

**LABOUR STANDARDS AND THE FLEXIBLE WORKFORCE:
CASUALISATION OF LABOUR UNDER THE NIGERIAN LABOUR
LAWS**

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I. INTRODUCTION

Casualisation of employment is a significant part of that group of employment arrangements that are collectively known as nonstandard, contingent, atypical, precarious and alternative work arrangements in international labour law (Kalleberg 2000). Casualisation has become a very topical and sensitive issue in Nigeria since the year 2000 when the Nigerian labour Congress (NLC) led by Adams Oshiomhole brought the issue to the attention of the public.

Traditional industrial relations systems based on the concept of a full-time employee working within an enterprise are increasingly being challenged by the use of nonstandard work arrangements (NSWAs) by employers. This changing nature of work has taken a new dimension with the adoption of flexible work arrangements by many firms globally. These changes have been adduced to globalisation of the world economy (Blanpain, R. 1999). The theme running through many of the new approaches to management in a globalised economy today is the development of a more flexible workforce (Benson and Ieronimo 1996), which has become employers' new frontier in the management of labour (Baglioni 1990).

These changing patterns of work (e.g. casual, contract, temporary, part-time employments, subcontracting etc) occasioned by Structural Adjustment Programmes (SAP), have created concerns for workers and trade unions alike, especially in Nigeria. Job security, social security, terminal benefits and minimum conditions of work are some of these issues. Scholars have argued that the new forms of work arrangements have led to the prospects of a "race to the bottom" in labour standards, particularly in the developing nations (Banks 2006). On close scrutiny one can observe that labour standards are being compromised by most firms involved in casualisation. Such standards include the right to form or belong to a trade union and the right to collective bargaining.

Casualisation of employment is growing at an alarming rate. More and more workers in permanent employment are losing their jobs and are re-employed as casual/contract workers or been replaced by casual or contract workers. Casual work which is supposed to be a form of temporary employment has acquired the status of permanent employment in Nigeria without the statutory benefits associated with that status. It must be noted that this is the prevalent form of employment in the private sector; however, the practice has crept into the public sector. This paper is divided into 3 parts. The first part deals with the general overview of flexible work arrangements and labour standards. The second part examines the legal framework of casualisation of employment in Nigeria and its impact on international labour

standards. We then conclude by making recommendations for government to protect workers from exploitation through policies and legislations that will ensure that employers comply with minimum labour standards while making profits.

II. DEFINING CASUALISATION

The ILO on its part defines casuals as “workers who have an explicit or implicit contract of employment which is not expected to continue for more than a short period, whose duration is to be determined by national circumstances” This ambiguous definition does not tackle the issues addressed in this paper such as the rights of workers in NSWAs who are referred to as casual and contract workers in Nigeria. This ambiguity has led to different definitions of casual and contract workers in different jurisdictions. Therefore the definition and their rights vary from one jurisdiction to another.

Casualisation is referred to in Europe and United States as Nonstandard Work Arrangements (NSWAs), and these work arrangements is increasing globally. In Australia for instance, casual work has been on the rise and those employed in that work arrangements are known as casual employees. Casual employees are defined as ‘employees who were not entitled to either annual leave or sick leave in their main job’ (ABS). Casualisation therefore is seen as ‘a process whereby more and more of the workforce are employed in these ‘casual’ jobs’ (May, Campbell & Burgess 2005). Chandra Chisala, in a paper defined casualisation ‘as a word that was euphemistically invented in Zambia ... to refer to the common corporate trend of hiring and keeping workers on temporary employment rather than permanent employment, even for years, as a cost reduction measure (Chisala 2006).

Casualisation is a term used in Nigeria to describe work arrangements that are characterised by bad work conditions like job insecurity, low wages, and lack of employment benefits that accrue to regular employees as well as the right to organise and collective bargaining. In addition, workers in this form of work arrangement can be dismissed at any time without notice and are not entitled to redundancy pay. Hence it is an unprotected form of employment because it does not enjoy the statutory protection available to permanent employees (Labour Act).

The emerging pattern of employment in Nigeria today is casualisation which is fast becoming the dominant form of flexible work arrangement particularly in the oil and gas Industry (OGI). There are two forms of employment under casualisation in Nigeria, casual and contract labour. The terms and conditions of employment of this category of workers are not regulated by the Nigerian labour laws in the sense that their status is not defined nor do the law make provisions for the regulation of the terms and conditions of their employment, hence the mass exploitation of these workers by employers. Employers use casualisation of the labour force as an effective means of reducing cost, maximising profit and de-unionising the work force.

It is difficult to give an accurate statistics about the number of casual and contract workers in Nigeria because there are no official statistics showing the extent and trends of casualisation (Fajana 2005). Some organisations have been reported to have up to 60-90 percent of their workers as casual/contract employees (Animashaun 2007). The unions in the OGI claim that 60% of employees in this industry are contract employees supplied by Labour Contractors (Employment Agencies).

