CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the Study

The concept of economically dependent workers refers to workers whose work arrangements do not correspond to the traditional definition of employee essentially because the workers who fall under the category do not have employment contract with their employer, but depends economically on a single employer for all or most of their sources of income. There are work arrangements in Nigeria that correspond to the definition and nature of economically dependent workers. Relevant labour statutes and case law exclude them from the definition of a worker or employee. Though, the concept of economically dependent worker is a novel idea in Nigeria. There are work relationships that meet the tenets of the concept. These work relationships in Nigeria include casual work, contract work and out sourced work. Labour laws in Nigeria afford little or no legal protection to this category of workers and so employers take advantage of the absence of legal protection and recognition of these classes of workers by labour statutes to subject these workers to all forms of inhuman and degrading treatments.

The workers under these categories are denied of labour rights and protection which are available to their counterpart permanent workers or standard form employees. The concept of economically dependent workers which manifests in Nigeria in the form of casualisation, contract staffing and outsourcing has led to so many legal and economic consequences such as denial of labour rights to freedom of association, inadequate remuneration, elimination of collective bargaining, job insecurity, denial of employment benefits, loss of revenue to the government, low quality of work, low productivity, brain drain and capital flight.

The above shows that economically dependent workers are left with little or no legal protection in Nigeria. This is however, different from the position in some other jurisdictions and the position of International Labour Organisation found in relevant International Labour

Organisation'sConventions that will be reviewed in this work. In some jurisdictions, the legal status of economically dependent workers has been elevated. A review of the labour laws of Ghana and South Africa as a case study of the legal status of economically dependent workers in some African Countries shows that legal recognition and protection are afforded to economically dependent workers. Also, in Asia, this research work shows that labour laws of India and Singapore have also given some protections to economically dependent workers.

Economically dependent workers are called different names in different jurisdictions. In some jurisdictions, they are called non-standard form workers which shows that there are workers whose work relationships are of a standard form. In some other jurisdiction, they are referred to as irregular employees which also depict the fact that there are employment relationships that are regular when compared with irregular employment relationships. Notwithstanding the nomenclature with which economically dependent workers are described, the most important thing is the nature and attribute of the work relationship. Once the work arrangement does not correspond with the traditional definition of a worker or employee, the workers depend on a single employer for almost if not all of their income, the relevant labour statutes do not protect their rights at their work place and they do not have a formal contract of employment with their employers, they are deemed economically dependent workers.

The position of International Labour Organisation is also a clear indication that economically dependent workers should be given the same legal recognition and protection given permanent or regular employees. This is because, virtually all the relevant International Labour Organisation's Conventions that will be reviewed in this research is to the effect that the provisions of their articles shall apply to all economic activities and to all employed persons. This means that every labour rights and protection provided in those relevant Conventions are meant to be available to every worker whether or not he or she is an economically dependent worker.

The main thrust of this work is to analyze the legal status of economically dependent workers in Nigeria as well as the general effect of that work arrangement on the employee, on the employer

and on the economy. The variants of this concept of economically dependent workers that occur in Nigeria are casualisation of workers, contract staffing of workers and outsourcing of workers. These work arrangements have become subject of great concern in the Nigerian labour market. This is because, casual, contract and outsourced workers are filling positions that are permanent in nature and when permanent positions are filled with these vulnerable workers as it is the case in Nigeria at present, the country will be left with a high level of unemployment and accompanying poverty. This is because there is no legal protection of the status of economically dependent workers in Nigeria. The above facts motivated this research work which is a call for a paradigm shift from the vulnerable legal status of workers under this category of economically dependent workers to the status of workers who are legally protected.

1.2 Statement of the Problem

For there to be a research work of this nature, there must be a problem that may warrant or justify undertaking this study to unravel and proffer a solution for the good of the citizens affected and the society at large. The problem that led to this research is the lack of adequate legal protection of economically dependent workers which exists in Nigeria in the form of casualisation of workers, contract staffing and outsourcing of workers. Sadly, these categories of workers in Nigeria are not included in the definition of workers in the Labour Act regulating labour and employment relationships. The exclusion of these workers denies them some work benefits, rights and protections which are provided to workers within the meaning of the Act. This therefore, creates a lot of incidental legal and economic problems in the Nigerian labour market.

For instance, the absence of legal protection of economically dependent workers enables employers to engage workers on casual basis and dismiss them at will thereby creating fluctuation in the rate of employment and unemployment. Also, workers who are employed on casual or contract basis have no security to their employment. They can be employed today and become unemployed tomorrow. It is also painful to see workers who were employed on casual basis or contract basis work for the greater part of their active years in life without being entitled to social security benefits

such as retirement benefits just because they do not have a formal contract of employment with their employers.

Employment of casuals and contract workers who are variants of economically dependent workers in Nigeria may seem to be an advantageous practice to employers who think that they are exploiting the precarious nature of economically dependent workers. However, the work arrangements also breed their own negative consequences on the employers. Employment of casuals and contract workers leads to low productivity, low quality of work life, instability at work force, and lack of commitment on the part of employees.

The economy of Nigeria where economically dependent workers are not legally protected and recognized as permanent workers is in no doubt experiencing some negative effects as a result of the high incidence of casualisation of labour and contract staffing. This manifests in high level of brain drain, loss of revenue as there is no basis to tax the wages of these workers who do not have a formal contract of employment with their employers. Job insecurity in this category of workers also has led to a high level of unemployment and/or underemployment. Unemployment and underemployment in turn results in some social vices such as corrupt practices. Lack of adequate legal framework for the recognition and protection of economically dependent workers and the incidental effects it has on the labour rights of the workers, its effects on the employers and its consequences on the economy necessitated this research.

1.3 Aim and Objectives of the Study

A research work just like every other undertaking is geared towards achieving particular objective or objectives. This research work is an attempt to unravel an endemic problem situation in Nigerian labour relations which requires frantic effort by every stakeholder to bring labour relations of Nigeria in line with the position in some other jurisdictions and the position under the relevant International Labour Organisation's Conventions. The research is therefore targeted at certain objectives which are stated hereunder *seriatim.*

The main objective of this research work is to examine the extant legal framework for the protection of economically dependent workers in Nigeria as against the legal framework for the protection of other workers who are not within the ambit of economically dependent workers. This work also aims at undertaking a conceptual clarification of the concept of economically dependent workers. This work will reveal the operation of the concept in different jurisdictions with respect to the nomenclature and practices. It is also the target of this research to undertake a study of the legal status of economically dependent workers in some other jurisdictions taking Ghana, South Africa, India, Singapore, United States of America and United Kingdom as case studies. This work will also appraise the legal status of economically dependent workers in the light of relevant International Labour Organisation's Convention.

This research will look at the consequences of lack of adequate legal protection of economically dependent workers in its variants in Nigeria on the labour rights of workers, on the employer's business and on the economy at large.

1.4 Scope and Limitations of the Study

The scope of a research is the area covered by the research work. The scope may be in terms of geographical space or subject area which the work intends to confine itself. It may also be both geographical and subject area. Limitation to the study entails the impediment and difficulty that touches on the scope of the study. The scope of a research work is not to be limitless but within a certain geographical or subject area. This research therefore,will cover the legal status of economically dependent workers. This means that the status of economically dependent workers under review is the legal status and not social status, economic status, religious status, marital status, family status and so on. It is also worthy to note that the legal status of economically dependent workers that this research is set out to appraise, is the legal status of economically dependent workers in Nigeria. In other words, this research will fish out the class of workers that fall within the ambit or better still fit into the definition of economically dependent workers in Nigeria. This work may nevertheless look into

some other jurisdictions to get insight into the way and manner the laws of those jurisdictions have offered some legal protections to the status of economically dependent workers but not to undertake a holistic appraisal of the concept of economically dependent workers in those jurisdictions. The class of workers that fall within the definition of economically dependent workers in Nigeria are casual, contract and outsourced workers and this work will only cover these classes of workers.

Following from the above, the scope of this research in terms of geographical space is Nigeria while the scope in terms of subject area is the legal status of economically dependent workers. This research work is limited in scope in that it concerns the study of the legal status of economically dependent workers in Nigeria and not about any other status of economically dependent workers. The work though about the study of legal status of economically dependent workers is limited to Nigeria with insight into some other jurisdictions and not about the study of economically dependent workers in Africa let alone a global perspective. The above therefore depicts that the work is limited in scope and subject area in the light of the nature of the research work in question. There are also financial difficulties that the researcher encountered in the course of this research which emanated from the cost of subscription of data for purpose of accessing relevant literature from the Internet. Epileptic power supply also affected the completion of this research in record time. This is because a good number of relevant literatures on the subject were sourced from the Internet and without electricity; the progress of the research became slow.

Absence of accurate data of these economically dependent workers also affected the progress of this research and inhibited the use of empirical method. Notwithstanding these limitations which the researchers encountered in the course of this research, the researchers were able to navigate through the problems that led to this research and showcased them as well as preferred commendable recommendations for a way forward towards legal protection of economically dependent workers in Nigeria.

1.4 Significance of the Study

There is lack of adequate legal protection of the status of economically dependent workers variants of which are in the form of casualisation of workers, contract staffing and outsourcing of workers in Nigeria. Economically dependent workers in Nigeria are not included in the definition of workers in the Principal Act regulating labour and employment relationship. The exclusion of economically dependent workers denies them some work benefits, rights and protections which are provided to workers within the meaning of the Act. This therefore creates a lot of incidental legal and economic problems in the Nigeria labour market. Absence of legal protection of the status of economically dependent workers enables employers to engage workers on casual basis and dismiss them at will. Also, workers who are employed on casual or contract basis have no security to their employment as they can be employed today and become unemployed tomorrow.Workers who are employed on casual basis or contract basis work for the greater part of their active years in life without being entitled to social security benefit such as retirement benefits just because they do not have formal contract of employment with their employers.

This problem arising from the lack of adequate legal framework for the protection of the status of economically dependent workers are growing in an alarming rate and therefore requires a research of this nature that shows the dangers inherent in the continuation of the extant legal framework. This research is therefore significant as it brings out the consequences of lack of legal protection of economically dependent workers in Nigeria. The research unlike other works on the subject shows the consequences of this lack of legal protection of economically dependent workers on the labour rights of workers, on the business of the employer and on the economy. This research is also significant in that it employed a concept that is novel in Nigeria but operates in some jurisdictions to capture practices that are carried on in Nigeria without complying with the tenets of the concept. The concept of economically dependent workers is novel in Nigeria but there are practices such as casualisation, contract staffing and outsourcing which are variants of the concept

economically dependent work in Nigeria but the employers who make use of casual workers and contract workers do not comply with the tenets of the concept of economically dependent work. This research will now use the concept to get at those practices and proffers solutions in order to correct the defects in the use of economically dependent workers in Nigeria.

The significance of this research work cannot be over emphasized in that the research unlike any other local literature on the topic or on the variants of the concept of economically dependent workers will carry out a holistic appraisal of the legal status of economically dependent workers in Nigeria and the incidental consequences that arise from the lack of adequate legal protection of workers who fall under economically dependent workers. The work will do a study of the position of labour laws of some other jurisdictions on the legal status of economically dependent workers. Above all, this research is significant in that it will chart a course for a legal framework for the protection of economically dependent workers which operate in Nigeria in the form of casualisation, contract staffing and outsourcing. It will also show the need to pursue the course of giving legal protection to these vulnerable classes of workers. For the employers, the work will benefit them as they will find out the dangers inherent in the use of economically dependent workers which operate in Nigeria in the form of casualisation, contract staffing and outsourcing. For the employees, this research will provide them with knowledge of their rights at work place, the need to demand those rights and better ways of fighting to achieve those rights. The work will also provide employees with knowledge of the dangers inherent in workers failing to fight for their rights at work place. For the government, this research will show the consequences of failure of government in protecting the legal status of economically dependent workers on the economy.

The significance of this research can also be viewed from the point of view of usefulness of this research work as a part of body of literature on this subject. In this light, the work stands as the first work that will provide a local literature on the concept of economically dependent workers in Nigeria. It will also provide the academic world with a useful material for further research and

provide the government with a useful guide for future policy and legislative framework. For the judiciary, this research will provide a useful persuasive authority on the legal status of economically dependent workers.

1.5 Research Question

In this research, the researcher intends to answer the major question which is:

1. What is the legal status of economically dependent workers in Nigeria?

This major question will lead the researchers to sub-ordinate questions which are:

i. Who are economically dependent workers and who are not economically dependent workers in Nigeria?

ii. What is the legal framework for the protection of economically dependent workers?

iii. What are the causes and consequences of the use of economically dependent workers in Nigeria?

iv. What is the position of labour laws on the legal status of economically dependent workers in some other jurisdictions?

v. What is the position of International Labour Organisation on the legal status of economically dependent workers?

vi. Are labour laws in Nigeria in compliance with the position of International Labour Organisation on the legal status of economically dependent workers?

Answers to these questions will be provided in this research and by the time the researchers answer these questions, the researchers will have been completely dealt with the topic to the satisfaction of every prospective reader of the work.

1.7 Research Methodology

Doctrinal methodology provides a systematic exposition of the rules governing particular legal category, analyses the relationships between these rules, explains areas of difficulty and predict future development. Reform Oriented legal research methodology evaluates the adequacy or otherwise of existing rules and recommend changes to any of the rules found wanting. Theoretical

legal research methodology deals with a complete understanding of the conceptual basis of a legal principle and the combined effect of a range of rules and procedure touching on a particular area of activity.

This research will provide a systematic exposition of the rules governing the legal status of economically dependent workers in Nigeria with insight into some other jurisdictions and analyses the relationship between the rules in Nigeria and some jurisdictions as well as relevant International Labour Organisation's Convention, explains areas of difficulty and predicts future development. The research will also evaluate the adequacy or otherwise of the legal framework for the protection of economically dependent workers and will recommend changes where the rules are found wanting. Also, this research will foster more complete conceptual bases of the legal status of economically dependent workers in Nigeria and the combined effects of the labour laws of Nigeria, those of some other jurisdictions and provisions of some relevant International Labour Organisation's Conventions that touch on the legal status of economically dependent workers in Nigeria.

From the above, it can be safely said that the researchers will adopt doctrinal, reform oriented and theoretical legal research methodology using analytical approach with the use of statutes books, case law, textbooks, journal articles, Internet materials and some unpublished works in achieving the objective of this work.

1.8 Organisational Layout

This entails the overview of the chapters of the work. It presupposes a statement of the issues treated in different chapters of the work. This research is divided into seven chapters. Chapter one is the general introduction which deals with background to the study, statement of the problem, objective of the study, scope and limitation of the study, significance of the study, research question, research methodology, review of relevant literature, organisational layout and definition of certain terms.

Chapter Two deals with the conceptual framework, review of relevant literatures that touch on the subject of this research and theoretical framework. Chapter Three is on appraisal of economically dependent workers and standard form contract of employment.

Chapter Four discusses legal and institutional framework for the protection of economically dependent workers.

Chapter Five is on the International Labour Organisation's standards on the legal status of economically dependent workers and it will deal with issues such as history and establishment of International Labour Organisation, objective and membership of International Labour Organisation, meaning, scope and purpose of international labour standards, benefits of international labour standards and the position of International Labour Organisation on the legal status of economically dependent workers.

Chapter Six is on the legal status of economically dependent workers in some other jurisdictions compared to Nigeria and it will deal with issues such as legal status of economically dependent workers in some African Countries, legal status of economically dependent workers in some Asian Countries, legal status of economically dependent workers in the United States of America and United Kingdom. Finally, chapter eight is on the summary of findings, conclusion and recommendations.

1.9 Definition of Terms

1.9.1 Economically Dependent Workers.

. It refers to those workers who do not correspond to the traditional definition of employee because they do not have an employment contract as dependent employees. However, they are economically dependent on a single employer for their source of income. The status of these workers falls in between self-employment and subordinate employment and they have some characteristics of both forms. First, they are formally self- employed, in that they have a sort of 'service contract' with the employer. Secondly, they depend on one single employer for all or much of their income. They are often similar to employees in a number of ways. They may lack a clear organisational separation,

working on the employer's premises and/or using the employer's equipment.[1] The essential element is that the dependent self-employed do not have a contract of employment, but still provide their labour to their principal. They work on the basis of private contract according to private law.[2]

1.9.2 Contract of Employment

The term 'contract of employment' is made up of two key words: ''contract'' and ''employment''. Apart from the definitions of the term in various labour law legislations and judicial definitions one can still derive the meaning of the term contract of employment by looking at the meaning of these two words that make up the term. A contract is defined as an agreement which the law will enforce or recognize as affecting the legal rights and duties of the parties.[3]

A contract is an agreement whereby a person undertakes for rewards (consideration) to perform an act for another.[4] From the above definitions, it is clear that in a contract, there must be two or more parties who will undertake to perform an act for another for purposes of receiving a reward called consideration and the agreement to do this must be such that is sanctioned by law. Where this agreement is recognized by law, one can safely say that the agreement with other elements in place has metamorphosed into a contract. That is while every contract must be an agreement but not all agreements are contracts.[5]

Also Garner[6] defines a contract as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. The underlying principle in this definition is that any agreement which does not create obligations recognizable at law is not a contract. It is also

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[1] A, Servizi, 'Domestic Work, Telework and Economically Dependent Work: Guidelines and Good Practice for Risk Prevention in a Reformed Labour Market, from Comparative Perspective') available at https://moodle.adaptland.it/pluginfile.php/8288/mod_resource/content/0/03_rapport_en.pdf accessed on 20/1/2018.

