functioning or administration. Convention No. 96 of the international labour conference declares that all members, even if they have not ratified the convention have an obligation, arising from the very fact of membership in the organization, to respect, to promote and to realize in good faith and in accordance with the constitution, the principle concerning the functional rights which are the subject of these conventions.

The ILO conventions have been consistent with the use of the word “worker”. In other words, there is no distinction between a temporary, casual, contract or permanent worker (Okafor and Rasak, 2015). It follows, therefore, that the classifications or divisions made so far are for the purpose of stripping the worker of his rights. A primary employer paid a fee determined by both parties. A close observation revealed that individual who retired from the service of the secondary employers usually set up labour contracting companies. It is very sad, however, to note that a practice (casualization) embraced by the construction industry in Nigeria today has been condemned by the ILO since 1951.

The Nigerian Labour Congress (NLC) and the Challenges of Casualization

The fundamental aims and objectives of the NLCs are to protect defend and promote the rights, well-being and the interests of all workers, pensioners and the trade unions; to promote and defend a Nigerian nation that would be just, democratic, transparent and prosperous and to advance the cause of the working class generally (NLC, 2002).

The Nigerian Labour Congress, as the umbrella body representing all workers in Nigeria, has been involved in the struggle against casualization. The congress acknowledges that casual employment cuts across all industries and institutions (private and public) which are against the provision of the law. It notes that it is however more prominent among multinational companies.

The practice of casualization affects union membership, its mobilizing capacity and check off dues from the large number of workers in the system that cannot be unionized. The NLC started the campaign for de-casualization late 1999 owing to their proscription by the military juntas (Rasak, 2011).

However, in 2001 the NLC set up committees on casualization and, at a summit, the following year, all employers agreed to implement the law on casualization and to liberalize their employment policy. Some of the strategies that the NLC used includes, industry-wide picketing in order to sensitize the public; presentation of papers at seminars and conferences and through various publications from the Congress (NLC, 2002). With support from the Solidarity Centre, the NLC created a multi-union anti-casualization task force to combat the flagrant anti-union practices. Through this task force, the NLC and its affiliate

unions have organized more than eight thousand workers, many of whom have received increased benefits as permanent workers.

However, Owoseye and Onwe (2009) opine that picketing has not yielded the desired result, as the incidence of casual staffing continues. Some employers misunderstood the reasons for the labour action against casual employment and before the commencement of the picketing activities; meetings were held with the employers through their central organization: the Nigeria Employers' Consultative Association (NECA), to clarify and share opinions on the illegality of casual labour and why they must regularize the employment status of such workers. Casual workers are not entitled to be part of any trade unions as they are not fully employed. This has been affecting the way the employers treat their staff and the struggles for a decent workplace by the trade unions (Owoseye and Onwe, 2009).

Nigeria Employers' Association (NECA) according to Owoseye and Onwe (2009) claimed that "the organization perceives the use of casual staff by most companies as illegal, as it is against the labour law in the country". They were of the opinion that casual staff can be employed by a company if the contract will not exceed the three-month agreement. The employer is expected to give a contract letter to the individual, stipulating the terms of employment. Although the organization is aware that some employers engage in the act, the organization try as much as possible to dissuade their members pleading morality, as they know it is an illegal act.

The organization tries to work hand in hand with the union to dissuade their members from engaging human capital for more than three months as casual staff; and is aware that casual employment is taking place in the country but most of the companies perpetrating the offence are not members of the organization, so this has limited what the organization can do about it.

The organization has always advised their members to make permanent their casual staff by giving them a contract letter if they feel their services are still required or let them go if they cannot engage them. However, it is argued that picketing of companies by the unions to dissuade the use of casual workers in the country is not the solution to the problem, as this has not stopped the act, Although it is the responsibility of the union to watch out for the workers, they can only get a concrete achievement with the support of the government. The non-coverage of casual workers in the Nigeria Labour Law implies that workers are not within the formal regulatory framework of government.

As a result, many construction firms operating in the country have used the opportunity to perpetrate inhuman practices with regards to their indigenous workers. Casualization as a practice in the construction sector has grown into a level in which employers tend to justify it with a lot of economic assumption backed up with statistics primarily for profit maximization. The desire of the labour union, however, has been that a worker should be given decent jobs with good pay to enhance the dignity of human labour (Okafor, 2005).

Employers in Nigeria try to increase profits and cut labour costs by getting around a 90-day hiring limit for casual workers through casualization. They may fire (and then immediately rehire) a worker just before the 90 days run out, or they may ignore the law altogether, knowing that enforcement will be feeble or non-existent (Okafor, 2005). Once employed, casual workers are made to sign the "yellow dog" contract, which is a compulsory undertaking not to join labour unions while in employment. This practice violates the ILO conventions and the principle of business ethics concerning the right of association as stated in the Nigerian labour law.