The Nigerian Labour Act does not define what casualisation is and does not provide a legal framework for the regulation of the terms and conditions of this work arrangement. However, Section 7(1) of the Act provides that a worker should not be employed for more than three months without the regularisation of such employment. After three months every worker including the casual or contract worker’s employment must be regularised by the employer by giving a written statement stating the terms and conditions of employment. This obligation to

provide a worker with written conditions of employment within three months of being employed was upheld by the National Arbitration Court in the case of *Management of Harmony House Furniture Company Ltd. v. National Union of Furniture, Fixtures and Wood Workers [1986]*.

However, the trade unions have interpreted section 7(1) to mean that if workers are employed for over three months then they cease to be casual or contract workers and should be made permanent employees. I disagree with this interpretation by the unions. What this section states is that a written statement should be given to the employee stating the terms and conditions of the employment contract, including “the nature of the employment” as well as “if the contract is for a fixed term and the date when the contract expires”. Some organisations give the written statement irrespective of the nature of the contract. So in my own interpretation, once an organisation does this they are not in breach of section 7 (1) of the Labour Act. The section and the Act do not expressly refer to casual and contract workers.

The lack of definition of the status of this category of workers as well as the legal framework regulating the terms and conditions of their employment and protection explains the motivating factor for the increasing use of casualisation by employers and why this category of workers is exploited by employers who engage them. The prevailing arrangement in most organisations in Nigeria is a situation where people are employed as casual and contract workers for five years or more and are paid less than their permanent counterparts in terms of wages and benefits even though they possess the same skills, work the same hours and perform the same tasks as permanent employees.

III. CASUALISATION AND THE NIGERIAN LABOUR LAWS

Although the origin of casualisation of employment is not clear-cut in Nigeria, it could be traced to the introduction of the Structural Adjustment Programme (SAP) by the General Babangida’s administration in 1986, the IMF and World Bank loans and their conditions. The combination of these factors led to a slump in the economy. Many factories shut down, some operating below minimum capacity and many organisations were finding it difficult to compete in the present globalised economy which is tilted more in favour of the developed economies. Moreover, in this era of globalisation and trade liberalisation, competition from imported goods, have forced enterprises in Nigeria to reduce their staff strength and replace them with contract and casual workers in order to cut cost of production and remain competitive.

The structural adjustment programme (SAP) was geared toward less government involvement in the economy and more private sector participation. In terms of job creation, the government was involved in downsizing of the civil service and its parastatals. The thinking was that the revitalisation of the private sector will attract the much needed Foreign Direct Investment (FDI) into the country. Yes it did attract some FDI especially in the OGI; however, this has led to the lowering of labour standards at the same time.

There is growing recourse to casualisation of labour not only in the oil and gas industry, but in many other industries and organisations in Nigeria. As noted earlier, nonstandard work arrangements is a global issue. In advanced economies due to globalisation and trade liberalisation, many enterprises have resorted to the engagement of contract labour, part-time work, temporary work etc in order to cut cost and remain competitive in the global market. In addition, employers argue that this growth is influenced by demographic changes in the

composition of the labour force (Kalleberg 1999). Many women want to work part-time in order to combine family care and work; this is the flexibility that NSWAs gives them. Therefore, the changing economic conditions such as greater instability and uncertainty necessitated the use of nonstandard workers as a response to the market by entrepreneurs (Kalleberg 1999).

The difference between Nigeria and the advanced economies is that an increasing number of workers have found themselves outside the standard purview of collective relations. Whereas in advanced jurisdictions, the situation has necessitated a readjustment of collective labour relations rules and practices so that the workers concerned can enjoy the fundamental collective labour relations rights of collective bargaining and union representation, as well as protection against exploitation.

The lack of clarity in the Nigerian Labour Laws concerning legal categories of workers is the motivating factor for the adoption of casualisation by employers. There is only one category of worker defined in the Labour Act and that is a 'worker'. The 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 work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour.”

The above definition does not recognise workers in nonstandard work arrangements. This can be adduced to the fact that the current labour Act was enacted in 1971 when NSWAs was alien to our industrial relations environment. In addition, this definition is rather narrow in the sense that it is apparent that it is not every employee at common law that is a worker under the Act. Thus for part 1 of the Act to apply to an employee under the common law he or she has to fall within the definition of the term worker (Uvieghara 2001). Unfortunately, this legislation have since not been reviewed to address the current realities on ground.

A Worker is also defined by other Labour Legislations in similar terms like the Labour Act (Workmen's Compensation Act, Trade Unions Act, and Trade Dispute Act). The term 'employee' is not defined by the Labour Act, therefore we rely on the common law definition which states that an employee is a worker who has a contract of service. This is distinguishable from an independent contractor or a self-employed person who are said to have a contract of service. This distinction is arrived at through the various test used under the common law such as control, mutuality of obligation, integration and multiple test.