[2] *Ibid*, P.10.

[3] I E, Sagay, *Nigerian Law of Contract* (2nd edn Ibadan: Spectrum Books Limited 2000)P. 1.

[4] C E, Ibe, *The Law of Contract* in M N, Umenweke, et al, *Commercial Law and Practice in Nigeria*, (Enugu: Nolix Educational Publications Nig, 2009)

[5] I E, Sagay, *Nigerian Law of Contract,op cit*;C E, Ibe, *The Law of Contract* in M N, Umenweke, et al, *Commercial Law and Practice in Nigeria,Ibid*.

[6] B A, Garner, *Black's Law Dictionary* (8th Edn, St. Paul Minn: West Pub. CO; 2004) p. 341.

pertinent to ascertain the meaning of other key word which is employment. Employment is defined as a relationship between a master and a servant.[7]

From the foregoing therefore, contract of employment can then be defined as a relationship which exists between an employer and an employee which the law recognizes as giving rise to a legal obligation between the employer and the employee which said obligation is enforceable at law.

The Labour Act[8] defines contract of employment to mean:

any agreement whether oral, or written, express or implied whereby one person agrees to employ another as a worker and that other person agrees to serve the employer as a worker. Implicit in this definition by the Labour Act[9] is that a contract of employment may be entered orally without the necessity of writing.

This is however subject to some statutory exceptions such as the requirements of writing in a contract of apprenticeship.[10] This exception as provided in section 50 of Labour Act[11] provides that:

'Every contract of apprenticeship and every assignment thereof shall be in writing; and no such writings shall be valid unless attested by and made with the approval of an authorized labour officer certified in writing under his hand on the contract or assignment'.

What this section of the Act[12] depicts is that notwithstanding the general definition of contract of employment in the preceding section of the Labour Act,[13] the Act itself provides a statutory exception to the effect that a contract of apprenticeship cannot be oral but in writing. It is also worthy to point out here that a contract of employment may also be by implication of law, without

[7]*Ibid*, p. 566.
[8]Labour Act, Cap L1 LFN 2004, S. 91.
[9]*Ibid* S. 91.
[10]*Ibid* S. 49.
[11]*Ibid.*
[12]*Ibid.*
[13]*Ibid.*

parties agreeing on the terms and conditions of the contract but because they have acted overtime on an employment relationship exchanging the necessary indices of employment, the law will imply employment relationship between them. The court has also defined contract of employment thus:

The Labour Act[14] which applies to workers, strictly to the exclusion of the management staff, defines a contract of employment as

> any agreement, whether oral or written, express or implied, whereby one person agrees to employ another as a worker and that other person agrees to serve the employer as a worker.[15]

Save the addition of the fact that the Labour Act that gives the above definition applies to workers strictly to the exclusion of management staff; the above definition is merely a judicial restatement of section 91 of Labour Act.[16] On the form of contract of employment and whether it can be inferred, the Court of Appeal per Orji Abadua stated that:

> Contract of employment may be in any form and it may be inferred from the conduct of the parties, it can be shown that such a contract was intended although not expressed. Contract of employment may arise out of agreement which is not enforceable in the law Courts because it lacks consideration.[17]

Notwithstanding the advantage the employer has over the employee and the predicament which the employee is put into in such situations, the common law recognises the interest of the employee amidst his 'beggar-has-no choice situation' immediately the employee agrees to enter into such relationship with the employer. A contract of employment is built around two parties or better still it is created by two parties called the employer and the employee. It is now pertinent to ascertain who qualifies as an employer as well as an employee.

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[14]Cap 198 laws of the Federation of Nigeria (now cap L1 LFN 2004)
[15]*Shena Security Co Ltd v Afrapak (Nig*) [2008] 18 NWLR (Pt. 1118) 77 at p.84.
[16]*Op cit.*
[17]*Johnson v Mobil Prod. (Nig) Unltd* [2010] 7NWLR (Pt. 1194) 471.

1.9.3 Employer and Employee

The terms 'employer' and 'employee' are normally used interchangeably with 'master' and 'servant' respectively. Employee is also sometimes referred to as a worker or a workman. What this means is that different people, and different laws use any of the above words to describe the party in a contract of employment who agrees to work for another as a worker. This also explain why different statutes define the terms 'employer and employee' in accordance with the circumstances of the legislation in question.

By section 91 of Labour Act,[18] An employer means any person who has entered into a contract of employment to employ any other person as a worker either for himself or for the service of any other person and includes the agent, manager or factor of that first – mentioned person and the personal representatives of a deceased employer. The Employee'sCompensation Act[19]defines employer to include any individual, body corporate, federal, state or local government or any of the government agencies who has entered into a contract of employment to employ any other person as an employee or apprentice. The above definitions, it must be noted are for the purposes of the application of their respective Acts. The definition of employer in the Employee's Compensation Act, appears to be more comprehensive as it lists the persons who are qualified as employers to include governments at all levels, departments and agencies of governments at all levels and by the opening word of the section, it means that so many persons and institutions not mentioned are also qualified to be employers once they enter into a contract of employment in any form. The Labour Act[20] 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

[18]*Ibid.*
[19]*Op cit* S. 72
[20]*Op cit* S. 91

implied, or oral or written, and whether it is a contract of service or a contract to personally execute any work or labour.

The Employee's Compensation Act[21] prefers the word employee and defines employee thus:

> Employee means a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporal, 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 sectors of the economy.

This definition is meant for the purposes of the Employee's Compensation Act which can be gleaned from the objective of the Act.[22] Section 1 of the Act[23]provides that the objectives of the Act are to:

(a) Provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependents for any death, injury, disease or disability arising out or in the course of employment;

(b). Provide rehabilitation to employees with work related disabilities as provided in the Act;

(c). Establish and maintain a solvent compensation fund managed in the interest of employees and employers;

(d). Provide for a fair and adequate assessment for employers;

(e) Provide an appeal procedure that is simple, fair and accessible, with minimal delays, and

[21]*Op cit.* Note that before the enactment of the Employees Compensation Act, the Workmen Compensation Act used the term workman instead of employee.
[22]*Ibid.* S. 1
[23]*Ibid.*

(f) Combined efforts and resources of relevant stakeholders for the prevention of workplace disabilities including the enforcement of occupational safety and health standards.

A careful look at these objectives of the Employee's Compensation Act will show why the Act gave an all-encompassing definition of who falls under the definition of an employee to be entitled to the benefits of the Act. The judicial sanction of the opinion of researchers is made manifest by the fact that the definition of the word employer or employee or worker in judicial authorities are merely judicial restatements of the provisions of the relevant labour law legislation in the light of facts and circumstances of a case at hand. In *Shena Security Co. Ltd v Afropak (Nig.) Ltd*[24]the Supreme Court of Nigeria stated as follows on the meaning of a worker:

> A worker is defined by the labour Act, Cap 198, Laws of the Federation of Nigeria, 1990 *imparimaterial* with Cap L1 LFN 2004 as 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. Such a contract is commonly referred to as a contract of service.

There is a prevalent difficulty inherent in attaching a precise meaning to the terms. This is why different statutes try to obviate the problems by defining the terms for purposes of their provisions. It then means that the meaning of the word 'worker' in the labour Act[25] is purely for the purpose of the Act. Implicit in this, is that all rights and liabilities in the provisions of any Act can only accrue to a person who has qualified as a worker or employee in accordance with the provisions of the Act in question. It is pertinent at this juncture to note that, certain categories of employees are statutorily

[24]*Supra*, p. 82.
[25]*Op cit.*

under the provisions of the labour Act as against other labour legislation. A careful insight into the provisions of labour Act aforesaid seems expedient. Section 91 (a-f) of Labour Act[26] provides that:

Worker means any person who has entered into… but does not include-

(a) any person employed otherwise than for the purposes of the employer's business, or

(b) persons exercising administrative, executive, technical or professional functions as public officers or otherwise; or

(c) members of the employer's family; or

(d) representatives, agents and commercial travelers in so far as their work is carried on outside the permanent work place of the employer's establishment; or

(e) any person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or the material; or

(f) Any person employed in a vessel or aircraft to which the law regulating merchant and shipping or civil aviation applies.

By the tenor of the above provision, certain persons are excluded from the operation of the Labour Act. Paragraph (a) of the section excludes domestic services providers which are necessarily incidental to effective performance of the work of an employee. The wisdom behind paragraph (b) of the section can be ascertained from the fact that these administrative, executive and technical officers in the public service may have different statutes regulating their employment while civil servants in the strict sense of the words have their employment regulated by Civil Service Rules.[27]

[26] *Ibid.*
[27] *Ibid* S. 91.

One important point that is clear in the statutory exclusions is that those mentioned are outside the ambit of the provisions of the Labour Act. It is imperative here to point out that the Act cited above[28] dispenses with the terms master and servant which have the privilege of being the only recognized and used terms that refer precisely to the employment relationship of contract of service as against contract for service where the servant is actually not a servant but the so called independent contractor. However, the Act still leaves untouched the scope of master and servant relationship but instead widens the scope.

1.9.4 Casualisation

Casualisation captures the phenomenal growth in non-standard employment globally. A plethora of terms have been deployed to define and account for this type of irregular employment contract. The ILO has used terms like "disguised employment" or "triangular employment relationship" to define the emergence of subcontractors, independent contractors, home based workers, all manner of informal work. Casualisation can be defined as work occupations in which the demand for employment is highly variable such as port work, farm migratory work and other jobs of unskilled intermittent nature. Also, casualisation is a form of involuntary servitude for a period of time. Casualisation primarily concerns those workers who are in an employment relationship in the strict sense but who are not in standard employment. The most important distinguishing factor is that they either do not work full time, or if they work full time, they work on a fixed term contract.[29] Based on the literature on the subject, the following are the distinctions within the rubrics of casual employment.

a) Workers directly employed by a firm on a casual, fixed term or temporary basis.

b) Triangular employment relationships in which a labour broker supply labour to a firm. The definition of employer in this relationship demand new forms of regulation. For instance, if a firm

[28] *Ibid.*

[29] E E, Okafor, and B, Rasak, 'Casual Employment – A Nostrum to Unemployment in Nigeria', *Fountain Journal of Management and Social Sciences*, vol. 4, (2015), p 100.

contracts labour broker to provide workers, does it then assume the responsibility of employer or are those workers employed by the subcontractor or labour broker?

c.) The third type is one characterized by dependent economic relations disguised and treated as commercial contracts. Independent contractors and home based workers fall into this category of a typical worker.

According to a learned writer, casualisation is a term used in Nigeria to describe work arrangements that are characterized 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 organize 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.[30]

Casualisation of work is a significant part of that group of employment arrangements that are collectively known as non-standard, contingent, precarious and alternative work arrangements in international labour law.[31] A casual employee is treated with less sophistication than a permanent employee with regards to rights, privileges and benefits.

1.9.5 Contract Staffing

Contract staffing is a form of casualisation of labour in which a worker is engaged directly or through a labour broker by a user company to do a particular work after which the worker is laid off. It refers to a systematic replacement of full time staff with staff employed on *adhoc* basis.[32] Contract staff refers to people who are employed on contract basis. They are employed for certain purposes and when that purpose is done, they are laid off. If another job comes up and they are still available, they might again be employed for the new job. Contract staffing is a term used in Nigeria to describe

[30] *Ibid* , p 101.
[31] P O, Kalejaije, 'The Rise of Casual Work in Nigeria: Who Loses, Who Benefits?' (2011) vol. 8(1) No. 32, *AfricanResearch Review, an International Multi-disciplinary, Journal, Ethiopia,* p. 159.
[32] E E, Okafor, *Op. cit,* p. 7614

work arrangements that are characterized 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 organize and collectively bargain.

1.9.6 Outsourcing

Outsourcing is a growing, cost cutting business tool that many organisations are eager to key into. Organisations are increasingly adopting recruitment using outsourcing as a measure to improve competitiveness. Outsourcing has been defined as the act of one company contracting with another company to provide services that might otherwise be performed by in-house employees.[33]It has also been defined as the process of entrusting non-core activities or operations from internal production within a business to an external entity that specializes in that particular operation.[34] Outsourcing is the delegation of one or more business processes to an external provider who then owns, manages and administrates the selected processes based on defined and measurable performance matrices.

1.9.7 International Labour Standards

International labour standards are legal instruments drawn up by the ILO's constituents such as governments, employers and workers and set out basic principles and rights at work.[35]International labour standards also refer to conventions agreed upon by international actors, resulting from a series of value judgments set forth to protect basic workers' rights, enhance workers' job security, and improve their terms of employment on a global scale. According to the International labour Organisation (ILO), international labour standards are primarily tools for government which in

[33] M, Sako, 'Outsourcing and OffShoring: Implications for Productivity of Business Services' O*xford Review of Economic Policy*, (2006) vol. 22, No. 4, p. 499.

[34] O A, Akinmbola, O O, Ogunnaike and O A, Ojo, 'Enterprise Outsourcing Strategies and Marketing Performance of Fast Food Industry in Lagos State, Nigeria', *Global Journal of Business Management and Accounting*, (2015), vol. 3, No. 1, p. 23.

[35] International Labour Organization, 'Introduction to International Labour Standards/ Conventions and Recommendations available on <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> accessed on 15th January, 2018

consultation with employers and workers are seeking to draft and implement labour law and social policies in conformity with internationally accepted standards. Thus, international standards serve as targets for harmonizing national laws and practices in a particular field.[36] Labour standards are the rules that govern how people are treated in a working environment. Compliance with those standards does not require application of complex legal formulae to every situation. It is sufficiently complied with by ensuring that basic rules of good sense and good governance apply in the working environment.[37]

[36] ILO, 'Introduction –to-international-Labour-Standards' <http://ilo.org/global/standards/introduction-to-international-labour-standards/lang--en/index.htm>; accessed on 27th January, 2018.
[37] O P, Obi, 'The Concept and Purpose of International Labour Standard' *NJLIR* Vol. 5 (2008) p. 66.

CHAPTER TWO

LITERATURE REVIEW

2.1Conceptual Framework

The concept of economically dependent workers is a fast growing trend in the labour realm globally. It has gained a remarkable attention especially in Europe. It is apposite to underscore here that some problems experienced by researchers on the concept of economically dependent workers include but are not limited to lack of clarity in terms of definition of the concept such an employment status and secondly, lack of specific quantitative data.[38] Before proceeding to the meaning of the concept of economically dependent workers, it is pertinent to look at two terms usually associated with the concept. These terms are subordinate employment and self-employment. A discourse on them is important because the concept of economically dependent workers is a grey area between them.

Sub-ordinate Employment:

Sub-ordinate employment may be described as the hierarchical relationship between employer and employee, a relationship recognized in law as unequal but, at the same time, balanced by a complex system of protection for the worker. It is the term by which the employer-employee relationship is generally known.[39] Some indicators which seem to be most significant on determining sub-ordinate employment status include the following:

a. The worker is part of the employer's organization.

b. The worker is not exposed to personal financial risk in carrying out the work

[38] A, Servizi, 'Domestic Work, Telework and Economically Dependent Work: Guidelines and Good Practice for Risk Prevention in a Reformed Labour Market, from Comparative Perspective') available at https://moodle.adaptland.it/pluginfile.php/8288/mod_resource/content/0/03_rapport_en.pdf accessed on 20/1/2018.

[39] A, Perulli 'Economically dependent/quasi – subordinate (Parasubordinate) employment: Legal, Social and Economic Aspects' available at https://www.researchgate.net/publication/267160315_economically_dependent_quasi_subordinate_employment_legal_social_and_economic_aspectsaccessed on 20/1/2018.

c. Terms of payment

d. The worker does not own the materials and equipment for the job.