Conceptualizing the term Freedom of Association

Freedom of association is based on the principle that people can do what they like as long as their actions do no harm to someone else. The freedom of workers to associate is regarded in international labour law as a fundamental right (UDHR, 1948) and is also protected by local legislations (Constitution of the Federal Republic of Nigeria, 1999). This fundamental right is what compels workers to come together to form trade unions, the purpose of which is to promote and protect their interests at work. Therefore, the establishment and the joining of a union is the most important basis of freedom of association.

And this right is to be exercised without interference or authorization from the state, employers and any administrative body (African Charter on Human Right, 1981).

It can therefore be deduced from the foregoing that both international law and local legislations recognize the right to freedom of association. International competition facilitated by lowering of trade barriers has created innovation, lower prices for goods and services and widened consumer choice. However, the fierce competition that is a fall out of the global economy affects the world of work in a number of ways: There is increased employment volatility, insecurity and inequality accompanying the economic adjustment process consequent upon financial trade liberalizations and privatization. Labour rights and standards are sometimes seen as sacrificial lambs on the altar of competitive edge by companies due to the perception that they constitute “costs” which if eliminated or reduced to the barest minimum, will impact positively on the ability of companies to compete favourably in the global market and consequent improvement of their balance sheets, to the joy of shareholders.

Internationalization of production is impacting on collective bargaining, as multinationals who frequently dominate the global economy tend to have an upper hand in collective bargaining due to multiple exit options available to mobile capital in the global economy. Also, due to the fact that the real decision makers in a multinational company are usually outside the local territory, representatives of employees may find themselves handicapped as to effectiveness of their bargains with puppet territory managers of the multinational with no real decision-making power. In the same vein, such workers may also find themselves handicapped by inadequate access to information about the international financial position and corporate plans of the multinational employer with whom they are negotiating.

Casual work arrangements (CWAs) are new forms of work arrangements occasioned by the effects of globalization and trade liberalization. This development was facilitated by technological improvement in communication and information technology. Scholars have argued that the shift from standard to nonstandard work arrangements is as a result of employers using it to avoid the mandates and costs associated with labour laws which are designed to protect permanent employees in standard employment.

Workers freedom to associate and the right to organize is seen as a fundamental right that should not be restricted in any way and by no administrative authority or State. However with the emergence of casual work arrangements (CWAs), this right especially in developing countries is being trampled on by many employers (Danesi, 2011).

Labour laws in many jurisdictions were designed originally to protect permanent employees and in order to avoid the mandates and cost associated with these laws; employers are making use of CWAs to respond to changes in the larger global economic environment (Lee, 1997).

The use of casual work arrangements (CWAs) now transcends the earlier scope and forms a large component of the labour force. Many organizations in Nigeria are known to have as much as 50% of their work force as either casual or contract employees. In Australia on the other hand 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. In this era of globalization and trade liberalization, 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 CWAs in the management of labour. The keen competition in the ever-growing industrialized 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 organization. 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 readily compromised, the user of labour continually seeks innovative ways to get the job done cheaper.

Casual work through outsourcing has met this need particularly as advances in technology have also re-defined the way work is done. The increasing use of contractors, both for the supply of components and for services, reflects an acceptance that the firm should concentrate on its core activities (Rees and Fielder, 1992).

Firms that specialize in such tasks, it is observed, can more efficiently perform non-value-adding activities (Cannon, 1989). The perceived benefit to the firm is that its limited physical, managerial and financial resources can be focused on producing a quality product or service at a competitive price (Venkatesan, 1992). While casual work through outsourcing can improve flexibility, the argument for adopting this practice tends to focus on cost considerations (Plunkett, 1991). Employers argue that

outsourcing helps them minimize costs and investment and gives them the flexibility to direct scarce capital where they hold a competitive advantage.

In addition to developing a more flexible work force, employers use casual labour to avoid obligations imposed by employment laws and protection. Casual workers are usually denied the right to organize; therefore this allows employers to avoid the problems they associate with union representation and collective bargaining (ILO, 2008).

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 specialize in these areas. This practice also gives them the freedom to “hire and fire” casual employees at will. However, for the worker the issue is that there are no better options available to meet her economic needs. Where she is faced with the choice between casual work and no work at all, the former will be the choice.

Nevertheless the use of labour contractors or employment agencies has been a source of ongoing conflict between unions and employers in Nigeria. This is because casual employees are not given the same benefits that accrue to permanent employees by virtue of their employment status and are also denied the right to form or belong to trade unions (Danesi, 2011). There is currently no statutory protection for workers in CWAs which arguably is responsible for their exploitation and the denial of the right to organize. It is observed that government have to enforce existing laws as well as amend some current laws to define clearly various employment relationships and protect the employment rights of workers in CWAs especially the right to organize.