The consequences of this however, is that the casual worker does not fall within the purview of the protection and rights available to permanent employees covered by the Labour Act. This form of work arrangement is therefore characterised by instability, lack of benefits and lack of right to organise and collective bargaining.

IV. THE NIGERIAN DEBATE ON CASUALISATION OF LABOUR

Most of the casual and contract workers are highly skilled and usually perform the same task with permanent employees but get lower remuneration and poor terms and conditions of employment generally and are denied the right to organise and benefit from collective

agreements. This is contrary to section 17(3)(e) of the Nigerian Constitution which states that *“the State shall direct its policy towards ensuring that there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever”* and section 40 which states 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.”*

Cases abound in some enterprises in Nigeria where workers have worked for between six and ten years as casual or contract workers without being given permanent status. To get round the law in the past, some employers were regularly in the habit of laying off their employees every three months and asking them to re-apply for re-engagement. But since the advent of the democratically elected government in Nigeria in 1999, employers engage workers as casual and contract workers with impunity without records of their employment.

Orifowomo (2007), in his work have argued that the casual or contract worker employed directly by organisations ought to be called employees even if some of them have a short-term employment. However, majority of them have become what is termed ‘permanent casuals’. They work for many years in the same company but are not granted full employee status. They are usually regarded as temporary workers in spite of their continuous employment for upward of 5 to 10 years. The casual and contract employees do not enjoy the benefits associated with permanent status, benefits like medical care, promotion, pension, leave with pay etc. I agree that in the prevailing circumstances, workers in NSWAs should be entitled to the same rights as permanent employees no matter the duration of their employment.

Okpara (1987) argues in her paper that the OGI has put in place a “dual system of recruitment which confers permanent employment status on one category of labour and contract employment status on another category of labour.” In her view this is a divisionary measure to strip labour of its bargaining power in order to weaken it and stop it from improving their terms and conditions of employment. This situation is appalling and has eroded the rights of workers at the work place as enunciated by the International Labour Organisation (ILO).

Petroleum and Natural Gas Senior Staff Association (PENGASSAN) denounced casualisation and contract labour in the OGI arguing that the reasons given to justify these work arrangements cannot be justified by the discrimination in the terms and conditions of employment as well as the denial of the right to organise and collective bargaining. Luwoye (2001) a former President of PENGASSAN sees casualisation as a means employed by employers to drive down wages and weaken trade unionism since workers in these arrangements have no right to organise. According to him the only beneficiaries are the employers, therefore these work arrangement should be legislated against.

Owei (2001) in his own analysis justifies the use of contract labour in the OGI. He argues that due to the nature of the oil and gas business, which involve various operational segmentation, there will always be the need for contract employees. The OGI he says believes that services that are not considered core to its main business of oil and gas exploration and marketing should be contracted out or outsourced to companies who are specialised in them and will provide them at reduced cost. However, Owei advocates that Labour Contractors must ensure that the remuneration of the contract workers they supply to the OGI is fair and comparable to the permanent workers employed directly by the OGI. He argued further that the contract workers should be allowed to exercise their right to organise and collective bargaining. Owei

also advocates that contract workers should be given priority whenever there is an opening for permanent employment in the OGI.

Awe (2001) in his own contribution decried the plight of contract workers in the OGI and urged policy makers to make legislations to protect these workers from exploitation by their employers. He also noted that many union officials were dismissed for agitating for better terms and conditions of employment for contract workers as well as agitating for their right to organise and to collective bargaining.

It is interesting to note that in spite of the trade unions campaigns against casualisation, not a single case has been prosecuted in the law courts. Workers in this form of employment are employed for years as temporary employees and are dismissed without notice no matter how long they have been in employment. There is not a single case law on this issue and one wonders why all this noise about casualisation without any legal action been taken on the part of the workers and trade unions.

V. FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING

The Trade Union Act defines a trade union 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 ...”

This can only be interpreted to mean that both permanent and contract employees have the right to organise and the right to collective bargaining which is in line with Conventions 87 and 98 of the International Labour Organisation (ILO). In addition, the Nigerian Constitution in section 40 guarantees the right to freedom of association by workers in order to protect their employment interests.

ILO Conventions and Recommendations cover a broad range of subjects concerning work, employment, social security, social policy and related human rights. Unfortunately, many of these rights are not respected in many parts of the world resulting in gross injustices against vulnerable people. People in NSWAs are one of such vulnerable people especially in Nigeria. The ILO Conventions and Recommendations are applicable to all member states and commits all member states, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the organisation to respect, to promote and to realise in good faith and in accordance with the constitution, the principles concerning the fundamental rights which are the subject of these Conventions (ILO 1999).