Self- Employment

This may be defined as work performed by a person who does not have sub-ordinate status, or who is not directed by a third party and where the subordinate employment indicators are either not present or not significant. A self-employed person is however different from an entrepreneur. The main criteria for distinguishing an entrepreneurial activity from self-employment is the way in which work and the means of production are organized.Where the economic activity is carried out without an organisational base, then it must be self-employment.[40]

Difference between Sub-Ordinate Employment and Self Employment

Having considered the meaning of these concepts, we shall now proceed to briefly distinguish between them. In this connection, only the major distinguishing factors will be noted. The main feature of sub-ordinate employment in labour law is the considerable level of protection that the law provides for employees. Thus, in an effort to ensure that workers enjoy the rights and protections relating to the subordinate status, legislations have historically intervened frequently in major aspects of the employment relationship between an employee and his employer in such a way as to reduce the freedom the contracting parties normally enjoy.

On the other hand, Self- employment is treated as a contract governed by general rules set out in civil and commercial law. In other words, a self -employed person is not regarded at all as a weak contracting party but is seen to be on an equal footing with the other party.

[40] *Ibid,* p. 9.

Economically Dependent Workers

Having noted the meaning of self-employment and subordinate employment as well as the major differences between them, it is apposite to proceed to the question of who are economically dependent workers.The concept of economically dependent workers falls between the two established concepts of subordinate employment and self- employment. It refers to those workers who do not correspond to the traditional definition of employee because they do not have an employment contract as dependent employees. However, they are economically dependent on a single employer for their source of income. The status of these workers falls in between self-employment and subordinate employment and they have some characteristics of both forms. First, they are formally self- employed, in that they have a sort of 'service contract' with the employer. Secondly, they depend on one single employer for all or much of their income. They are often similar to employees in a number of ways. They may lack a clear organisational separation, working on the employer's premises and/or using the employer's equipment.[41] The essential element is that the dependent self-employed do not have a contract of employment, but still provide their labour to their principal. They work on the basis of private contract according to private law.[42] The current legal framework of the Nigerian labour relations leaves us with no doubt as to whether it encourages the growth of some category of workers who are economically dependent on the employers. The concept of economically dependent workers refers to workers who do not correspond to the traditional definition of an employee – essentially because they do not have an employment contract but who are economically dependent on a single employer for all or most of their source of income. For the purpose of this work, the concept will be considered from the angle of a general situation of dependence which is reasonably considered as deserving protection similar to that granted to employees in a standard form contact of employment. The concept of economically dependent work is a novel ideal in Nigeria labour and employment relations. There are work relationships in Nigeria

[41] A, Servizi*Op.cit,* p. 9.
[42]*Ibid,* P.10.

whose nature corresponds to the tenets of economically dependent work. This is probably because these work relationships do not correspond to the traditional definition of employee or worker and in some cases labour statutes will exclude them in the definition of employee or worker. Some of the labour and employment statutes do not even put these classes of employment relationships into contemplation.[43] In some jurisdictions, they are referred to as non-standard form employment relationship. These categories of workers in Nigeria whose work situations do not ordinarily correspond to the traditional standard form of employment relationship but are economically dependent on a single employer for their sources of income are brought together under the concept of economically dependent workers. They include casual workers, contract staff/workers and outsourced workers.

The way labour politics is played in Nigeria shows clearly that the employers of labour take advantage of our law in subjugating the rights of Nigerian workers. A critical perusal of our laws also shows clearly that only permanent workers are recognized and protected under the law. This spells doom for other category of workers as they are unfairly denied labour benefits enjoyed by their counterpart permanent workers. Apart from the fact the growth of these work relationships has some negative impact on the rights of these categories of workers; it has also caused some economic problems like loss of revenue, low productivity and unemployment. The main thrust of this chapter is to examine the legal status of these workers as well as the general effects of the work relationships.

2.2 Review of Relevant Literature

Literature review is review of the existing literature on the subject of the research. It is imperative to undertake a review of the existing literature on the research. In this research, there exist both local and foreign literatures on the topic. However, as the concept of economically dependent workers will be shown in this work in Nigerian labour and employment jurisprudence. The literature on the

[43]See Labour Cap L1 LFN, 2004 s. 91; Trade Unions Act, Cap T14. LFN, 2004 s. 54; Trade Dispute Act Cap LFN 2004.

concept of economically dependent workers under review here and which are going to be used in this work are exotic.

However, economically dependent workers which are casualisation, contract staffing and outsourcing are concepts that operate in Nigeria and for which many literatures exist. This therefore shows that a lot of literature exists on the concepts of casualisation of labour, contract staffing and outsourcing of workers in Nigeria. These literatures are both local and international. Since the literature to be used in this research work range from textbooks, journal articles, Internet materials and some unpublished works, it is more sequential to start this review with the textbooks.

The first local literature on labour and employment law is the book by Uvieghara[44] A comprehensive perusal of the text by Uvieghara shows that no mention is made of the concept of economically dependent workers. The practices of casualisation of labour, contract staffing and outsourcing of workers are not even treated in the work. This is in the light of the endemic practices of casualisation of labour, contract staffing and outsourcing of labour and their attendant consequences. This therefore created a lacuna that makes it necessary for this work to be done.

A work on the law, practice and procedure of the National Industrial Court of Nigeria by Amucheazi and Abba[45] did not also address the concept of economically dependent workers. The work also did not treat the variants of economically dependent workers as they operate in Nigeria in the form of casualisation, contract staffing and outsourcing. Though the work treated the application of international labour conventions, it did not treat the application of international labour conventions on the status of economically dependent workers.

As has been said earlier, most authors in labour and employment relations did not treat the concept of economically dependent workers. This is even worse with respect to most labour law textbooks which were consulted in the course of carrying out this research. The texts did not also

[44]E E, Uvieghara, *Labour law in Nigeria, (Lagos MalthousePress Ltd*, (2011)
[45]O D, Amucheazi and P U, Abba, *The National Industrial Court of Nigeria: Law, Practice and Procedure* (Dubia, T.O.P Design, 2013)

treat the variants of the concept of economically dependent workers which are in the form of casualisation, outsourcing and contract staffing. A review of the work of Emiola[46] shows that no mention is made of casualisation, contract staffing and outsourcing let alone the concept of economically dependent workers. This is despite the fact that Emiola's work is generally seen as one of the best labour law text in Nigeria. The failure on the part of Emiola[47] to deal with this endemic practice of casualisation, contract staffing and outsourcing created a very big gap in the body of literature on labour and employment law by failing to treat the issue of economically dependent workers in Nigeria. This therefore makes this present research imperative in order to fill the gap.

Another renowned and versatile author who also wrote on employment law is Chianu[48]. Chianu[49] did not also provide any literature on the issue of casualisation, contract staffing and outsourcing let alone any literature on the concept of economically dependent workers.

Abugu[50] wrote on the application of International Labour Organisation Conventions in Nigeria. The researchers was eager to embrace this work hoping to get information on how relevant International Labour Organisation's Conventions have influenced the practice of casualisation, contract staffing and outsourcing. Unfortunately, none was found as the work did not link relevant International Labour Organisation's Conventions on the legal status of economically dependent workers and by extension to the legal status of causal workers, contract workers and outsourced workers in Nigeria. This work of Abugu[51] therefore created a room for the present research to be carried out to fill the gap and provide local literature on the influence of International Labour Organisation's Conventions on the legal status of economically dependent workers which operate in Nigeria in the form of casualisation, contract staffing and outsourcing. The work of Abugu[52] did not also look at the position of the law in some jurisdictions on the legal status of economically dependent workers

[46]A, Emiola, *Nigerian Labour Law* (4th edn Ogbomosho, Emiola publishers Ltd, 2008)
[47]*Ibid*
[48]E, Chianu, *Employment Law*, (Akure, bemiCov. Publishers (Nigeria) Ltd, 2004)
[49]*Ibid*
[50]JO, Abugu, *A Treatise on the Application of ILO Conventions in Nigeria* (Lagos, University of Lagos press, 2009)
[51]*Ibid*
[52]*Ibid*

which operate in Nigeria in the form of casualisation, contract staffing and outsourcing. These lapses were filled in this present research.

In the search for local literature on the concept of economically dependent workers or on the variants of the concept of economically dependent workers which operate in Nigeria in the form of casualisation, contract staffing and outsourcing, the researchers came across on the work of Oji and Amucheazi[53]. Although Oji and Amucheazi[54] did not treat the concept of economically dependent workers, yet, the work treated one of the variants of the concept of economically dependent workers in Nigeria which is casualisation of workers. The work of Oji and Amucheazi[55] defined a casual worker as a worker who is engaged seasonally or intermittently and not for a continuous period. The work of Oji and Amucheazi reiterated the judicial attitude to the legal status of casual workers in Nigeria as was held in the case of *Ogunyale*& Ors v.*Globalcom*[56] to the effect that casual work is a fact both locally and internationally but that Nigerian labour law does not mention it and there is no legislation in place in Nigeria recognizing, regulating or protecting casual workers.

The work of Oji and Amucheazi left room for the present research work as it did not treat the legal status of economically dependent workers and did not also treat the other variants of the concept of economically dependent workers. The work also did not treat the causes and effects of the absence of legal protection of economically dependent workers which operate in Nigeria in the form of casualisation, contract staffing and outsourcing. The work also did not treat the position of law in some other jurisdictions pertaining to the legal status of economically dependent workers which operate in Nigeria in the form of casualisation, contract staffing and outsourcing. The position of International Labour Organisation which can be found in the relevant international labour conventions was not also considered in the work of Oji and Amucheazi to see how those relevant

[53]E A, Oji and O D Amucheazi, *Employment and Labour Law in Nigeria,* (Lagos, Mbeyi&Associates (Nig) Ltd 2015)
[54]*Ibid*
[55]*Ibid*
[56](2013) 30 NLLR (Pt.85) 49.

International Labour Organisation's Conventions could influence the legal status of these classes of workers referred to as economically dependent workers.

Erugo[57], in his work, wrote on the phenomenal concept standard form employment. According to him, Non-standard form of employment is described as any deviation from standard form employment and is characterised as being temporary or casual in nature, lacking benefits, lacking in certain legal protections, and usually associated with low income. According to Erugo, the rise in non-standard form of employment over the decade is traceable to a number of factors including changes in the world of work brought about by globalisation[58]. The work of Erugo provided the researcher with materials on the nature of economically dependent workers. However, the work treated the nature of non-standard form of employment without specifically discussing casualisation, contract staffing and outsourcing of workers which are the forms of economically dependent workers under review in this research.

Notwithstanding what has been said so far on these textbooks by those renowned authors, their works provided the researchers with useful materials that helped the researchers in carrying out this research. This is because, apart from the concept of economically dependent workers and the legal status of economically dependent workers, these textbooks provided information on standard form employment relationships which are the opposite of economically dependent workers. Some of the texts also helped this present research in identifying relevant international labour conventions that are used in this research. Therefore, the researchers opine that those works provided useful material information for the present research but they did not close the door against this present research.

[57] S Erugo, *Introduction to Nigerian Labour Law Contract of Employment and Labour Practice,* (2nd Edition: Lagos, Princeton & Associates Publishing Co. Ltd, 2019).
[58] S Erugo, *Ibid.*

An international report of Cornell University ILR School[59], dealt extensively with the concept of economically dependent workers. The work shows a clear understanding of the conceptual bases of the meaning and nature of the concept of economically dependent workers. The work shows a comparative analysis of the concept of economically dependent workers. It looks as if the work has closed the door to further research on the concept of economically dependent workers. Notwithstanding the fact that the work dealt with the concept of economically dependent worker extensively, there are still reasons to undertake this present research work. This is because, the report of Cornell University did no analyze the concept of economically dependent workers as it operates in Nigeria and the report is not emphatic on the legal status of economically dependent workers in the light of the law and practices in other jurisdictions as well as the position of relevant Conventions of International Labour Organisation. The above makes the present research work imperative. Other foreign literature on the concept of economically dependent workers did not also analyze the concept as it operates in Nigeria rather they show to a great extent the attributes of workers under the category of economically dependent workers. The attributes or indices are akin to the attributes that occur in casualisation of workers, contract staffing of workers and outsourcing of workers in Nigeria.

It is imperative to review relevant journal articles local or foreign that deal with casualisation, contract staffing and outsourcing to see the extent to which the literature admit of the necessity for the present research work.

Okafor and Rasak[60] wrote on casual employment. The work covers the concept of casual employment, reasons for the employers using casual workers, impacts of casual employment on organisation. However, the work of Okafor and Rasak[61] is a social perspective of casualisation and not from a legal point of view. Therefore, the work of Okafor and Rasak[62] created a lacuna that makes it imperative for this present legal research.

[59]Eurofound, http://digitalcommons.iLrcornell.edu/intl accessed 18/02/2018.
[60]E E, Okafor and B, Rasak, 'Casual Employment A Nostrum to unemployment in Nigeria', *Fountain Journal of management and Social Sciences* (2015) 4 (2) p. 100-112
[61] *Ibid*
[62] *Ibid*

Our own Ibekwe[63] wrote on a cross national comparison of the legal implication of employment casualisation in Nigeria. The work impressively deals with the legal protection of casual workers under the Constitution, under the Trade Dispute Act and under the Trade Unions Act. The work also carried out a cross-national comparison of the legal protection of casual workers in Ghana, China, European Union and the United States of America.

Notwithstanding the sagacity employed in the work of Ibekwe[64] in tackling the issues of legal protection of casual workers, the work did not in any way close the door for further research on the topic let alone affecting the present research work. This is because the present research work is an employment of a broader concept that covers casualisation, contract staffing and outsourcing in dealing with the practice of casualisation, contract staffing and outsourcing. It is also worthy to state that unlike the work of Ibekwe[65], the present research work treated the legal status of economically dependent workers which operate in Nigeria in the form of casualisation, contract staffing and outsourcing in the light of the position of relevant International Labour Organisation's Conventions.

Christopher, Ifeanyichukwu and Kizito[66] wrote on the casualisation of labour and the inefficiency of Nigeria labour law. The work made a clarification of terms, theoretical framework, origin of casualisation and impact of casualisation. The first lacuna that admits the necessity for this present research work is the fact that the work under review did not treat the legal status of casual workers let alone economically dependent workers which includes not only casual workers but also contract workers and outsourced workers. The work did not also undertake the analysis of the concept of economically dependent workers as it operates in Nigeria and treated in this present work.

[63]C.S, Ibekwe, 'Legal Implication of Employment Casualisation in Nigeria. A Cross-National Comparison' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence,* Vol. 7 No 22 (2016) p. 79-89
[64] *Ibid*
[65] *Ibid*
[66]P S, Christopher, O.B, Ifeanyichukwu and D.T Kizito, 'Casualisation of Labour and Inefficiency of Nigeria Labour Laws, A Critical Appraisal' *International Journal of Innovative Research in Social Sciences & Strategic Management Techniques*; Vol 4 No 1 (2017) p. 35-47

Fapohunda[67] also wrote from the social perspective of the employment casualisation and degradation of work in Nigeria. The work dealt with the nature of casualisation causes and effects of casualisation and trends of casualisation in Nigeria. However, the work did not treat the legal status of casual workers let alone the legal status of economically dependent workers which operates in Nigeria in the form of casualisation, contract staffing and outsourcing of workers. The work did not also treat the topic in the light of the position of relevant international labour conventions.

Bamidele[68] wrote on causal employment, its ambiguity, heterogeneity and causes in Nigerian manufacturing sector. His work dealt with various classes of casualisation and causes of casualisation in manufacturing sector in Nigeria. The work of Bamidele[69] obviously is not on the legal status of economically dependent workers which includes casual workers, contract workers and outsourced workers. The work emphasizes the ambiguity surrounding the nature of casualisation.

Kelejaiye[70] wrote on the rise of casual work in Nigeria, the losses and benefits of casual work in Nigeria. The work did not treat the legal status of economically dependent workers. The work of Kelejaiye[71] did not also consider the legal status of economically dependent workers in the light of the position in some other jurisdictions and the positions of relevant International Labour Organisation's Conventions. The above lapses in the work of Kelejaiye[72] make the present research work imperative.

Eyongndi[73] wrote on the matters arising from casual employment in Nigeria. The work of Eyongndi is from a legal perspective and dealt with issues such as definition of casualisation of labour, definition of a worker, meaning of contract of employment, categories of casual workers, the

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[67]T M, Fapohunda, 'Employment Casualisation and Degradation of Work in Nigeria' *International Journal of Business and Social Sciences,* Vol 3 No. 9 (2012) pp. 257-267

[68]R, Bamidele, 'Casual Employment' Its Ambiguity Heterogeneity and Causes in the Nigerian Manufacturing Sectors *Journal of Sociology and Criminology*, Vol.5 No. 1 (2017) pp 1-7.