Sources of Freedom of association

A cornerstone of democratic governance and constitutional liberalism is the freedom of association. This freedom enables people who share similar interests to come together and form organizations that represent their interests and views. Also, this is applicable to workers who come together under the umbrella of a union to protect and promote their employment interests. Many ILO instruments and other international instruments as well as local laws guarantee the right to freedom of association (ILO, 2008). The international and local sources of the freedom of association are as follows:

International Sources

1. The Universal Declaration of Human Rights.
2. The International Covenant on Economic, Social and Cultural Right
3. The European Convention for the Protection of Human Rights and Fundamental Freedoms.
4. The International Labour Organization.

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR, 1948) recognizes the right to freedom of association and provides that, “Everyone has the right to freedom of peaceful assembly and association,” article, 20 (UDHR, 1948). The article 23 (4), UDHR further affirms that “everyone has the right to form and to join trade unions for the protection of his interests”. With this, it is clear that this declaration also promotes the ILO standards on the freedom of a person to join or form an organization of one’s choosing to protect his or her interest. This right ought to be promoted in civil society as well as the work environment.

The International Labour Organization

The ILO came into existence in 1919. The scope and applicability of its Conventions and Recommendations are far reaching. Many countries like Nigeria have ratified Conventions 87 and 98. These Conventions are binding as soon as a State ratifies it and it is expected that ratifying States must adopt them as guidelines for national policies and legislations. The ILO’s Conventions and Recommendations together make up the ILO International Labour Standards.

With the Philadelphia declaration (1998), it is expected that all nations whether they have ratified the Conventions or not have an obligation arising from the very fact of membership in the organization to respect, to promote and to realize in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of these Conventions.

The four key issues that form the core of the declaration are as follows: Freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced and

compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation

Freedom of Association and the Protection of the Right to Organize Convention (No. 87)

A sound and harmonious industrial relations system of any country is based on the full recognition of freedom of association and the right to collective bargaining (Casale, 2005). Thus Convention 87 deals with the right of workers and employers to establish and join organizations of their own choosing without prior authorization from an administrative body. Public authorities are urged to refrain from any interference, dissolution or suspension of these bodies. The ILO also recognizes that in exercising these rights, workers' organizations as well as employers' organizations must respect the law of the land.

All workers according to this Convention have the right to organize without hindrances from anybody or authority and this include casual workers. This Convention was ratified by Nigeria on 17th October, 1960.

Right to Organize and Collective Bargaining Convention (No. 98)

This Convention on the right to organize and collective bargaining is a follow up or complimentary to Convention (87). Convention 98 seeks to guarantee that "workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment". Such protection shall apply more particularly in respect of acts calculated to: (a) Make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership (b) Cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Right to Freedom of association and Membership of Trade Unions in Nigeria

- a. Constitutional Protection
- b. The Trade Union Act
- c. The Labour Act
- d. The African Charter of Human Rights

Constitutional Guarantee of the freedom of Association

Section 40 of the Constitution of the Federal Republic of Nigeria (1999), guarantees the right to freedom of association. The section provides that:

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

This constitutional guarantee covers workers in both the private and public sectors of the economy. Therefore it is clear that an employer who prevents or bars his employee from joining a trade union is infringing the constitutional right of his or her employee (Danesi, 2011). The Constitution provides for access to a court of law for remedy in the event that the right to freedom of association has been breached. Section 46 provides that "any person who alleges that any of the provisions of the chapter has been is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress".

The constitutional right of workers to form or belong to a trade union of their choice in Nigeria is openly breached with impunity in the case of workers in CWAs. There have been many instances where employers make their employees sign "yellow dog" contracts not to be members of a trade union while in employment (Danesi, 2011).

This is the situation with many employers in Nigeria who employ casual and contract workers. They do not allow these workers to join trade unions or benefit from collective agreements. Section 46 of the Constitution of the Federal Republic of Nigeria (1999), goes on to provide that any person who alleges that his or her right to freedom to form or belong to a trade union "is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress". Nevertheless employers have continued to violate this constitutional right with impunity because there are no provisions for sanctions by the State against erring employers. This probably explains the reason why there is no case

law to show that workers in CWAs have challenged their employers in court for refusing them the right to organize.

The Nigerian Constitution is regarded as the “Grundnorm” of the Nigerian legal system because the country is based on the Presidential system of governance with a written constitution. Any law that is inconsistent with the Constitution is null and void to the extent of its inconsistency (CFRN, 1999). Therefore the supremacy of the Constitution overrides all other laws. This implies that any employer who denies his workers the right to organize is in breach of the constitution and in accordance with section 46 the worker can get remedy from the High court in her State over this constitutional breach. However, casual workers are yet to take advantage of this section to seek remedy against their employers.