For the oil and gas industry, the motive for casualisation of the workforce is seen strictly as cost cutting and profit maximisation as well as circumventing the obligations put on them by the labour legislations and international labour standards. They are making huge profits and yet retrenching workers. The government is seen to have abdicated its duty of enacting protective legislations for contract and casual employees in Nigeria. The fight for the protection of this category of workers has been left solely in the hands of the trade unions concerning their status and employment protection.

The use of contracting out and casualisation through labour and service contractors is seen as a means to undermine trade union organisation and avoid collective bargaining, leading to a downturn in worker's representation, democracy and social partnership. This form of work arrangement has been used over the last decade to weaken trade unionism and to drive down

wages in Nigeria. The government should not sit down and fold its arms; it must ensure that workers are protected from exploitation through legislations and policies.

People who find themselves in this kind of work arrangement cannot join trade unions and are not entitled to benefits like pension, leave allowance and gratuity that permanent workers get. In essence the employer dictates the terms and conditions of employment without negotiating with the workers. It is a matter of “take it or leave it”. In addition, these workers do not benefit from collective agreement because they are not members of a trade union.

The new development whereby the contract workers in the oil and gas industry are allowed to join the unions as contract employees is a new development and a step in the right direction. It must be noted that this new development is only in the oil and gas industry. However, the terms and conditions of employment of contract workers are still far less favourable than their permanent counterparts. Other sectors of the economy like banking, insurance, education &c do not allow their casual and contract workers to form or join trade unions.

The Nigerian Labour Congress (NLC) says some organisations renew contract employment after every three months, some do not have records for their casual workers, and some organisations have more than half their staff strength as casual or contract workers. This is an indication that employers have devised various ways of keeping this category of workers as a means of cutting down on employees’ salaries and production cost generally and avoiding obligations set out in the Labour Act for permanent employees. This is an undesirable and unacceptable situation and the government must intervene in the area of policy and legislation to stop this trend.

In Nigeria, contract and casual workers are regarded as temporary employees even though they remain on the job permanently and are not allowed to be members of trade unions. Therefore, many collective agreements do not extend to them except where it is expressly stated to be applicable to them, and this kind of situation is very rare. Such clauses exclude casual and contract workers from the protection offered by the International Labour Organisation (ILO) concerning the right to organise and the right to collective bargaining. In addition, this also contravenes the right to form or belong to a trade union as stipulated by the Nigerian Constitution. Therefore denying workers these rights at work because they are not regarded as permanent employees is a stark contravention of the Nigerian Constitution and International Labour Standards.

VI. THE WAY FORWARD

In order to address the inadequacy of our Labour Laws we need to adopt a multi-dimensional personal work contract framework for Nigeria that will take into cognisance various types of employment contracts, and consequently provide a legal framework for the regulation and protection of employment of workers in NSWAs. The Nigerian industrial relations system is tripartite in nature like most others in the world, therefore the government has to step in through legislation and policy to protect the weaker party in the contract of employment (in this case the employees) from exploitation by the employers. The following are the three basic areas I suggest should be covered:

- a. **Policy:** Government’s policy on casualisation must be harmonised and explicit as opposed to the current situation. For instance, the various types of employment

contracts must be expressly defined as well as the rights and benefits that should accrue to these contracts.

- b. **Practice:** The policy on casualisation must be seen to work. For example in the area of recruitment and rights of all categories of employees whether permanent or temporary. The regulatory authorities must ensure that employers obey the law and any breach must be addressed. Workers rights must be protected especially in the area of the right to organise and remedies against unfair labour practices.
- c. **Research:** The issue of casualisation is such that emerging debates should be properly articulated in the form of concepts and philosophies taking into view current practices, trends and impact on the contract of employment viz a viz the impact of globalisation and neo-liberalisation on the labour market and international labour standards.

VII. CONCLUSION

This paper has shown that section 7 (1) is the only provision in the Labour Act that mentions 'nature of employment' and 'fixed term' contract. It did not go further to explain the various types of nonstandard work arrangements and the rights accruing to workers in this form of work arrangements. This section of the Labour Act as well as the entire Act inadequately addresses the issue of contract and casual labour in Nigeria in terms of regulatory framework for statutory employment rights and protection from exploitation. This is the reason why employers exploit this loophole with impunity.

We have argued that it is dear that employers are encouraged by the lack of provision for the regulation and protection of employment of NSWAs, to increasingly casualise the workforce. Steps should be taken to deal with this problem faced by thousands of Nigerian workers in all sectors of the economy. Suggestions have been made as to how the problems associated with Casualisation should be resolved. The 1998 ILO Declaration of the fundamental principles of the rights at work should be strictly adhered to in the review of the Labour Laws in Nigeria to ensure that workers rights are upheld and decent work should be the hallmark of the work place.

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