[69] *Ibid.*

[70]P O, Kalejaiye, The 'Rise of Casual Workers in Nigeria' Who Loses, Who Benefits? *African Research Review, An International Multidisciplinary Journal Ethiopia,* Vol.8 (1) No. 32 (2014) pp 156-176.

[71] *Ibid.*

[72] *Ibid.*

[73]D T, Eyongndi, 'Casual Employees under Nigerian Law: Matters Arising', www.academic.edu.com accessed 03/03/2018.

rights of casual workers in Nigeria, the duties of casual workers, casual workers and trade unionism as well as casual workers and redundancy. Though the work has a legal perspective, it did not deal clearly and extensivelyon the legal status of casual workers let alone the legal status of economically dependent workers. The work unlike the present research did not consider casualisation in the light of practices in some other jurisdictions as well as the position under the relevant International Labour Organisation's Conventions. These gaps make the present research work imperative.

Eyongndi[74] also wrote on the analysis of casualisation of labour under Nigerian laws. However, the work like his previous work reviewed in this research did not deal clearly and extensivelyon the legal status of casual workers let alone the legal status of economically dependent workers. The work unlike the present research did not consider casualisation in the light of practices in some other jurisdictions as well as the position under the relevant International Labour Organisation's Conventions. These gaps make the present research work imperative.

Bamidele[75] again wrote on casualisation and labour utilization in Nigeria. He noted the problematic nature of an attempt in defining casual worker. He also treated the trends of casual employment in some societies. Despite the fact that the work of Bamidele[76] is more of a social perspective than legal perspective to the issue of legal status of casual workers, the work did not treat the legal status of casual workers let alone the legal status of economically dependent workers which operates in Nigeria in the form of casualisation, contract staffing and outsourcing of workers. The work did not also treat the topic in the light of the position of relevant international labour conventions.

Ibekwe[77] again wrote on the protection of rights of non-standard workers to freedom of association and trade unionism. The work of Ibekwe treated extensively the rights of non-standard workers to unionise under the relevant labour laws in Nigeria. The work also treated international labour conventions on the rights of non-standard workers to freedom of association and trade

[74] D T, Eyongndi, 'An Analysis of Casualisation of Labour under Nigerian Law' Vol. 7 No. 4 *The Gravitas Review of Business and Property Law* (2016) pp 102-116

[75] R, Bamidele, 'Casualisation and Labour Utilization in Nigeria' www. Academia.edu.com accessed 18/02/2018.

[76] *Ibid.*

[77] C S, Ibekwe , 'Protecting Non-Standard Workers' Right to Freedom of Association and Trade Unionism' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence,* Vol.6 (2015) pp. 173-183.

unionism. Notwithstanding the erudition exhibited by Ibekwe in analyzing the legal protection of non-standard workers, the work created room for this present research. This is because the work of Ibekwe is limited to legal protection of the rights of non-standard workers to freedom of association and trade unionism. This is unlike the present research that looks at the legal status of economically dependent workers holistically. The present research work is an employment of a broader concept that covers casualisation, contract staffing and outsourcing in dealing with the practice of casualisation, contract staffing and outsourcing. It is also worthy to state that unlike the work of Ibekwe[78], the present research work treated the legal status of economically dependent workers which operate in Nigeria in the form of casualisation, contract staffing and outsourcing in the light of the position of relevant International Labour Organisation's Conventions.

Eze and Eze[79] wrote on the legal framework for the protection of casual work arrangements in their work titled 'A Cross National Survey of the Legal Framework for the Protection of Casual Work Arrangements in Some Selected Jurisdictions. The paper by Eze undertook a comparative study of the legal framework for the protection of non-standard workers in Nigeria and some selected jurisdictions. The aim of the paper is to analyze the efficacy or otherwise of the extant Nigerian statutory framework in relation to those of other jurisdictions. The paper made a case for an effective and adequate comprehensive body of legislation to deal with the precarious legal position of non-standard workers in Nigeria.

The work by Eze and Eze like the present research brought out the variants of non-standard workers as casual workers, outsourced workers, part-time workers and so on. The work treated the protection of legal status of non-standard workers under relevant Nigerian labour laws and the laws of some selected jurisdictions. The work of Eze and Eze no doubt shares some similitude with the

[78] *Ibid.*
[79] G A, Eze and T G Eze 'A Cross National Survey of the Legal Framework for the Protection of Casual Work Arrangements in Some Selected *Jurisdictions' Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, vol.4 (2013) pp. 57-68

present research work. However, Eze and Eze being a paper with limited scope could not cover other variants of non-standard workers like contract staff and outsourced workers.

Apart from Casualisation, another form of operation of economically dependent work in Nigeria is contract staffing. Contract staffing is an innovative system devised by employers to cope with harsh economic realities in labour market. Contract staffing leads workers engaged in such arrangement to lose labour rights and benefits. Employees under a contract staffing employment relationship are denied basic conditions of work which their permanent counterparts enjoy. There exist local literatures on the menace of contract staffing. However, a good number of those literatures are devoid of legal perspective to the issue of contract staffing.

Hamilton[80] wrote on the nature of contract staffing, contract staff management in the construction industry in Nigeria, effects of selected variables on the performance of contract staff. The very first and perhaps the most striking gap in the work of Hamilton[81] that admits of the need for the present research is the fact that Hamilton did not treat the legal status of contract workers in Nigeria let alone the position in other jurisdictions. Hamilton[82] did not also look at the influence of international labour conventions on the status of contract workers which is a variant of economically dependent workers. The work of Hamilton is purely on the management system of contract staffing.

Ohiorenoya and Uwadiae[83] wrote on contract staffing. The work of Ohiorenoya and Uwadiae[84] is on the nature of contract staffing and employee engagement in the oil and gas industry in Nigeria. The work did not treat the legal status of contract staff let alone its umbrella concept of economically dependent workers which is the target of the present research. The work of

[80]D I, Hamilton, 'Contract Staff Management System in the Construction Industry in Nigeria' *Pakistan Economic and Social Review* vol. XLIV, No.1 (Summer 2006) pp. 1-18.
[81] *Ibid*.
[82] *Ibid*.
[83]J O, Ohiorenoya and OS, Uwadiae, 'Contract Staffing and Employee Engagement in the Oil and Gas Industry in Nigeria (A Case Study of Shell Petroleum Development Company (SPDC) West, Nigeria*)', International Journal of Business and Social Science,* vol. 7 No. 10 (2016) pp.196-206.
[84]*Ibid.*

Ohiorenoyaand Uwadiae[85] did not also consider the position of the labour laws and practices in other jurisdictions to see where Nigeria can tap idea from in order to remedy the situation in its labour and employment relationship. Ohiorenoya and Uwadiae[86] did not also make recourse to the position of international labour conventions to find out whether or not the labour laws of Nigeria are incompliance with the position of International Labour Organisation as can be found in relevant international labour conventions.

Onyeche and Edeke[87] wrote on the impact of contract staffing on Job Productivity in selected organisations in Port Harcourt Rivers State. They dealt with the rationale for Contract staffing, causes and effects of Contract Staffing. The work of Onyeche and Edeke[88] is purely from social and Anthropological point of view and devoid of any legal perspectives. However, the work gave some insight as to the factors that lead to contract staffing and the reasons for contract staffing. Notwithstanding this assistance, the work of Onyeche and Edeke[89] created a need for the present research in thatthe work did not treat the legal status of contract staff let alone its umbrella concept of economically dependent workers which is the target of the present research. The work of Onyeche and Edeke[90] did not also consider the position of labour laws and practices in other jurisdictions to see how Nigeria can remedy its labour laws and employment relationships as it pertains to the legal status of economically dependent workers.

Onyeche and Edeke[91] did not also make recourse to the position of international labour conventions to find out whether or not labour laws of Nigeria are in compliance with the position of International Labour Organisation as can be found in relevant international labour conventions.

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[85] *Ibid.*
[86] *Ibid.*
[87] Onyeche, C and Edeke, S O, 'The Impact of Contract Staffing on Job Productivity: A Case Study of Selected Organisations in Port Harcourt Rivers State, Nigeria' *Equatorial Journal of Social Sciences and Human Behaviour,* vol. 1 Issue 1 (2016) pp. 43-47.
[88] *Ibid.*
[89] *Ibid.*
[90] *Ibid.*
[91] *Ibid.*

Another form in which the concept of economically dependent work operates in Nigeria is outsourcing. It is also important to review some of the literatures consulted in the course of this research that dealt with outsourcing of workers as a form of economically dependent work. Outsourced workers in Nigeria share so many features in common with other forms of non-standard employment relationship such as casual workers and contract workers. They are classified as irregular workers, non-standard workers or economically dependent workers.

Abioro, Sofekun and Attah[92] wrote on Nigerian job outsourcing in retrospect: issues, challenges and way forward. The work started with a conceptual clarification of job outsourcing, its benefits and the challenges of job outsourcing. The work concluded by recommending enactment of legislation that will serve as protection of rights of outsourced workers' rights. This impliedly shows that outsourced workers' rights at workplace are not protected by the extent labour legislations. The work of Abioro and others did not treat the legal status of outsourced workers in Nigeria. The work did not also treat the position of labour laws of other jurisdictions on the legal status of outsourced workers. It is also important to state here that the work of Abioro[93] and others did not consider the position of International labour Organisation as can be found in relevant international labour conventions in order to find out whether labour laws and practices in Nigeria are in conformity with relevant international labour conventions. The above makes the need for the present research imperative.

Awolusi[94] wrote on the effects of successful outsourcing on perceived business performance in banking industry. The work by Awolusi[95] is purely an empirical analysis of the issues of outsourcing and performance. The work of Awolusi[96] did not treat the legal status of outsourced

[92]M A,Abioro, E A, Sofekun and A E, Attah, 'The Nigerian Job Outsourcing in Retrospect: Issues, Challenges and the Way Forward*' International Journal of Economics, Commerce and Management, vol. V Issue 7 (2017) pp. 467-477.*
[93]Awolusi, O D, 'The Effects of Successful Outsourcing on Perceived Business Performance in Nigeria Banking Industry: An Empirical Analysis', *Research Journal of Business Management and Accounting*, Vol. 1 No. 3 (2012) pp 46-56.
[94]*Ibid.*
[95]*Ibid.*
[96]*Ibid.*

workers in Nigeria. The work did not also treat the position of labour laws of other jurisdictions on the legal status of outsourced workers. Awolusi[97] did not also consider the position of International labour Organisation as can be found in relevant international labour conventions in order to find out whether labour laws and practices in Nigeria are in compliance with relevant international labour conventions. The above makes the present research imperative.

Agburu[98] wrote on the effect of outsourcing strategies on the performance of small and medium scale enterprise. The work is purely from the economic and commercial perspective of outsourcing and not about legal status of economically dependent workers. This therefore, makes the present research imperatives as it is targeted at creating a body of literature on legal the status of economically dependent workers which operates in Nigeria in the form of casual, contract and outsourced workers.

2.3Theoretical Framework

2.3.1 Forms of Economically Dependent Workers in Nigeria

A variant of this concept of economically dependent work in Nigeria is casualization of work. Casualization in the Nigerian labour market is a subject of great concern. Casual employees are filling positions that are permanent in nature in line with employee vulnerability in Nigeria with the high level of unemployment and accompanying poverty. The world economic meltdown has bred a dangerous work environment where many desperate job seekers in the labour market are willing to take any job for survival purposes rather than dignity.

[97] *Ibid.*

[98] Agburu, J I, Nza, N C and Iyortsuun, A S, 'Effect of Outsourcing Strategies on the Performance of Small and Medium Scale Enterprises', *Journal of Global Entrepreneurship* (2017) pp 7-26.

2.3.2 Casualisation of Labour in Nigeria

The origin of casualisation in Nigeria will be considered in two major dimensions namely:

a) Casualisation of labour during the colonial era

b) Casualisation of labour after independence

Colonial Era

There was a coalescence of ideas about the labour policies adopted by the colonial administration.[99] The pacification of northern Nigeria in 1906 created the first opportunities for the colonial government to formulate and implement its labour policies. The former situation where labour regime was uncoordinated based on "voluntarism",[100] gave way for a more proactive and coordinated labour policy. The new labour dispensation coincided with the coming of Lugard as the colonial governor of Nigeria. Lugard in order to ensure effective utilization of the indigent labour force introduced forced labour, which then was meant to induce interest of the natives in wage labour which became necessary in order to facilitate the laying of rail tracks across various parts of Nigeria. This followed the opening of Jos and Enugu tin and coal mines in 1912 and 1915 respectively which require a large indigent work force.

The outbreak of World War 1 in 1914 changed the prevailing colonial labour policy at the time. Faced with enormous cost in prosecuting the war, the use of forced labour became exigent. This was predicated on the need to have a labour force that could be readily deployed at short notice and one which could be converted to a reserve army to serve the colonial army in the prosecution of the war. The end of the war and demobilisation of the native army that followed created unanticipated labour problems. First, there was need to resettle the demobilized colonial native military personnel and check the burgeoning labour that is becoming too expensive to maintain. Faced with the labour dilemma, the colonial government abandoned forced labour and introduced a

[99] D, Otobo, *State and Industrial Relations in Nigeria*, (Lagos: Malthouse Press, 1988) p. 35
[100] Voluntarism means free rein to the natives to choose whether to work for the government or not.

new labour regime based on piece-meal payment system, which entails placing majority of the workers on part-time contracts. Thus, some of the workers were engaged to perform sundry work and at the end of the day are paid stipends calculated either hourly or daily. The colonial government resorted to use of daily paid workers, particularly in the technical departments. Perhaps this explains why most of labour unrest at the time came from artisans and labourers in the construction, building and engineering departments. The most celebrated case was that of staff of public works department (PWD) who complained having their salaries unceremoniously slashed overnight by the colonial governor, Sir McCullum who argued that the existing wages was still too high.[101]

Post-Colonial Era

It has been strongly argued that casualisation became a feature of the Nigerian labour market in the late 1980's when the country adopted the structural adjustment programme in line with the neoliberal policies prescribed by the International Monetary Fund and World Bank.[102] The adoption of structural adjustment policies means the implementation of neo liberal policies such as, the privatisation of government companies, deregulation of many sectors of the economy and the removal of subsidies on agricultural, and in the case of Nigeria, petroleum products.[103] Deregulation allowed the Nigerian government to hands off its monopoly in many sectors of the economy such as banking, health care, water resources, and telecommunications.[104] The effect of the policy was the retrenchment of workers in the public sector which created large scale unemployment. However, the private sector which was to be strengthened by government policies to absorb these workers could not absorb all the retrenched workers from the public sector. Therefore, many of them were employed as casual workers with low remuneration, limited benefits and lack of rights to organise.

[101]A K, Udeku*Industrial Relations in Developing Countries, the Case of Nigeria*. (London: Macmillan Press, 1984) cited in P.U, Okoye and Y.W, Aderibeghe 'Comparative Assessment of Safety Climate of Casuals and Permanent Construction Workers in Southern Nigeria' *International Journal of Health and Psychology Research*, vol. 2, No. 1 (2014) p. 58.

[102] C, Alozie,*Recession: Temporary Employment, the New Toast for Employers* (Lagos: NEXT,2001), p. 80.

[103] E E, Anugwom 'Globalisation and Labour in Nigeria: Evidence from the construction Industry' (2007) *AfricanDevelopment*, vol. XXXII No.2 p 115.

[104]*Ibid*. see also A Fair Globalisation Creating Opportunities for all (Report of the World Commission on the Social Dimension of Globalization, An ILO Publication, April, 2004,, p. 21 available at htm accessed 20/09/2017.

Although the Structural Adjustment Programme (SAP) was geared towards less government involvement in the economy and more private sector participation, the revitalisation of the private sector was aimed at attracting the much needed Foreign Direct Investment (FDI) into the country. While it attracted some FDI almost in all sectors of the nation's economy, it has led to the lowering of labour standards at the same time.

Despite the wide criticisms, and basically due to the absence of a legislative response, casualisation has continued to enjoy a steady growth. In the past, casual labour was mainly unskilled and required seasonal work or short-term periodical jobs predominantly in the construction industry and the agricultural sector. But today both the skilled and the unskilled labour are engaged as casual workers and even in the public sector.[105]Casualisation has become the in-thing. The bulk of workers in telecommunications, oil and gas sectors and other sectors of the economy are casual employees.