African Charter on Human Rights

The African Charter is another source that guarantees freedom of association for workers in Nigeria (LFN, 1990). Article 10 of the Charter provides that “Every individual shall have the right to free association provided that he abides by the law.” Nigeria has ratified this Charter and has indeed made it part of its national law by way of enactment through section 12 (1) of the Constitution of Federal Republic of Nigeria (1999), which states that “No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.” Therefore it can be deduced from this that the African Charter on Human and Peoples Rights has become part of Nigerian law.

Trade Unions Act and Freedom of Association

The Trade Unions Act defines a trade union in section 1, to mean,

“Any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers...”

The above definition indicates that workers no matter their employment status “whether temporary or permanent” have the right to join or form trade unions without prior authorization from their employer in order to improve their employment conditions (LFN, 1990). If a worker is denied this right, then he or she will not have an avenue to bargain collectively with other workers to improve his or her terms and conditions of employment and therefore open to exploitation. The casual workers employed in the private sector who do not belong to unions are increasing in number.

The reason given by employers is that since these workers are casual workers they are not supposed to be members of trade unions in the industry. However, a close look at the definition of a trade union in the Trade Union Act debunks this view because it says a union may comprise of “temporary or permanent” employees. Therefore, companies are not justified in their exclusion of this category of workers from the freedom to join or form unions. Another impact is that the inability of casual workers to organize is robbing the unions its membership and check-off dues.

The reason for this is that Nigerian unions enjoy monopoly because it is a “single union system” and not a “multi-union system” like the system in the United Kingdom and the United States. The Trade Union (Amendment) Act (2005) reiterated the voluntarism principle of the Nigerian industrial relations system and the introduction of a multi-union system. However, prior to this law reform trade union membership was more or less compulsory. Workers in a particular organization or industry were compelled to join the available unions in those organizations. The amendment however has changed this. This reform conforms to section 40 of the Constitution of Federal Republic of Nigeria (1999) which guarantees the voluntary membership of trade union in Nigeria.

Labour Act and Freedom of Association

Another law that protects the rights of workers to associate for trade union purposes is the Labour Act Cap 198, Laws of the Federation (1990) Workers membership of trade unions and trade union activities are protected by section 9 (6) (a) and (b) which provides that: No contract shall (a) make it a condition of employment that a worker shall or shall not join a trade union or shall or shall not relinquish membership of a trade union; or (b) Cause the dismissal of, or otherwise prejudice, a worker (i) By reason of trade union membership, or (ii) Because of trade union activities outside working hours or, with the consent of

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

Recognition of Trade Unions

By virtue of section 24 (1) of the Trade Union Act an employer is mandated to automatically recognize a trade union of which persons in his or her employment are members, on registration in accordance with the provisions of the Act. An employer who fails to recognize any trade union registered pursuant to the provision of section 24 (1) shall be guilty of an offence and be liable on summary conviction to a fine of 1,000 Naira (LFN, 1990). This recognition is interpreted to be for the purpose of collective bargaining which implies that the trade union can bargain collectively on behalf of its members whether temporary or permanent and the collective agreement reached should be applicable to all categories of workers.

Casual Work Arrangements (CWAs) and its effects on Right to Freedom of Association in Nigeria

Though Nigeria ratified ILO Conventions 87 and 98 on October, 1960, the State has not been seen enforcing the principles of freedom of association contained in these conventions particularly as it concerns casual and contract workers in Nigeria (Danesi, 2011). Therefore employers flout provisions in the Constitution and labour legislations with impunity because the State has abdicated its duty of enforcement through its agencies.

Union officials have been victimized and dismissed because of their active opposition to the discrimination meted out on this category of workers who are denied the right to organize by their employers. For example the attempts of the unions in the oil and gas industry to get the managements to allow this category of workers to unionize have led to dismissal of some union officials (Danesi, 2011). For example, in June 2001 National Union of Petroleum and Natural Gas Workers (NUPENG) went on a protest through massive demonstrations and rallies for two days to protest against what it called “the evil of Casualisation, victimization of union activists and anti-union posture of Nigerian employers and managements who wanted to foist on the oil and gas industry the no-union syndrome in their companies” (NUPENG, 2001).

The Nigerian Labour Congress (NLC) on its part brought the issue of Casualisation to the public in 2000 when it set up an “Anti-Casualisation Committee” whose mandate was to fight against casualization in the country. They set out by picketing companies who they have identified as having casual workers with no rights in their employ. The NLC as the central labour organization saw casualization as an unfair labour practice even though this is not defined in our labour law.

The strategy of picketing did not stop Casualisation but sensitized the public into believing and accepting that the practice was anti-labour. As has been articulated, casual workers in Nigeria are regarded as temporary employees even though they remain on the job permanently and they are denied the right form or join unions of their choice.