2.3.3 Causes of Casualisation

Casualisation of labour in Nigeria traces to a number of factors which include but are not limited to the following:

Inadequacy of Legal Framework

Inadequate coverage of the status of casual workers as well as the legal framework regulating the terms and conditions of the employment probably explain the motivating factor for the increasing use of casualisation by employers.[106] By the Labour Act[107] 'anyperson who has entered into agreement to work under a contract with an employer whether the contract is for manual Labour or clerical work, is expressed or implied, oral or written and whether it is for contract of service or a contract personally to execute a work. An employer on the other hand is defined as any person who has entered into a contract of employment to employ any other person as a worker either for himself or theservices of any

[105] C S, Ibekwe 'Legal Implications of Employment Casualisation in Nigeria: A Cross National Comparison'. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*vol. 7, No. 22, (2016), p 80
[106] T M, Fapohunda 'Employment Casualisation and Degradation of Work of Nigeria', *International Journal of Business and Social Sciences*, vol. 3 No. 9 (2013) p. 260.
[107] See Labour Act *op. cit*, section 91.

other person and include the agent, manager or factor of that first- mentioned person and personal representation of the deceased employer'.

It is pertinent to know at this juncture that certain categories of employees do not fall within the meaning of a worker within the meaning of the Labour Act. They are:

(a) any person employed otherwise than for the purpose of the employer's business, or

(b) person exercising administrative, executive, technical or professional functions as public officers or otherwise, or

(c) members of the employer's family, or

(d) any representatives, agents and commercial travelers in so far as their work is carried on outside the permanent work place of their employer's establishment; or

(e) any person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or other materials; or

(f) any person employed in a vessel or aircraft to which the laws regulating shipping or civil aviation apply.

At common law, master and servant have the advantage of being the only terms that refer precisely to the employment relationship of contract of service as opposed to contract for services where the servant is not actually a servant but the so-called independent contractor otherwise known as self-employed person. But under the Labour Act a worker is referred to as one who enters into a contract of service or contract to personally execute work or labour. However, these statutory definitions of contract of employment and worker in the statutes above x-rayed, have been given judicial interpretation by the Supreme Court of Nigeria in the case of *Shena Security Co. Ltd v.Afro Pak (Nig.) Ltd &2 Ors,*[108] where the court was faced with the issue of whether the contract to supply security guards and supervisors by the appellant to the respondents was a contract of service or one for service to qualify the appellant as a worker. The court held that:

[108][2008]18NWLR(pt.1118) p.82.

> a worker is defined by the Labour Act as any person who has entered into or works under a contract with an employer whether the contract is for manual or clerical work or is expressed or implied, oral or written and whether it is a contract of service or a contract to personally execute any work or labour.

Such a contract, according to the Supreme Court, is commonly referred to as contract of service. On the meaning of contract of employment, the court had this to say.The Labour Act[109] which applies to workers, strictly to the exclusion of the management staff defines a contract of employment as any agreement whether oral or written expressed or implied whereby one person agrees to employ another as a worker and that other person agrees to serve the employer as a worker.

The definition does not recognize workers in non-standard work arrangements. This can be adduced to the fact that the current labour Act was enacted in 1971 when non-standard work arrangements were alien to our industrial relations environment. Unfortunately the labour Act has not been reviewed since to address the current realities on grounds. A little recognition of causal work and protection can be seen in the Employee Compensation Act.[110] Employees Compensation Act covers economically dependent workers.[111]By virtue of section 2(1) of the Employees Compensation Act, 2010, the Act applies to all employers and employees in the public and private sectors in the Federal Republic of Nigeria. This means that, ordinarily, once a person qualifies as an employee or employer under the Act, the person becomes covered by the Act and thus becomes entitled to benefit from the compensation provisions of the Act in the event of any of the workplace disabilities.

[109]*Op cit.*
[110]Employee Compensation Act, 2010.
[111]Employee Compensation Act 2010, Section 73.

Outsourcing

Arising from globalization, outsourcing provides an easier way to cut costs and run off competition. Where an employer outsources labour or production components, fewer members of permanent employees are needed. The popular practice therefore is to cut the number of permanent employees and replace them with casual workers.[112]

Increase in Capital Mobility

Apart from the deregulation of the labour market and the incidence of outsourcing, casualization is also a resultant effect of the need for profit maximization.[113] In response, employers tend to adopt cost cutting measures, including downsizing/cutting back on employment.[114] Simply put, a lot of expenses are associated with permanent employees. In order to satisfy the drive for profit maximization, the employers are left with no other option than to casualize the employees into non Standard Workers.

Absence of Substantial Infrastructure and Enabling Environment

This compels employers to fend for such essential infrastructures such as power, efficient transport system, etc. which ordinarily should not be the case. These expenses have negative effect on the overhead cost of the employer and the employer is consequently forced to take decisions that affect the welfare status of his workplace.

Neo-liberalism Cum Globalisation

Also known as economic liberalism, neo-liberalism is a very broad theory that usually refers to fewer government regulations and restrictions in the economy, in exchange for greater participation of

[112] T M, Fapohunda, *Op.cit*, p 260.
[113] P O, Kalejaiye, *Op.cit*, p 156.
[114]C S, Ibekwe*Op.cit*, p 79.

private entities.[115] Corporations in a typical neo-liberal economic environment prefer short-term contract of employment, which in effect forces workers to apply and re-apply for the same job over and over again.[116] This kind of flexibility reduces cost of production, boost profit, but at the same time, minimizes or cheapens workers quality of working lives.[117]

Workers Choice

Many workers (especially female workers) would prefer to work part-time in order to combine family care and work. This is the flexibility that non-standard work gives them.[118]

Lack of Enforcement of the Current Legislation

Nigeria is very slow in terms of adherence unto international labour standards and enforcement of laws. Specifically, the Constitution of the Federal Republic of Nigeria[119] amongst other laws, guarantees the right to freedom of association. One of the areas in which Nigerian workers are casualized is that of unionization. This has continued notwithstanding the clear provisions of the Constitution. Therefore, the incidence and growth of casualisation greatly traces to lack of enforcement of relevant laws by the Nigerian government and its agencies.

Unemployment and Poverty

The high rates of unemployment and poverty in Nigeria is one of the causes of casualization of labour. Almost half of the population in Nigeria lives in poverty. This is the major reason for accepting jobs without job security.[120]

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[115] O, Odibo, 'The Extent and Effect of Casualisation in South Africa: Analysis of Lesotho, Mozambique, South Africa, Swaziland, Zambia, and Zimbabwe', *Research Report for Danish Federation of Workers*, November, 2006, www.eldis.org accessed 15/10/2017.

[116] D, Harvey,*A Brief History of New Liberalism*(Oxford: Oxford University Press, 2005), p. 170.

[117] E E, Okafor 'Emerging Non-Standard Employment Relations and Implications for Human Resource Management Functions in Nigeria' *African Journal of Business Management*, vol.6 No.26 (2015) p. 7612.

[118] C I, Ibekwe, *Op.cit,* p 80.

[119] Constitution of the Federal Republic of Nigeria, 1999, as amended, section 40.

[120] B, Anugwom, An Address Delivered at a Seminar/Workshop on Casualisation held on 5th and 6th of November, 2007 at NICON Hilton Hotels, Abuja, Nigeria, cited in T.M, Fapohunda, *op cit*, p, 260..

2.3.4 Effects of Casualisation of Workers

Casualisation of labour has had a lot of damaging effects on the rights of workers and the economy at large. This will be shortly discussed below.

2.3.4.1 Effects of Casualisation on the Rights of Workers

Job Insecurity

Most casual workers especially those in unskilled or non-specialized labour are treated by their employers as disposable waste. The labour Act in section 11 envisages that notice must be given to a worker before termination of his employment. Cases abound where employers dispose casual workers without prior notice and benefits. There is unequal protection as between permanent workers and casual workers under the law[121]

Inadequate Remuneration

Notwithstanding the fact that most casual workers perform the same duties like their permanent counterparts, they are paid less when compared to permanent employees[122].

Denial of the Right to Freedom of Association/Unionisation

Employers have continuously denied workers the right to form or join a trade union of their choice notwithstanding that it is a constitutional right. Attempts of the unions in the oil & gas industry to get the managements in the industry to allow this category of workers to unionize have led to dismissal of some union officials.[123]

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[121] V, Bendapudi, S L, Mangum, J W, Tansky and M M, Fisher, 'Non Standard Employment Arrangement: A Proposed Typology and Policy Planning Framework' (2003) *Human Resource Planning*, vol.26 No.1, p 26.

[122] S, Ebun, F, Amajiya, E, Anozie and A, Olayinka, 'Tragedy of Casualisation: How Companies Enslave Casual Workers' http://www.vanguardngr.com/2013/10/tragedy-casualisation-companies-enslave-casual-workers/ accessed on 20/09/ 2017.

[123] R.A, Danaesi, 'Non-Standard Work Arrangements and the Rights to Freedom of Association', A Paper Presented at 11Ra Regional Conference in Lagos, 2011 available at http://www.ilo.org/public/english/iira/documents/congressess/regional/lagos 2011/5th session/session 5a/non standard work pdf accessed 20/09/2017.

Elimination of Collective Bargaining

The formation of trade union by workers is a pre-cursor to collective bargaining. Where workers are unable to unionize, it becomes difficult if not impossible to demand and obtain their due rights and privileges from the employer.

Low Quality of Work life

The key challenge in casual employment is not simply to rectify the problem experienced by individual casual worker; rather the problem is the process of casualisation itself.[124]The European Foundation for the Improvement of Living Conditions notes that quality of work life is a multi-dimensional construct, made up of a number of interrelated factors that need careful consideration to conceptualize and measure. It is associated with motivation, productivity, health, safety and wellbeing, etc. Casual workers do not enjoy sound quality of work life which the labour laws ordinarily grant to permanent workers.[125]

Denial of Employment Benefits

Casualisation also results on the denial of some employment benefits envisaged under the law such as annual leave, sick leave, medical case allowances, maternity protection, redundancy pay, public holidays, etc. Unlike permanent workers, casual workers do not enjoy these benefits

[124]http://ses.library.usyd.edu.all/bitstream/21/23/13407/1/wp76pdf accessed 20/09/2017.
[125] European Foundation for the Improvement of Living Conditions 2002 'New York Organisation, Working Conditions and Quality of Work: Towards the Flexible Firm?' Available at www.eurofound.eu.int.Accessed on 20/09/2017.

2.3.4.2 Effects of Casualisation on the Economy

Loss of Revenue

Casualisation leads to loss of revenue to the government. Incomes of causal workers do not contribute to the economy because what casual workers earn is not taxed.[126] Their income is not subject to any form of taxation and so they do not contribute to economic development of the country.

Low Productivity

Over reliance on casual employment could pose a serious risk to productivity. This is because employers may be less likely to invest in training of their casual employees and as a result could lead to deterioration in skills acquisition and development.[127] This gradually spells doom for the economy as these user companies battle with low quality products and services.

Brain Drain and Capital Flight

Casualisation may also increase the rate of brain drain and capital flight in the country since the labour force will begin to run to other countries with better employment conditions and working environment as has been witnessed in Nigeria. More so, it renders the citizens who are supposed to be the major beneficiaries of economic investments impoverished and completely hopeless.[128]

Social Vices

Casualisation causes cyclical poverty and disruption of family life. Most youths finding themselves in casual jobs resort to social vices that expose them to mortally threatening diseases like

[126] D, Yaqub, 'Contemporary Issues on Casualisation,Contract and Abuse of Workers Rights in Nigeria' a paper presented at the NLC Casualisation Committee Meeting, November 14, 2000. Available at http://allafrica.com/stories/200507180858html accessed 20/09/2017.
[127] C, Von Otter, 'Employment Tools: A Common Resource Approach to Labour Market' *Economy and Democracy*, vol.16, No.2 (1995) p 306.
[128] T M, Fapohunda, *Op.cit* p 263.

HIV/AIDs.[129] Some of them become prostitutes, armed robbers, kidnappers, cyber criminals, etc. They illegally drench the economy and their income is not even subject to taxation. The above analysis of the effect of causalisation of workers in Nigeria portrays that the keen competition in the ever growing industrialised market economy has led employers to devise means of remain competitive. This means that cheaper yet qualitative attractive goods and services are the goal of every organization. Every provider of goods and services therefore cheaper capital and labour in order to keep this 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 at a cheaper rate. Casual work through outsourcing has met this need particularly as advances in technology have also redefined the way work is done.

2.4 Contract Staff/Workers: A Form of Economically Dependent Workers in Nigeria

Contract staffing is growing at an alarming rate in Nigeria. More and more workers in permanent employment lose their jobs and are re-employed as contract workers. Unfortunately, this massive shift away from regular employment to contract work or job is having a deep negative effect on all workers, their families and the society at large. This is because, the workers classified as the contract staff will fall back into the saturated pool of high unemployment in future. Contract staffing or contract work in recent times has acquired a status of permanent employment in many organisations in Nigeria without the statutory benefits associated with permanent employment status[130]. Contract workers are subject to low pay, barred from their right to join a union and denied medical and other benefits. Companies will often hire several part time workers instead of one or two full time workers to avoid their obligation to provide benefits, to divide the work force, and to dissuade unionizing efforts.

[129] P S, Christopher et al *Op.cit* p 42.
[130] O, Animashaun 'Casualisation and Casual Employment in Nigeria: Beyond Contract' *NJLIR*, vol. 1, No. 4, (2012), p. 14.

Recently, there are instances where workers employed as contract staff with little wages and conditions are being used to reduce and eventually eliminate a permanent work force of long standing. This trend has had significant and far reaching impact on employment given the dangers that precarious employments pose to the workers. This is what is happening virtually in all sectors of the economy.[131] Contract staffing is a term used in Nigeria to describe work arrangements that are characterized 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 organize and collectively bargain.

2.4.1 Causes of Contract Staffing

The practice of contract staffing can be traced to a lot of factors. Being a form of casualisation, all the factors that lead to casualisation of labour also bring about contract staffing. Some of these factors are briefly discussed below:[132]

High Rate of Unemployment

More than half of the Nigerian population is unemployed. Many Nigerians feed from hand to mouth. They believe that it is better to be doing something than to be staying idle. Employers capitalize on this factor to employ a good number of them, use them, pay them stipends and finally dump them.

Family Pressure

This speaks more volumes where a worker is the bread winner of the family. He does not have time to settle for a better job. Another aspect of family pressure is with respect to married women. Because of their domestic duties, many married women prefer a temporary work where they can have time for themselves and for their family.

[131] S, Fisher, 'The Challenges of Casualisation in Africa'. http//www.inf.org/external/speeches/2011/01190.html. Accessed 23/09/2017.

[132] O, Chinwendu and E S, Okon, 'The Impact of Contract Staffing on Job Productivity: A Study of Selected Organizations in Port Harcourt, Rivers State, Nigeria' *Equatorial Journal of Social Sciences and Human, Behaviour,* vol., Issue 1, (2016) pp 44, 45.

High Rate of Illiteracy

Most temporary workers are people with little or no education. These people do not know their rights. They work more than the educated permanent workers but are paid stipends. However, today, illiteracy is losing its position as a contributory factor to casualisation and contract staffing because even the so called skilled labourer suffers from casualisation/contract staffing.

Economic Competition

There is staff competition in the economic sector. Each company wants to be economically powerful than the other. This leads them to adopt various cost cutting measures including contract staffing. The gist is that they incur fewer expenses in employment of contract staffs than permanent workers.

Avoidance of Legal Liabilities

Labour laws provide for some benefits for workers such as annual leave, sick leave, redundancy pay, pensions, maternity protection, adequate remuneration, etc. These are labour rights of workers but employers get around these duties by employing them as contract staff or casual workers.

Inadequate Legal Framework

Our labour laws do not completely protect contract staff. Their terms and conditions of employment are not regulated under the law. The employers rely on this loophole to casualize the employment of their workers.

2.4.2 Effects of Contract Staffing

Contract staffing as a form of casualisation has its own implications:

1. As far as the national economy is concerned, the modern capitalist slavery called contract staffing is capable of destroying the economy gradually. Its long and predominant usage produces individuals who have over-worked themselves with little earnings and consequently, little or no savings for retirement, resulting in the emergence of an over worked population.

These workers will depend on the nation for survival or daily needs, thus over bearing the nation's social welfare system and living at the mercy of the society.[133]

2. Contract staffing increases unemployment. This is because contract staffing is not strictly speaking an employment as the workers will certainly be laid off after the employer has used them. Most of the workers that are laid off find it difficult to find another job. In other words, contract staffing leads to job insecurity which results in a spike in the rate of unemployment.
3. Contract staffing casualizes workers and denies them the benefits they deserve under the law. A contract worker is barely guaranteed minimum wage, job security, allowance for lunch and housing nor would they ordinarily receive benefits like annual leave, sick leave, funeral assistance or terminal benefits.
4. Contract staffing encourages poor organisational citizenship. Most contract workers do not enjoy the sense of belonging in their workplaces. As a result, they refuse to go beyond their call of duty and thus do not contribute to the organisational effectiveness of the firm.[134]
5. Contract staffing also leads to low employee commitment. This is due to the fact rewards such as incentives, increased pay, praise or promotion and other motivational benefits are not usually available to contract workers. This affects the level of performance of the workers.
6. Most contract workers do not pay tax. This has an adverse effect on the nation's economy because, given that a majority of Nigerian workers do not pay their tax, there will be low government investment, federal borrowing which will in turn lead to economic meltdown.
7. Contract staffing encourages the growth of social vices. This is because these contract workers are sacked at will by their employers. They hardly find another job. They are forced to develop criminal tendencies like prostitution, kidnapping, robbery, cybercrime, to mention.

[133] O Chinwendu& E S, Okon*Op.cit,* p 45.
[134]J O, Ohiorenoya& O S, Uwandaie 'Contract Staffing and Employee Engagement in the Oil and Gas Industry in Nigeria' *International Journal of Business and Social Science,* vol. 7 No.(2016) p 202.

8. Contract staffing leads to job dissatisfaction. Most contract workers are not satisfied with their jobs. A current research[135] into the plausible reasons in their order of importance for job dissatisfaction by contract workers ranks them as follows:

- Not getting what others are getting in terms of pay (94.2%)
- Lack of promotion (62.9%)
- Lack of improvement in skills (61.9%)
- Not benefitting from any allowances from the organisation (57.4%)
- Lack of career development (51.4%)
- Reluctance to extra contract period on the expiration of existing one (46.9%)
- Lack of leave entitlements (45.9%)
- Lack of recognition (42.6%)
- Lack of achievement (35.5%)
- Lack of health care benefits (34.8%)

9. Contract staffing leads to low unionisation. In Nigeria, from a legal perspective, workers generally join trade unions for the benefits that may accrue to them. These benefits include economic, social, educational and political benefits. However, in some oil companies for instance, contract staff/workers find it difficult to be members of the companies trade unions as some of the companies expressly make this known to them from the beginning[136] or their contract covertly suggests so. A recent survey in the petroleum industry, specifically on contract workers, reveals that 84% of respondents were not members of a union, while 16% were union members.[137] The reasons for which contract workers do not unionized include on the one hand, the fact that their employers often threaten them with dismissal. On the other hand, the fact that the contract worker who belong to one union or the other have not benefitted anything

[135] C, Onyechi 'Contract Staffing and Job Dissatisfaction in Selected Organizations in Port Harcourt City, Rivers State, Nigeria' *Equatorial Journal of Social Sciences and Human Behaviour,* volume 1, Issue 1, (2016), p 52, 53.
[136]H A, Ajonbadi, 'The Dynamics of Policies and Practices of Labour Contracting in the Nigeria Oil and Gas Sector' *Open Access Library Journal*, volume 2, (2015), p 11.
[137]*Ibid*,p12.

whatsoever from the union. For instance, these unions have no influence on the renewal or otherwise of their labour contracts upon expiration. Worst still, being members of these unions, they are made to pay union dues. Therefore, contract staffing typically makes it difficult for workers to join trade unions.

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. While casual work through outsourcing can improve flexibility, 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. Apart from the outsourcing strategy, the employers have also engaged workers on contract basis in such a way that once the work is done, the workers automatically lose their job. This has been shown to have a lot of effects on the workers commitment and job security.

2.5 Outsourced Workers: A Form of Economically Dependent Workers in Nigeria

In Nigeria, outsourcing has raised concern over the protection of workers. By law, workers are supposed to be entitled to all the rights guaranteed by national law and international best practices. Precisely, workers have the right to form and join trade unions, enjoy protection against discrimination, be guaranteed work safety and health, adequate remuneration, access to training, maternity rights and benefits, minimum wage provisions, rest period, annual leave, right to redundancy pay, etc. as a result of outsourcing, different workers unions in Nigeria have engaged employers of labour over the isolation of these rights, as many of contract workers cannot unionise. This has laid to declining income for unions, as workers in this category do not pay union dues. Outsourcing is similar to terms such as “off shoring” and “near shore outsourcing” while the recipients for outsourcing are generally in the same country, when a company in another continent is

involved e.g. USA, the correct term to use is offshore outsourcing. Near shore outsourcing refers to outsourcing projects that are outside the country but on the same continent e.g. Ghana.

For the sake of understanding and convenience, outsourcing is further going to be reviewed by considering the various types.[138]

a. **Business Process Outsourcing (BPO)**: This is a sub-set of outsourcing that involves the contracting of the operations and responsibilities of specific business functions (or process) to a third party service provider. Originally, this was associated with manufacturing firms, such as coca cola that outsourced large segments of its supply chain. It is primarily used to refer to the outsourcing of business processing services to an outside firm, replacing in-house services with labour from an outside firm.
b. **Recruitment Process Outsourcing (RPO):** This is a form of outsourcing where an employer outsources or transfers all or part of its recruitment activities to an external service provider. The entire recruitment/hiring form job profiling through the on boarding of the new hire, including staff, technology, method and reporting.
c. **Technology Services Outsourcing (TSO):** This basically deals with organisations that utilize technology requiring sophisticated, quick response computer systems and software that are flexible to respond to the increasing capabilities of technology and the rapid changes in business models. These services include electronic commerce infrastructure (networks), software, telecommunications, etc.[139]

[138] C A, Ezigbo, 'Justification of Outsourcing for Organisations Competitive Advantage', *European Journal of Social Sciences*, vol. 24, No. 2, (2012), p. 263.

[139] G M, Omeje, 'Outsourcing and Human Resource Utilisation in Tertiary Institution in Nigeria: A Case Study of University of Nigeria, Nsukka' Being a Thesis Presented to the Department of Public Administration and Local Government Studies, Faculty of Social Sciences, University of Nigeria, Nsukka in Partial Fulfillment of the Requirements for the Award of Master of Science (M.Sc.) Degree in Public Administration and Local Government Studies, February, (2014), p 39, available at http://www.unn.edu.ng/publications/files OMEJE, 0/020 GIDEON% MMADUABUCHI,pdf accessed 25/09/2017..

2.5.1 Causes of Outsourcing in Nigeria

Outsourcing is traced to a lot of factors, some of which are clearly highlighted below:

Globalisation/Competitive Advantage

The increasing movement of goods, services and capital across national borders has led a lot of companies to adopt several measures in order to remain economically buoyant. Globalisation came with the deregulation of not only the product markets but also the labour market. This led to economic competition in the labour market, and outsourcing provides an easier way to cut costs and run off competition.[140]

Cost Reduction and Flexibility

Outsourcing enables an organisation to relinquish some of its non-core activities to focus on developing greater competences in its core activities. By outsourcing its non-core activities, an organisation frees internal resources that will help it to focus and improve on its core competitive advantages in the market.

Entrepreneurial Risk

Outsourcing is also a direct result of entrepreneurial risks. There are a lot of risk and costs incidental to running an organization. These risks include managements, administration, financial, human resource risk, etc. As result, the practice is to outsource the human resource management to a third party firm.[141]

[140] T M, Fapohunda, 'Towards Successful Outsourcing of Human Resource Functions', *International Journal of Human Resource Studies*, (2013), vol. 3 No. 3 p 42.

[141] AA, Emmanuel, 'Does Outsourcing Improve Quality of Service in Public Health Institutions in South East Nigeria?' *International Journal of Academic Research in Accounting, Finance and Management Sciences*, vol. 6 No. 2, (2016), p 198.

Limitation of Resources

Due to the fact of resource limitations, few firms have the ability to apply world class resources to all areas of competition. Thus, in order to make up for this and gain competitive advantage, they select the areas in which they will concentrate their resources. By outsourcing to specialist organisation, the firm can see services not generated by core competent companies and make an improvement in their organisational performance.

Technological Advancement/Expertise

Due to technological advancement, firms need to have the latest equipment and procedures. This is best achieved through outsourcing. Most of these equipment and systems require specialized skills and experts to perform the functions. Consequently, organisations in such need outsource the specified activities.[142]

Circumvention of Labour and Social Security Laws

The outsourcing firm faces fewer legal constraints of employment protection in terms of working hours or security, given that most employment protection laws are not applicable in such work relationships. Moreover, it does not have to pay social security contributions and does not bear the financial risk when the worker becomes ill, and the worker is usually beyond the scope of collective bargaining and trade union representation.[143]

[142] G M, Omeje, *Op.cit,* p 46.
[143]E, Werner,'Social Protection Rights of Economically Dependent Self-employed Workers' *ResearchReportNo. 54,* (2013) pp 54, 55. Available at http//www.europarl.europa.eu/studies accessed 15/09/2017.

Increase in Tax Burden

This also produces an incentive to source out workers so as to financially optimize labour under the new regulatory regime. Outsourcing reflects a response to strict labour market regulations and increasing cost of social security payments for employed staff.[144]

2.5.2 Effects of Outsourcing

There are quite a number of consequences traceable to the practice of labour outsourcing. The effects transcends from the user – company, the workers and even to the economy as a whole. It is apposite to underscore that unlike as generally thought; outsourcing has both negative and positive effects. In this connection, below are the general effects of outsourcing:

Organisational Performance and Flexibility

Contrary to some arguments[145] as study on the impact of outsourcing on the organizational performance of most companies has revealed that outsourcing impacts positively on the performance of the organisations, that is to say, it reduces on costs, increases access to new technology, new expertise, core competence concentration, speeds up delivery and increases revenue.[146] Organisations that do everything on their own may be exposed to greater levels of risks than those who outsource their business functions. Most time, the former mentioned organisations may face difficulties trying to balance between choosing the right alternatives, tracing their employees in that area of interest, increasing reliability and maximizing efficiency. By doing everything on its own, an organization may have a difficult time trying to eliminate risks, and usually run the risk of spending too much on infrastructural capital. Consequently, this eats into their profitability and reduces their chances of growing their organisation's business. However, through outsourcing, organizations have been found to minimize their risks with regard to huge infrastructural expenditures and the overall result of this

[144] *Ibid*

[145] K M, Gilley & A, Rasheed, 'Making more by doing less: An Analysis of Outsourcing and its Effects on Firm Performance', *Journal of Management,* vol. 26 No. 4 (2000) p. 763.

[146] H, Nzewi, & D B, Cynthia,'Outsourcing Strategy and the Performance of *CHEVRON* Nigeria Ltd', *InternationalJournal of Business, Management & Research (IJBMR),* vol. 5, Issue 2, (2015) p 99.

is that more investors will be attracted to such organisations.[147] Bringing it down to the labour jurisprudence, it is clear that the main aim of the user company in adopting the outsourcing strategy is to cut cost. Outsourcing achieves this aim to some extent by shifting the whole employment burden to the labour contractor while giving the user company the flexibility of focusing on its other core areas of management. This, unarguably, produces a great deal of organizational performance for the user company.

Increased Service Quality

Research has also shown that outsourcing also leads to improvement in the overall service quality of the user companies.[148] This fact is not disputable especially when we call to mind how these outsourced workers are made to work tremendously each day under strict supervision. Service quality entails the customer's overall judgment or perception regarding a service.[149]Outsourcing increases the service quality of the user firms as they receive praise from all and sundry while little or nothing is said about the workers.[150]

Dependency on the Labour Contractors

In as much as outsourcing has been found to be of some positive effects on the user firms, it has been strongly submitted that the user firms lose control of the employment function which it has outsourced.[151]Perhaps, maintaining this same print in another tone, another writer posits that outsourcing eliminates the direct communication between the user company and its clients.[152] There is no plausible reason to disagree with the above views especially when one imagines what the effect

[147] See R F, Suraju, A K, Hamed, 'Outsourcing Services as a Strategic Tool for Organisational Performance: An Explanatory Study of Nigeria Food, Beverage and Tobacco Industry',*Journal of Management Policies andPractices*, vol. 1 No.1, (2013), p 25.

[148] See E A, Arisi – Nwugbalia 'Does Outsourcing Improve quality of service in the Public Health Care Institutions in South East Nigeria', *International Journal of Academic Research*, vol. 6 No.2, (2016), p 201.

[149] A, Parasuraman, V, Zeithaml, & L L, Berry 'Servpual: a multiple – item scale for measuring customer perception of service quality', *Journal of Retailing,* vol. 64, No.1 (1988) p 12.

[150] See for instance, The Nation 'Anonymous:' 'Reps praise NIPCO for boosting downstream' September 7, 2017 available at http/thenationonlineng.net/reps-praise-nipco-boosting-downstream. Accessed 20/09/2017

[151] See A Edwin & O V, Awele, 'Strategic Management of the Benefits and Challenges of Human Resources Outsourcingin Effective Organisational Management', *Journal of Business Studies Quarterly,* (2015), vol.7 No.2, p 95.

[152]C A, Ezigbo, 'Justification of Outsourcing for Organisation's Competence Advantage', *op. cit*, p. 1450.

would be if a labour contractor supplying almost 80% of the workforce of a particular user company, suddenly backs out of its employment with the user company.

Casualization of Labour

It is strongly believed that outsourcing ranks top amongst the major causes of casualization of labour in Nigeria. Outsourcing affects employees through the loss of fixed employment opportunities and results in an increasing number of part-time and contract workers typically earning less pay than permanent workers and without health, life, short and long term disability, and retirement benefits. This also has an impact on the organized labour by intimidating the labour force, as employees are threatened by the prospect of jobs moving overseas (offshoring) and are not enthusiastic about unionizing.[153]

Low Commitment and Apathy

Another problematic effect of outsourcing is poor service on the part of the workers[154]for instance, a research on the financial sector, has revealed that outsourcing leads to low commitment and general apathy. A worker is supposed to have filial commitment to the organization where he works but when a contract worker works the same schedule and capacity as the permanent employees, and he sees the latter earn more than him; it creates an uncommitted workforce and non-committal attitude on the part of the workers.[155]

Divided Loyalty

Similar to the above effect, outsourcing causes some form of divided loyalty amongst the workers. This is because although the control on what to do or how to do the work may be effected by the user company, these workers are usually answerable to their employers i.e. the labour contractors. They

[153] P, Lazes & J, Savage, 'Embracing the future: Union Strategies for the 21st Century', *Journal of Quality & Participation*, vol. 23 No. 4, (2000) p 20.
[154] G N, Omeje, *Op.cit,* p 51.
[155] D, Ogah, 'Outsourcing: Short end for Workers and the Economy, Guardian 22 August 2015 available at http://m.guardean.ng/business-service/business/outsourcing-short-end-for-workers-and-the-economy. Accessed 20/09/2017.

do not show much loyalty to the management of the user companies as they usually have no contract of employment with item.

Unemployment

As funny as it may sound, outsourcing is one of the major causes of unemployment in Nigeria. The main reason for outsourcing by user firms is to cut cost and not to create employment. This is evident in the poor treatment, inadequate remuneration and unfair disengagement of the same employed workers by their so called employers.

Outsourcing leads to unemployment in three specific dimensions. First, given the basic goal of outsourcing (cost cutting), the user firms usually downsize the number of its permanent employees to pave way for the outsourced workers. These employees are forced to search for another job and employed as an outsourced/contract worker. The gist is that some of them remain unemployed for a very long time. The second dimension is as regards lack of job security for the outsourced workers. One finds it difficult to draw a strong line of distinction between workers who may be sacked at any time, for any reason on the one hand, except for the little peanuts that the former enjoys and the freedom from work stress that the latter enjoys. Thirdly, international outsourcing, popularly known as off shoring, also contributes to unemployment in Nigeria. With no jobs to offer to local workers (since most of job functions are taken by offshore outsourcing providers), the Nigerian economy could not provide the required number of alternative jobs against workers that were laid off[156]

Economic Instability

Theoretically, outsourcing is generally believed to boost the economic sector by granting competitive advantage to firms, increasingly productivity and thus attracting the injection and circulation of

[156] See for instance, 'Ericsson to Sack Nigerians, Outsource Jobs to India by End of November' by Sahara Reporters, New York, Nov. 14, (2016). Available at http//saharareporters.com/2016/11/14/ericsson-sack-nigerians-outsource-jobs-india-november.Accessed on 20/09/2017. See also, A, Dada, and O, Abioye, 'Eco bank Nigeria fires 1,040 workers', *The Punch newspapers*, June 2, (2016) available at http//punching.com/ecobank-nigeria-fires-1040-workers. Accessed on 20/09/2017.

capital. However, in practice, this appears to be untrue especially in under-developed countries like Nigeria where the practice is somewhat negatively appreciated. No economy grows when unemployment is the other of the day. It is an established economic reality that the size of the work force directly impacts on a country's GDP. Unemployment contributes to reduction in the potential which exists in spurring a country's GDP.[157] Discussing the correlation between unemployment and economic instability, some writers have rightly traced the problems to some policy measures adopted by the government in the 1980's including liberalization which itself introduced outsourcing and casualisation of labour[158]. Therefore suffice it to so say that outsourcing negatively affects the economy in many ways especially with respect to the extent to which it leads to unemployment.