Factors affecting the Right to Freedom of association of Casual Workers in Nigeria

- a. Inadequate legislations
- b. Lack of Enforcement of current legislations
- c. Government policy on employment and the attraction of foreign direct investments (FDI)

Inadequate Legislations

The definition of a “worker” as it is currently in our labour laws is inadequate because it does not specifically cover the broad range of different categories of employees and employment status. Section 91 of the Labour Act defines a worker to mean,

“any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical worker is expressed or implied or oral or written, or whether it is a contract of service or a contract personally to execute any work or labour”.

This is what has been done in developed and developing economies of the world including the EU, Australia, Ghana and South Africa where labour legislations clearly mentions and defines different categories of employees (Department of Labour, 1996). For instance in the Ghana Labour Act of 2003,

the terms “casual worker” and “temporary workers” are clearly defined in its interpretation section (Ghana Labour Act, 2003). It also provides for a legal framework for the regulation, duration and general terms and conditions of such employment.

The Act went further to provide for guidelines for their remuneration. This kind of clarity will remove the inadequacy of the current Labour laws. It is therefore this lack of clarity or ambiguity that has left casual workers vulnerable to exploitation. Freedland (1999), elaborated on this when he said that discrimination by pattern of work for a category of workers like those in CWAs in denying them the right to freedom of association is unjustified discrimination. This arguably has been the excuse of companies in Nigeria for justifying the non-unionization of casual workers. They argue that only full time employees should be eligible to the right to organize and collective bargaining.

Lack of Enforcement of Current Legislations

It is clear that Nigeria has ratified all the international instruments, is therefore bound by these international instruments as it concerns freedom of association. In addition, municipal legislations including the 1999 Constitution of the Federal Republic of Nigeria also guarantees the right to freedom of association. The Trade Unions Act and the Labour Act also protects this right. The issue from the foregoing is not lack of local legislations or international instruments guaranteeing the freedom of association and the right to organize, but the lack of enforcement of the laws by the government and its agencies as well as the extension of this right to casual workers. Therefore, the problem is also in the area of enforcement as employers breach these laws with impunity.

Government Employment Policy and the Attraction of Foreign Direct Investment (FDI)

The Government employment policy is to ensure that more jobs are created through the process of attracting foreign direct investments (FDI). It is concerned with economic growth and development as well as compliance with World Trade Organization (WTO). This has made government complacent in not ensuring that the investors in the Nigerian economy operate lawfully.

Labour Market Segmentation Theory (LMS)

This theory argues that political and economic forces encourage the division of the labour market into separate submarkets, or segments, distinguished by different labour market characteristics and behavioural rules. Segmented labour markets are thus the outcome of a segmentation process (Reich, Gordon and Edward, 1973). Segments may cut horizontally across the occupational hierarchy as well as vertically. The present labour market conditions can most usefully be understood as the outcome of two segmentation processes-primary and secondary segments. The primary and secondary segments are differentiated mainly by stability characteristics.

In primary segment, jobs require and develop stable working habits, skills are often acquired on the job, wages are relatively high, and job ladders exist; while, in the secondary segment, jobs do not require and often discourage stable working habits; wages are low, turnover is high, and job ladders are few (Reich, Gordon and Edward, 1973). Moreover, primary jobs are rationed, that is, not all workers who are qualified for primary sector jobs and desire one can obtain one. Also, the sector of the labour market in which an individual is employed directly influences his or her tastes, behaviour patterns and cognitive abilities (Gordon, 1998).

Labour market segmentation theory arose and is perpetuated because it is functional, that is, it facilitates the operation of capitalist institutions. The theory is functional primarily because it helps reproduce capitalist hegemony. First, the theory divides workers and forestalls potential movements uniting all workers against employers (Kerr and Siegel, 1969). Second, the theory establishes “fire trails” across vertical job ladders and, to the extent that workers perceive separate segments with different criteria for access, workers limit their own aspirations for mobility. Less pressure is then placed on other social institutions – the school and the family, for example that produce the class structure. Third, division of workers into segments legitimizes inequalities in authority and control between superiors and subordinate.

Labour market segmentation theory is understood as having a number of interacting causes, including employers’ organizational requirements and labour-use strategies, the responses of unions, and the impact of the household division of labour on workers’ labour supply decisions. The theory arises from the

tendency of legal regulation to superimpose a set of status-based distinctions on work relations. These legal taxonomies, which partition and stratify the workforce, are only partly a response to external economic and political factors; they are also, to a degree, internally generated by the complex and multi-functional modes of regulation which characterize labour law systems (Mitchell and Bill, 2006).