Human Capacity Destruction

Outsourced workers are made to perform their work efficiently and yield productivity but are not well taken care of. They are treated as sub-human capital, outsourcing destroys human capital. For instance, there is no provision for them to be trained. Therefore, they cannot be professionals. It is true that many of the outsourced workers are graduates from institutions of higher learning and one way or the other, have undergone different forms of training in different fields in their different schools. However, the training they received are no longer developed and taken care of. Such trainings gradually get lost due to the nature of the job they are doing.

Besides, outsourced staff receives stipends in form of salary without any fringe benefits attached, no yearly increment, no leave nor leave pay, yet their salary attracted tax.[159] Furthermore, outsourced staff works several hours daily, and when they suffer a degree of injury or have accidents in the course of discharging their duties and responsibilities, they do not get help or support from their employers. The injuries sustained or accident had at times could lead to permanent disability

[157] See C A, Nwankwo and A P, Ifejiofor, 'Impact of Unemployment on Nigerian Economic Development: A Study of Selected Local Government Areas in Anambra State, Nigeria', *European Journal of Business and Management*, vol.6 No.35, (2014), p 107.
[158] *Ibid.*
[159] A, Adegbami, O, Makinde and B, Shiyambade, 'Human Resources Outsource in Nigeria: Exploiting Organisation 'Vital Tools'. *International Journal of Humanities and Social Science*, vol. 4 No. 13 (2014) p 137.

which could force the workers out of job prematurely and permanently without compensation. Thus, the workers become liabilities to their family.[160]

Proliferation of Labour Disputes

As a corollary to the above negative effects of outsourcing, the courts are seen flooded with lots of employment cases. The employees who are sacked to pave way for the outsourced workers usually approach the court for some remedy as well as the outsourced workers who are poorly treated at their workplaces. The above analysis of the status of these forms of non-standard employment relationship in Nigeria which are in this work categorized as economically dependent work shows that the silence of labour laws on this work relationships and the failure of government to respond to the agitations of these workers in Nigeria imply that the government does not appreciate that what goes around comes around. The unfair labour practices discussed in this work have been shown to not only affect the workers but also the economy. There are so many companies in Nigeria yet unemployment grows day by day. This shows that something is wrong somewhere. There is need therefore for the government to closely look into the problems created by casualisation of labour and quickly enact a law that will recognize and protect the right of Nigerian worker.

[160]*Ibid.*

CHAPTER THREE

APPRAISAL OFECONOMICALLY DEFENDANT WORKERSAND STANDARD FORM CONTRACT OF EMPLOYMENT

3.1 Appraisal of Economically Dependent Workers in Nigeria

The concept of economically dependent workers is a fast growing trend in the labour realm globally. It has gained a remarkable attention especially in Europe.[161]It is apposite to underscore here that some problems experienced by the researcher on the concept of economically dependent workers include but are not limited to lack of clarity in terms of definition of the concept and secondly, lack of specific quantitative. Before proceeding to the meaning of the concept of economically dependent workers, it is pertinent to look at two terms usually associated with the concept. These terms are subordinate employment and self-employment. A discourse on them is important because the concept of economically dependent workers is a grey area between them.

Sub-ordinate Employment:

Sub-ordinate employment may be described as the hierarchical relationship between employer and employee, a relationship recognized in law as unequal but, at the same time, balanced by a complex system of protection for the worker. It is the term by which the employer-employee relationship is generally known.[162] Some indicators which seem to be most significant on determining sub-ordinate employment status include the following:

[161] A, Servizi, 'Domestic Work, Telework and Economically Dependent Work: Guidelines and Good Practice for Risk Prevention in a Reformed Labour Market, from Comparative Perspective') available at https://moodle.adaptland.it/pluginfile.php/8288/mod_resource/content/0/03_rapport_en.pdf accessed on 20/1/2018.

[162] A, Perulli 'Economically dependent/quasi – subordinate (Parasubordinate) employment: Legal, Social and Economic Aspects' available at https://www.researchgate.net/publication/267160315_economically_dependent_quasi_subordinate_employment_legal_social_and_economic_aspectsaccessed on 20/1/2018.

e. The worker is part of the employer's organization.

f. The worker is not exposed to personal financial risk in carrying out the work

g. Terms of payment

h. The worker does not own the materials and equipment for the job.

Self- Employment

This may be defined as work performed by a person who does not have sub-ordinate status, or who is not directed by a third party and where the subordinate employment indicators are either not present or not significant. A self-employed person is however different from an entrepreneur. The main criteria for distinguishing an entrepreneurial activity from self-employment is the way in which work and the means of production are organized.Where the economic activity is carried out without an organisational base, then it must be self-employment.[163]

Difference between Sub-Ordinate Employment and Self Employment

Having considered the meaning of these concepts, we shall now proceed to briefly distinguish between them. In this connection, only the major distinguishing factors will be noted. The main feature of sub-ordinate employment in labour law is the considerable level of protection that the law provides for employees. Thus, in an effort to ensure that workers enjoy the rights and protections relating to the subordinate status, legislations have historically intervened frequently in major aspects of the employment relationship between an employee and his employer in such a way as to reduce the freedom the contracting parties normally enjoy.

On the other hand, Self- employment is treated as a contract governed by general rules set out in civil and commercial law. In other words, a self -employed person is not regarded at all as a weak contracting party but is seen to be on an equal footing with the other party.

[163]*Ibid,* p. 9.

3.1.1 History of Economically Dependent Workers

The development of different categories of workers including economically dependent workerscould be traced to the incidence of globalisation. The term globalisation refers to the growing economic inter-dependencies of countries worldwide through increasing volume and variety of cross border transactions in goods and services and of international capital flows, as well as through rapid and wide spread diffusion of technology and information.[164] In this connection, most writers maintain that globalisation is a form of colonization employed by industrialized countries to entrench a global capitalist system and consumer auction by establishing a global market controlled by the most dominant interests within the ruling elites of these multinational companies.[165]

Globalisation of the Nigerian economy started in 1986 during the structural adjustment program (SAP) which ushered the country to liberalisation, deregulation, commercialisation and privatisation programme. Before we continue, it is apposite to note that, before the advent of globalisation into Nigeria, most Nigerians could rightly be qualified as falling under the self-employment category given that they were basically farmers. The Nigerian economy during the first decade after independence could be reasonably described as an agricultural economy because agriculture served as the engine for growth in the overall economy[166]. During this period, Nigeria was the world's second largest producer of cocoa, largest exporter of palm kernel and largest producer and exporter of palm oil. However, the agricultural sector was relegated to the background when Nigeria became an oil exporting country. This relegation was attributed to inappropriate exchange rate policy which made the prices of agricultural output too low to give farmers the incentive to produce. Following this incidence, many self-employed Nigerians became entirely

[164] OS, Adesina 'The Negative Impact of Globalization in Nigeria' *International Journal of Humanities and Social Science,* vol. 2 No. 1, (2012) p.193 .
[165]*Ibid* p 194
[166]B C,Ogbonna, , 'Structural Adjustment Programme (SAP) in Nigeria: An Emperical Assessment' *Journal of Banking*

Vol 6 No. 1 (2012) PP.19.

unemployed and thus started seeking for job from the government. To reverse the worsening economic fortunes in terms of declining growth, increasing unemployment, galloping inflation, high incidence of poverty, worsening balance of payment conditions, debilitating debt burden and increasing unsustainable fiscal deficits, amongst others, government embarked on austerity measures in 1982; and arising from the minimal impacts of these measures, an extensive structural adjustment programme was put in place in 1986 with emphasis on expenditure reducing and switching policies as well as using the private sector as the engine of growth of the economy via commercialisation and privatisation of government owned enterprises. The major policy thrust of this structural adjustment programme was reduction from inward looking import substitution strategy to outward looking export promotion strategy.

Note that the economic crisis for which Structural Adjustment Programme was introduced to tackle was chiefly caused by the sudden collapse of world oil prices and the sharp decline in petroleum output. The impact of this on labour was that many Nigerians who were formerly self-employed (when the agricultural sector was booming) but who ran to the government for employment, began to experience difficult times as many of them were retrenched. Therefore, the indigenous (post-colonial) administrations in Nigeria were faced with the task of introducing some economic measures geared towards correcting the lapses in the economy and achieving accelerated socio-economic development of the country. In 1980, President Shehu Shagari introduced the economic stability measures, otherwise known as Austerity Measures in response to growing structural imbalance and liquidity squeeze of the period. One of the major measures includes the freezing of recruitment into the public sector. The Buhari-Idiagbon regime continued with the preceding administrations stabilization measures. In addition, the administration embarked on a mass retrenchment of public sector workers and the banning of importation of some commodities. The remarkable problem here was that these retrenched workers have no work to fall back on as the government had no sustainable labour plan for them. it is submitted that this neglect for labour and

the incidental high rate of unemployment contributed heavily to the failure of these economic programmes i.e. The Green Revolution and Economic Stability Measures. It was the Babangida administration from 1985 to 1994 that introduced the Structural Adjustment Programme (SAP) in June 1986, which led to fundamental structural economic changes in the country. The programme signaled a radical departure from the previous reforms with its emphasis on market prices and private sector as ways of redressing the problems in the economy.

One of the policy instruments of Structural Adjustment Programme includes the privatisation and commercialisation of state-owned enterprises. This entailed handing over economic control to private hands. These private individuals and firms were to run the economy while generating revenue for the government. It also entailed that the government will have minimal control on how the economic system was run as the economy was opened or subjected to market forces. The notable point here wasthat globalisation actually had its way into Nigeria through the implementation of the Structural Adjustment Programme. It must be noted that before the introduction of SAP, many retrenched public sector workers became unemployed while some returned to agriculture. The unemployed groups continued to search for jobs and were ready to take any kind of work available to them. When the private sector took over, the incidence of capitalism and competition forced employers to take steps towards reducing cost and achieving management flexibility. The first step that came to their mind was the reduction of salaries of the workers. However, this was met by a wide rejection from the workers' union which led the government to revise the legal protection of the workers. The employers were therefore required by the Government through the instrumentality of the Labour Act to meet certain standards and employee benefits under the law.[167] Most of the employers, in blatant refusal to follow the law, embarked on a mass sacking of their employees and replaced them with contract staff. This was not difficult for them because, workers both skilled and unskilled who were previously retrenched by the public sector before the advent of SAP were readily available to take the jobs on any term. Thus, the number of jobs in the private sector was not as good

[167]*Ibid*,178.

as those lost in the public sector due to competition in the private sector and the low survival of these firms.[168]

With the growth of competition in the private sector, employers started coming to terms with unfair labour practices such as contract staffing, outsourcing and casualization of labour. This arguably led to the emergence of the concept of economically dependent worker in Nigeria. The growth of various forms of employment relationships was historically visible in the oil & gas sector. It has been strongly submitted that the emergence of outsourcing, contract work and casual work by employers in the oil and gas sector was not sudden, but adequately planned, backed up by government policies, gradually and surreptitiously executed in various sectors. Research has shown how these oil companies operated in other to respond to the strict labour conditions of employment.[169] They came up with advertised goal of restructuring the work processes for the purposes of better service delivery, optimum returns and improved productivity. What was hidden was a means of getting rid of existing staff. These staffs are usually taken out on training, indoctrinated on importance of early retirement and entrepreneurship. Many workers fell for this trick and accepted the disengagement packages. This is more so as most of them were given huge sums of money. During this period, it could be said that economically dependent workers who evolved through outsourcing were basically unskilled or semi-skilled labourers compared to those that were found within the contract staff. However, today it has been shown that skilled dependent workers are alsobeen outsourced. In other words, a skilled worker can comfortably bend himself under contract work or outsourcing contract. Educational qualification no longer guarantees a permanent job opportunity. Other industries than the oil and gas sector have supposedly borrowed leaf from the oil and gas sector. A research on the construction industry of Edo state, for instance, has clearly shown that only 2.2% of the workers were permanent employees, 23.6% were engaged as

[168] O A, Elijah, 'Effect of Economic Globalisation on Employment Trend and Wages in Developing Countries from Nigeria Experience' Selected Paper in Developing Countries: Lessons from Nigeria Conference of Labour Economics Organized by Association of Italian Economists of Labour(AIEL) Sept. 13-14 (2007) p 13.

[169] D, Otobo, *Reforms and Nigerian Labour and Employment Relations: Perspectives Issues and Challenges'* (Lagos, Malthouse Press limited, 2016)pp177-178

contract staff and 29.2% were outsourced workers.[170] A visitor cannot distinguish a contract employee from a permanent employee because they work the same hours and perform the same tasks and the contract staff were also skilled and qualified workers.[171]

In summary, there is no official data on the history of economically dependent work in Nigeria. Most Nigerians could be said to be categorized under the self- employment bracket as they were basically farmers. With the discovery of oil in Nigeria in the late 1970's, the country recorded a shift from the agricultural business to the oil and gas sector. Many Nigerians in search of a greener pasture left their farming businesses, acquired education and got jobs in the oil and gas sector. The educated ones remained in the public sector while the unskilled ones worked in the informal sector. Huge problem started for the educated permanent workers when the price of oil slashed globally. This led to a retrenchment of many of these workers. The government in a bid to tackle this economic crisis introduced the Structural Adjustment Programme in 1986 which itself heralded the advent of globalisation in Nigeria. Private hands took over the economic administration and the management of the workers. With the incidence of global market forces like capitalism and competition, these private firms sought for measures to remain in competition while cutting cost. These measures include retrenchment of workers, contract staffing, outsourcing, casualisation etc. These various unfair labour practices affect both skilled and unskilled labour and have produced a special group of workers, who depend on their employer for economic survival; who work alongside employees but who are not given some legal recognition and protection in Nigeria.

One huge problem of the concept of Economically Dependent Work is that there is no clarity of definition of the concept. Many countries especially in Africa do not have a clear definition of economically dependent worker let alone a significant internal political or social debate on the matter. This is not completely the case in Europe as most European countries either have a definition

[170] B O, Osaghele et al 'An Evaluation of Skilled Labour in Selected Construction Firms in Edo State, Nigeria' *American Journal of Engineering Research (AJER)* vol. 4, Issue 1(2012) p. 163.

[171] R A, Danesi , 'Contract Labour and the Right to Freedom of Association in the Oil and Gas Industry in Nigeria' available at http://ilera2012.wharton.upenn.edu/refereed papers/danesirosemary.pdf accessed on 25/01/ 2018

of the concept or record a wide ranging debate on whether or not legal measures should be introduced to cover the concept. Countries where the concept is most clearly defined are Italy and Germany. In these countries, for the past two decades at least, the term "quasi-subordinate employment" has been used, sometimes in legal theory and sometimes by the lawmakers. Therefore, these countries are in the privileged position of being able to assess the factors relating to the situation and the solutions that have been provided in law.In Italy law, the term 'Quasi-subordinate employment" was used to define forms of self-employment displaying special characteristics which made it similar to subordinate employment.[172]

A research on the definition of economically dependent employment under Italian law[173]shows that it is based on three main characteristics namely: continuity, coordination and the personal nature of the work. Continuity means that the work is intended to meet a long-term requirement of the other party and that it will take time to complete. In other words, it will not be over in an instant. However, since this is self-employed work aimed at achieving a result, one cannot speak of long lasting obligation in the legal sense. It is the *de facto* continuity of the service that is important. In practice, even in cases where although the work is completed in a single effort, the worker may have spent considerable time preparing it, so that continuity may be said to exist, i.e there is a relationship of temporary duration. Coordination of the work by the client must be distinct from employer control otherwise the work could fall within the subordinate employment category. With respect to the third condition, the work must be of mainly personal nature, it entails the following:

i. It excludes services rendered by a natural person whose job is to direct the work of others without being personally involved in that work.
ii. It excludes services rendered on behalf of company
iii. It excludes activities that are purely entrepreneurial.

[172]A, Perulli*Op.cit* p. 79.
[173]*Ibid,* p. 80.