The theory defines a primary labour market and secondary labour market with rigidities, restricting nonentity between the two segments. The proponents of this theory argue that on-the-job search behaviour is likely to be different according to which “segment” the worker is employed within. The traditional notion of a primary labour market worker suggests that they are employed in tight internal labour market structures which facilitate career advancement, and search activity is used to enhance his/her career aspirations.

Conversely, the secondary labour market worker may be motivated to search for new employment because their jobs are typically precarious. Intrinsic search is associated with occupational and educational levels associated with the primary sector, while extrinsic search tends to be associated with individuals in the secondary sector. The theory posits that the higher rates of turnover in metropolitan labour markets will have different impacts on primary and secondary workers.

Primary workers with higher levels of education and skill should be able to use job mobility to appropriate productivity gains associated with their human capital. Job mobility by secondary workers is driven by extrinsic factor (fear) and generates negligible improvements in pay, security and overall job satisfaction (Mitchell and Bill, 2006). Segmentation occurs when the labour market is divided or structured in a way which is reflected in the forms taken by the employment relationship or contract.

It is associated with the division between “core” and “atypical” employment in some contexts, and with that between “formal” and “informal” employment in others.

In industrialized economies, atypical work takes the form of part-time, fixed-term and temporary agency employment, and casualized forms of work such as zero-hours contracts, task contracts and “false” or “sham” self-employment. These employment categories are said to be “atypical” by comparison to a “normal” or “standard” employment relationship (SER), which is full-time, indeterminate in duration, and based on a stable contract between the individual worker and a single, clearly defined employing entity.

In developing economies, segmentation is identified with a distinction between a “formal” sector in which employment is stable and regulated, and an “informal” sector of casualized work relations, which are, in varying degrees, undocumented, untaxed, and beyond the scope of collective agreements and legislative protections (Mitchell and Bill, 2006). Labour market segmentation is regarded as problematic because of its association with inequality and discrimination. The rationing of high quality jobs to those in a protected “core” or “formal” sector and the resulting marginalization of others is linked to earnings inequality and to the perpetuation of discrimination based on education, skill, gender, age, and ethnic origin. Segmentation may also have implications for efficiency.

Dualist labour market structures may be the result of choices by employers and workers which are privately efficient but socially sub-optimal. In other words, they may maximize the joint product of parties directly engaged in bargaining but impose a net loss on society by virtue of their negative effects on third parties (Mitchell and Bill, 2006). Dualist structures could also result from institutional rigidities which prevent efficient contracting, and so impose both private and social costs. Either way, segmentation results in the misallocation of resources. The issue to be considered here is how far the negative effects of labour market segmentation can be counteracted by legal or other regulatory measures. This poses a number of prior questions. One is how far labour law itself, as a labour market institution, is responsible for segmentation.

Another is how far law can be used as an instrument for addressing a complex, multi-causal social and economic phenomenon such as segmentation. To address these questions, an interdisciplinary approach is required, which can isolate the role of the law in shaping or structuring the labour market, and arrive at an assessment of the possibilities of and limits to legal intervention as a mechanism for promoting job quality.

From an economic perspective, segmentation is understood as having a number of interacting causes, including employers’ organizational requirements (internal labour market theory) and labour-use strategies (efficiency wage theory), the responses of unions (insider outsider theory), and the impact of

the household division of labour on workers' labour supply decisions (feminist economic theory). From a legal perspective, segmentation arises from the tendency of legal regulation to superimpose a set of status-based distinctions on work relations (SER theory).

These legal taxonomies, which partition and stratify the workforce, are only partly a response to external economic and political factors; they are also, to a degree, internally generated by the complex and multifunctional modes of regulation which characterize labour law systems (reflexive law theory). Theories of development present a range of views on the phenomenon of informality in emerging markets, which can be variously interpreted as the consequence of delayed development (structural transformation theory), an adaptive response to local conditions (dependency theory), and evidence of over-regulation (legal origin theory) (Doeringer and Piore, 1971).

The legal responses are grouped into three. The first consists of changes to the taxonomical categories used to determine the scope of labour law protections. These include legal measures that widen the definition of wage-dependent labour and minimize or remove qualifying thresholds based on wages, hours or duration of employment. The aim here is to ensure that fewer workers are excluded from the 'core' protected category; their effect is purely formal or classificatory, in that the substance of protection is not addressed. The second set of techniques, by contrast, addresses the content of labour law protections (Doeringer and Piore, 1971).

This includes, laws mandating equal (or pro rata) protections for workers in atypical work relationships to those in the 'core' ('leveling up'); and, laws reducing the protections which apply to the workers in the core, so as to bring them closer into line with those in the atypical categories ('leveling down'). The third set of techniques involves the use of the law to stimulate alternative mechanisms of labour market regulation for addressing segmentation: these include collective bargaining, training policy, and fiscal incentives (Doeringer and Piore, 1971). Employment within the vertically-integrated firm was seen as based on formal, bureaucratic rules and procedures, whereas work in the secondary market was governed by unfettered competition (Edwards, 1973).

This is compatible with human capital theory, which claims that long-term employment relationships and seniority-based wages would be found in contexts where firms and workers made mutual investments in firm-specific training (Becker, 1964). In a similar vein, transaction cost economics identifies stable employment with the presence of "asset-specific" capabilities, in contrast to low-skill and low-discretion jobs which were associated with "spot contracting" and "market governance" (Williamson, Wachter and Harris, 1975). These results were extended by the efficiency wage theory from the early 1980s.

The efficiency wage paid by employers in the primary sector reflects external market prices to some degree, but is also based on the firm's need to incentivize its workforce through internal payment systems and job security arrangements. Owing to asymmetric information, employers cannot fully assess the qualities of workers (Stiglitz, 1986). Where they cannot monitor workers' aptitude and motivation without cost, and where firm-specific investments are at stake, employers will increase wages and other elements of the work bargain above the opportunity or market-clearing wage. As wages in the primary sector do not fully reflect prices, labour is displaced into the secondary sector, where competition is further intensified (Yellen, 1984).

The effect is to worsen job insecurity in the secondary sector, and to induce involuntary unemployment, as workers are unable to "price themselves" back into jobs no matter how low the wages they are prepared to accept (Solow, 1990). For employers in the primary sector, this may be a welcome side-effect of their own wage bargaining strategies, as the existence of a "reserve army" of labour in the secondary market enhances the disciplinary threat of job loss for those in the primary sector (Bulow and Summers, 1986). In these ways, privately efficient behaviour by employers and workers in the primary sector could lead to an overall social cost, as the positive effects of higher productivity in the primary sector are outweighed by the negative effects of unemployment and low wages in the secondary sector, and by immobility of labour across the divide between the primary and secondary sectors.

One implication of these theories is that state intervention may mitigate the effects of segmentation in various ways, by, for example, instituting universal vocational education and training systems which counteract the effects of casualization and under-investment in human capital in the secondary sector (Acemoglu and Pischke, 1998). Another way in which the state could reduce segmentation is by

mandating unfair dismissal and worker representation laws, which may enhance motivation and productivity without employers needing to rely on divisive forms of efficiency wage bargaining (Levine, 1991).

A further development of efficiency wage theory is insider-outsider theory, which uses a similar logic, but shifts attention to the role of trade unions in segmenting the labour market. According to this approach, segmentation is at least partly the result of union organizing strategies, which seek to control the labour supply with a view to bidding up wages in the primary sector (Lindbeck and Snower, 1988).

The empirical validity of this view has been questioned, as exclusion is by no means the only or even principal strategy pursued by unions; general unions seeking to organize across occupational and sectoral lines would, by the same logic, counteract the effects of segmentation (Sengenberger, 1981). If so, the law has a role to play in mitigating the effects of this segmentation, according to how far it supports inclusive union organization strategies and seeks to extend the protections of collective bargaining to fewer workers in sectors facing obstacles to unionization in the form of casualization and weak employer organization (Rubery and Wilkinson, 1981). The economic and sociological literature has also analysed a range of supply-side factors influencing labour market segmentation.

The feminist theory emphasizes the role of social norms governing the household division of labour as a source of segmentation. The traditional household division of labour is seen as entailing a double source of disadvantage for women: within the household, their labour is un-priced and provided at below market cost, while their participation in the labour market tends to be restricted to jobs which do not consistently provide a subsistence wage (Picchio del Mercado, 1981; 1992).

The differential labour market experiences of male and female workers work systematically to the advantage of the former; this is reflected in occupational segregation and unequal access to training, job security and employment-related benefits (Walby, 1986). According to this point of view, laws which address inequality between women and men in employment and which aim to break down the gender-based division of labour, such as equal pay laws, discrimination laws and work-life balance laws, can be expected to alleviate the effects of segmentation (Fredman, 1998).

Three broad types of reform can be identified, which roughly correspond to stages in the evolution of the regulatory response: (i) changes to the personal scope of worker-protective laws, aimed at enlarging the definition of wage-dependent labour and lowering or removing wages and hours thresholds and minimum qualifying periods of service which had the effect of excluding atypical workers from protection; (ii) shifts in the substance of protection, in some cases involving a weakening of the rights of workers in the core, in others the establishment of a legal right to equivalent or pro-rata treatment for those in the periphery; and (iii) the conjoining of reforms to worker protective laws (including some deregulatory ones) to complementary mechanisms of intervention, including active labour market policy, fiscal law, social security law, and collective bargaining.

CONCLUSION

Grimshaw, (2008) observes that recent changes to organizational context associated with economic restructuring have resulted in dismantling of the traditional labour market, as organizations “delayer” and “downsize”, resulting in a dislocation of workers from traditional career paths and limited access to training and development. The effects of these changes are unthinkable in the sense that, according to Nicholls (2006), the changes resulted in the wholesale loss of the tradition of permanent positions, with production staff working on short-term contracts from weeks to months, always mindful of how to obtain the next package of work. Okafor (2007) also avers that some work organizations resorted to unethical business practices like casualization of workers thereby hurting workers’ interest and violating some fundamental labour laws.

As a driving force to casualization, neo-liberalism tends to deregulate markets, including the labour market, to increase labour flexibility. Generally that labour market flexibility is a subject of great controversy (Okoye, 2014). Flexible work arrangements have different connotations that reflect the same concept. Their definitions are often a source of confusion and controversy because they are marked by tension between vernacular, regulatory and contractual meanings (Campbell, 2004). The available literatures has preferred using different terms for this same concept (for example, contract, contingent,

casual, irregular, non-standard, atypical, non-core, temporary, part-time, flexible, hire labour, subcontracting, fixed term, and short term.), (Wooden and Hawke, 1998; Quinlan, 2003; Australian Industry Group, 2005; Hamilton, 2006).

Cheadle (2006) identifies three kinds of flexibility: employment flexibility (the freedom to determine employment levels quickly and cheaply); wage flexibility (the freedom to alter wage level without restraint); functional flexibility (the freedom to alter work processes, terms and conditions of employment, and so on and cheaply) upon which increase in adoption of casual employment is based. Reilly (1998) avers that flexibility of labour is reflected in an employer's ability to recruit or dispose of labour as required; alter labour costs in line with market needs; allocate labour efficiently within the firm; and fix working hours to suit business requirements.

Fleetwood (2007) argues that, in the context of the employment relationship, flexibility is for the employer and of the employee; and subsequently, whilst there are undeniable benefits for labour from certain forms of flexibility-where there are mutual gains to be had from both parties; flexibility cannot be seen as unequivocally good from an employee perspective. Increasingly, Casual employees are filling positions that are permanent in nature and behind employee vulnerability; the high levels of unemployment and accompanying poverty are the most driving force in Africa (Bodibe, 2006; Anugwon, 2007; Okafor, 2012).

Wandera (2011) posits that the three main reasons for employers to use short-term workers are flexibility of staff, reduction of cost and ease of dismissal. On his part, Jauch (2010) notes that global experiences have shown that employers use labour-hire workers for a variety of reasons, which include coping with peaks in demand, reducing costs, avoiding industrial relations problems, greater flexibility, as well as avoiding retrenchment procedures and trade unions. Globalization, technological change and abundance of labour supply are also mentioned as reasons for casualization (Fapohunda, 2012).

In addition, Brenner, (2002) contends that the firms' main reasons for using labour hire include to source additional staff; replace temporarily absent employees; outsource the administrative burden of employment; achieve thorough recruitment; and overcome skill shortages. Contending, This form of employment is characterized by job insecurity, low wages and substandard working conditions, limited training and skills development and low levels of unionization, job dissatisfaction, low level of sense of belonging, unscheduled turnover, low morale, low level of productivity, dehumanization of work and workers, lack of employment benefits that accrue to regular employees, promotion as well as right to organize and partake in collective bargaining (Wooden and Hawke, 1998; Wandera, 2011).

In the same vein, Laplagne, (2005) argues that the labour-hire work arrangement may be deficient in terms of training, promotion, human capital investment, and career prospects; occupational health and safety and workers' compensation and rehabilitation; job security; and workers' remuneration and entitlements. Majid (2012) submits that the work of non-regularly employed workers is characterized not only by low income (as we have seen earlier) but also by variability in the intensity as well as timing of labour use over the production cycle by individual workers in this category. The key challenge in casual employment is not simply to rectify the problems experienced by individual casual worker; rather the problem is the processes of casualization itself. The significance of casualization is that it is integral to labour management strategies that achieve better deployment, and not development of labour (Hall, 2002).

The permanent nature of casual work has resulted in a phenomenon known as "permanent casuals". This means that casual workers may remain on that employment status for more than five years with low remuneration, lack of benefits, and denial of the right to associate and lack of conversion to permanent employee status.

It is submitted here that the right to belong to a trade union is a fundamental right which every worker whether permanent or temporary should enjoy as provided by section 40 of the Constitution of the Federal Republic of Nigeria and section 1 of the Trade Unions Act as well as international labour standards.

It should be understood that there is no government policy today that favour the denial of the right to associate imposed by employers in the country on casual workers. This practice has no legal backing either in terms of legislation or policy. However, the employers usually argue that casualization helps to create jobs for a growing number of the unemployed. This is not a plausible argument. Denying workers

the right to freedom of association is a denial of a fundamental right from which other rights at work evolve (Danesi, 2011).

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