However, it is opposite to note that due to the fact that most Italian employers capitalized on the three elements highlighted above to use the quasi-subordinate category as a way to hide what should have been standard employees into a discounted status with fewer rights and benefits, the Italian legislature enacted the Jobs Act of 2015 with a view to changing the course by implementing a strong presumption of employment status.[174]

Germany is another country where the question of economically dependent work is most well-known and debated. As was the case in Italy, the first German law to deal with economically dependent workers who, in the German system are called 'workers similar to employees', is a kind of procedural law. The law extended to these workers the procedural protection that applies to employees. The procedural Act on labour law includes among employees "other persons, who because of a lack of economic autonomy are treated as dependent workers" The same terms are used in section 2 of the German Holidays Act of 1963 and section 12a of the German Collective Agreement Act of 1974.[175] The German legislative rules provide the following three criteria to define economically dependent employee:

1. He does not employ other employees
2. He usually works for only one contractor
3. He performs the same type of work that is also carried out by regular employees.[176]

3.1.2 Economically Dependent Workers in Nigeria

Although the term "Economically Dependent Worker" has not been fully appreciated in Nigeria, It is strongly maintained that Nigeria is one of the countries where labour issues relating to the concept are being heavily debated and discussed. In Nigeria, it is not difficult to find the range of workers who do not have an employment contract with the employer or who depend on a single employer for

[174] M A, Cherry & A,AloisiDependent Contractors in the Gig Economy: A Comparative Approach, *Legal Studies Research Series*,No 16 (2016), p.24 available at https://ssrn.com/abstract=2847869 accessed on 20/01/2018.
[175] A, Perulli*Op.cit* p. 83
[176] https://www.eurofund.europa.eu/observatories/eurwork/comparative_information/natio

their income or who are not entitled to the protection and benefits available under the labour law. Casualisation in the Nigerian labour market is a subject of great concern. Casual employees are filling positions that are permanent in nature; In line with employee vulnerability in Nigeria is the high level of unemployment and attendant poverty. The world economic meltdown has bred a dangerous work environment where many job seekers in the labour force are willing to take any job for survival purposes rather than dignity. Despite the different names by which these workers may have been identified, it is submitted that most of them fall under the category of Economically Dependent Workers.

Based on a careful perusal of different available data on economically dependent workers, it is humbly submitted that they can be identified with the following features:

1. They do not have a formally accepted definition or statutory framework;
2. They do not have a contract of employment with their employers;
3. They depend on one single employer for their income;
4. They do not employ other employees;
5. They most often perform the kind of work that is performed by regular employees;
6. They usually fall within the un-skilled or semi-skilled labour category. Though recently skilled labour workers will find themselves in this category;
7. They are not entitled to employment benefits; and
8. Their salaries are usually inadequate.

Let us take cursory look at the Nigerian upstream oil and gas companies where we have the following employment relationships:

a. Regular Employees: These are the direct employees of the companies that have standard contracts of employment

b. **Labour Contract Employees**: These are employees who work side by side with regular employees but do not have a direct employment relationship with the oil and gas companies.

c. Service Contract Employees: The oil and gas companiesissue out a myriad of service contracts for different kinds of work to be carried out by service companies in aid of oil and gas exploration/production business. In some cases, the employees of these service companies are embedded in the principal oil and gas companies because of the nature of the service that their primary companies are rendering to the oil and gas companies.

d. Casual Employees: These are daily paid employees who are hired for three months fixed duration and released afterwards. They are meant to be used for non-continuous works.[177]

In this connection, it is clear that labour contract employees and service contract employees may be assumed to fall under the umbrella of economically dependent workers because, they do the same work done by the regular employees; they do not have any clear organisational separation from the employer and they only have a commercial contract with the employer i.e. they do not have a contract of employment. Most importantly, they depend only on the employer for their income. Based on this analogy, it is clear that most contract staffs in Nigeria are economically dependent workers. However, it is worthy of note that for the service contract employees to come under the umbrella of Economically Dependent Workers, we must exclude those that render professional

[177] See C O, 'Christopher et al 'Collective Bargaining Dynamics in the Upstream Oil and Gas Industry: The Nigerian Experience' p 6 & 7 available at https://www.ilo.org/public/english//iira/documents/congresses/regional/lagos2011/4thsession/session4a/collectivebargaining.pdf accessed 20/01/ 2018

services. In other words, their task must be simple and no professional knowledge or competence will be needed.[178]

3.1.3 Reasons for the Emergence of Economically Dependent Workers

The emergence of economically dependent workers could be specifically traced to a lot of reasons have not been properly checked and still fuels directly or indirectly the growth of these category of workers. These inter-dependent factors are briefly discussed below:

Globalisation

This involves economic integration; the transfer of policies across borders, the transmission of knowledge, cultural stability; the reproduction, relations and discourses of power. It is a global process, a concept, a revolution and an establishment of a global market from socio-political control.[179] It is characterized by forces such as capital mobility and deregulation of the labour market. It is believed to be the bedrock of many other factors contributing to the emergence of this category of workers in the informal sector in Nigeria.[180] As has been pointed out, globalisation traces to the introduction of the Structural Adjustment Programme in Nigeria during the 1980's. The programme was a massive package of macro- economic panaceas from the Bretton Woods institution for the Nigerian economy. However, the adoption of the panacea has not helped the economy of the country in any significant measure.[181] It is on record that globalisation caused a decrease in the number of people directly employed by Agriculture.[182] It also brought about the takeover of economic by the private sector. This led to massive downsizing in government parastatals and a

[178] R, Pedersini, 'Economically Dependent Workers, Employment Law and Industrial Relations *'European Observatory of Working Life*,Published on 13 June (2002) p. 2 available at https://www.europound.europa.eu/observations/euwork/comparative_information/economically_dependent_workers_employment_law_and_industrial_relations accessed on 21/01.2018.

[179] O S, Adesina*op.cit* p 193.

[180]T M, Fapohunda, 'Employment Casualisation and Degradation of Work in Nigeria' I*nternational Journal and Social Science* vol. 3 No. 9, (2012) P 260.

[181]E E, Anugwom 'Globalisation and Labour Utilization in Nigeria Evidence from the Construction Industry' *African Development Journal* vol. 37. No. 2,(2017) p. 122.

[182] O A, Elijah *op.cit* p 9.

remarkable shift of workers to the informal sector for job opportunities.[183] With the ever growing competition in the industrialized market economy, employers in the formal sector resorted tocasual labour as a means of remaining competitive. It is not therefore difficult to find today, in most organisations, skilled workers who do not have a contract of employment.

Outsourcing

A careful research on economically dependent workers has revealed outsourcing as one of the major reasons for the emergence of such workers.[184] There is evidence that an increasing share of outsourcing activities leads to the outsourced worker being economically dependent on the firm he/she contracts with and being in hierarchical subordination to it.[185] Arising from globalisation, outsourcing provides an easier way to cut costs and run-off competition. Where an employer outsources labour or production components, less number of permanent employees is needed.[186] In the past, the companies in the oil and gas industry employed contract workers directly. But now, they no longer employ this category of employees directly. Instead, it is outsourced to labour and service contractors.[187] These outsourced workers have no defined contract of employment and are not allowed to enjoy the protection available under the Labour laws.

Contract Staffing

This has also been unarguably linked with the emergence of the economically dependent workers.[188] Contract staffing is also an incidence caused by globalisation. It is one of measures resorted to by organisations both in the private and public sector to withstand the stringent economic competition that followed the introduction of capitalism in Nigeria. An in depth study on the employment in the

[183] *Ibid* pp. 10 to 12.
[184] See S, Stefan 'Economically Dependent Workers in Slovenia' *European Observatory of Working Life* on 12, August 2007 available at https://www.eurofound.europa.eu/observatories/euwork/articles/economically-dependent-workers-in-slovenia accessed on 02/0 2/ 2018.
[185] R, Boheim and U, Muchlberger, 'Dependent Forms of Self-employment in the UK: Identifying Workers on the Border Between Employment and Self-employment' *IZA Discussion Paper* No.1963, (2006) p.2.
[186] T M, Fapohunda,*Op.cit* p. 60.
[187] R A, Danesi,*Op.cit* p. 3.
[188] R, Boheim& U, Muchlberger,*Op.cit* p. 2

Federal Civil Service between 1970 to 1997 shows clearly that contract workers started in the public sector barely with the introduction of Structural Adjustment Programme in Nigeria.[189] These contract workers do the same work done by the permanent workers. The only difference is the absence of a contract of employment. Although their service is agreed to be for a fixed period, in most cases, there contracts are renewed for another fixed period and so on until the contract worker is retained as a permanent workerdepending on some factors such as experience and hard work, disengaged or the contract worker finds a better employment opportunity.

Unemployment

This is another factor shown by research to be a major cause of the emergence of economically dependent workers.[190] History also shows clearly that unemployment became a trend in Nigeria with the introduction of Structural Adjustment Programme and globalisation.[191] Unemployment qualifies as a basic reason for the emergence of economically dependent workers in Nigeria because it breeds vulnerability and staff competition in the labour force. This leaves the citizens with no choice than to accept any kind of work regardless of the condition of work.

Retrenchment of Workers

Similar to unemployment, retrenchment is one of the original causes of the emergence of economically dependent workers in Nigeria.[192] Although retrenchment in the Nigeria economy predated the economic crisis that produced Structural Adjustment Programme, it became a historic incidence in the emergence of economically dependent workers when Murtala became head of state on 29 July, 1975. He was just what the country needed to sweep clean the cobwebs of the Gowon regime. Out of his great moral courage, thousands of workers were sacked in the civil service, in the

[189] O A, Elijah,*Op.cit,* pp. 11 & 12
[190] E, Werner, *et al 'Social Protection Rights of Economically Dependent Self-employed Workers' IZA Research Report* No. 54. August (2013) p.51
[191] C A, Nwankwo &A P, Ifejiofor 'Impact of Unemployment on Nigerian Economic Development: A Study of Selected Local Government Area in Anambra State, Nigeria'*European Journal of Business and Management* vol. 6 No. 35 (2014) p.106.
[192] E, Werner, et al *Op.cit* p 52.

armed forces, in the universities, in parastatals, everywhere in the country, thousands lost their means of livelihood for reasons of poor health, doubtful integrity, redundancy, inefficiency, ineffectiveness, irresponsibility, poor attitude to work, misapplication, old age and long absences from duty without proper authority.[193] Another historic retrenchment that occurred was during the Buhari-Idiagbon regime. According to the report of the shuttle employment enquiries, 1983, between October 1982 and October 1983, about 28, 975 persons were retrenched in Nigeria.[194] From 1984 to 1988 about 156, 550 people were retrenched by the various governments and parastatals in the economy. The government adopted the measure basically to reduce the total wage bills of workers in a bid to reduce governmental total expenditure amidst the looming economic crisis and advent of globalisation. The overall effect of retrenchment on the labour market was that it increased the rate of unemployment. Even the informal sector could not manage the large number of workers applying for jobs.[195] Streamlining the link between retrenchment and growth of economically dependent workers the banking sector may serve as a perfect example. Research has shown that one of the effects of the retrenchment of workers as a result of the banking policy increasing the capital base of banks to 25 Billion naira in 2004 includes the increased use of non-standard workers.[196]

Cost of Management

The employers' goal to achieve gross reduction of costs and maintain flexibility is not only an original cause of the emergence of the economically dependent workers but a continuous contributory factor to the expansion of the group. Other measures such as outsourcing, contract staffing, and retrenchment e.t.c aretraces of the growing desire by employers to cut cost and remain in competition.[197] It is obvious that cost of management does not always serve as a contributory

[193] O J, Fapohunda, 'Retrenchment and Redeployment in the Public Sector of the Nigerian Economy'*World Employment Programme Research WorkingPaper*, Vol.4 No. 51 (1991) p. 17.
[194]*Ibid* p. 17.
[195]*Ibid* pp. 31 to 35
[196]E E, Okafor, 'Reforms in the Nigerian Banking Sector and Strategies for Managing Human Resources Challenges' *European Journal of Business and Management*vol 5.No.18 (2013) p.131.
[197]S B, Monday & W O, Olori, 'Management Practices and Industrial Harmony in Oil and Gas Firms in Rivers State, Nigeria' *International Journal of Advanced Academic Research* vol. 2 No. 11 (2016) p.105.

factor to the use of short term workers.This may not be challenged to the extent that the word "short term workers" was used because they do not come under the ambit of economically dependent workers. However, where a worker is literally termed 'a short term worker' and is continuously used by the employer, such a worker could arguably be seen as an economically dependent worker in which case, this substandard nature of work will always be traced to employer's cost of management tactics.

Circumvention of Labour Law Provisions

Outsourcing firms for instance face fewer legal constraint of employment protection in terms of working time or security, given that most employment protection laws are not applicable to such work relationships. In such circumstances, it is always typical of employers to begin to create an invisible line between "Core" and "non-Core" activities as an excuse for circumventing labour law provisions.

Rigid Internal Labour Market Structure

Institutional constraints such as labour tax regulations have been highlighted as being one of the driving forces for the growth of economically dependent workers. The Personal Income Tax Act holds the employer responsible for the deduction and payment of the taxes of its employees' non-compliances of which attracts some penalties.Similarly, Sections 7 to 10 of the Pension Reform Act contains some retirement benefits for employees at the expense of the employer.The effect of these provisions is not difficult to fathom. Both the employer and the worker are affected in the sense that while the employer would always cut cost and maximize profits, the worker would not be happy to see part of his salary being deducted by the employer. This leads to tax evasion. The employer resorts to measures such as outsourcing and contract staffing to tackle the problem while the worker chooses to work on contract basis (that is, otherwise than as an employee). Little wonder, research has shown that tax avoidance is more pronounced among dependent and independent self-employed

workers than with permanent employees. The case of *Star-Deep Water Petroleum Limited v. LIRS*[198]shows clearly how outsourcing is adopted by companies to avoid incidence of tax.

Government Policies

From the historical analysis of the growth of economically dependent workers earlier discussed, it has be shown how government policies starting from the economic reforms in the 1970's to the introduction of SAP and even till today, has greatly affected the Nigerian labour relations. The problem is that when these policies are introduced, the government usually does not put workers into consideration as to how the policies may affect them. Let's take the banking sector for instance, banking reforms in Nigeria mainly take the form of recapitalization, merger and (or) acquisition, both in a consolidation and post consolidation period. In 2004, the central Bank of Nigeria raised the capital base from 2 billion naira to N25 billion and mandated all existing banks to recapitalize to the tune of 25 billion naira on or before 31st December, 2005. This led to a massive retrenchment in the banking sector. It left the surviving banks with no other option than to adopt any possible means of cutting cost such as engaging workers on contract basis, etc.

Silence of the Law

The greatest problem faced by most Nigerian dependent contractors is that they do not appreciate the nature of their work. Some of them think that they are employees while they are not. This problem traced to the fact that our labour laws areyet to become abreast of this growing trend in the Nigerian labour realm. The Labour Act[199] was enacted in 1971. This definition of a worker under the Labour Act has been described as narrow because it is apparent that it is not every employee under Common Law that is a worker under the Act.The government has not deemed it fit to review the legislation neither has it shown interest to enact a law that will govern this new group of workers. The existing

[198](2016) TLRN18
[199]Cap L 1 LFN, 2004.

loopholes in the Labour Act and the failure by government to address them encourage the growth of economically dependent workers.

3.1.4 Arguments in Support of Economically Dependent Workers

We shall begin this segment by considering the Taylor review of modern working practices, July 2017. The United Kingdom Prime Minister, Theresa May, had requested Matthew Taylor, Chief executive of the Royal Society for the Arts, to conduct an independent review into how employment practices in the United Kingdom need to change to keep pace with Modern Business Models.[200] It is worthy of note that the concept of economically dependent workers is not novel in the UK as it is legally recognized under section 230 of the Employment Rights Act, 1996. The economically dependent workers are known in the UK as "Workers" and the Act defines a worker to include an individual who has entered into or works under any contract, whether express or implied and whether oral or in writing whereby the individual undertakes to do or perform personally any work or services for another party to the contract.[201]

After a careful research, the report vehemently refused to follow the representations suggesting that the three tier approach to employment adopted by U.K be replaced with a two-tier system of employment and self-employment.[202] The reviewers submitted that the government should retain the three-tier approach to employment e.t.c. They however suggested that the term worker as used in the Act be renamed as dependent contractors.After a careful reading of the various suggestions in favour of the creation of a new category of workers.

[200]M, Taylor *et al* 'Good Work: The Taylor Review of Modern Working Practices' (2017)p. 1 to 116 available at https://www.gov.uk/government/uploads/system/uploads/attachment-data/file/627671/good-work-taylor-review-modem-working-pracices-rg.pdf accessed on 27/01/2018

[201] See Employment Right Act (UK), 1996 section 230.

[202] M, Taylor *et al, Op.cit*, p.35

Reduction of the Burden on Courts

This is quite similar to the point discussed above. The opponents of a new category may argue that it is rather better for the courts to give wide meaning to the gamut of employees instead of creating a new category. However, applying this part has not been easy for the courts. The Uber drivers' saga is a perfect example. Worst still, even when the court finally holds that the workers were eventually employees as against independent contractors, this does not seem to put a stop to the controversy. Apart from the Uber drivers saga, another classic example perfectly encapsulating this issue occurred in the case of *Vizcaino v.Microsoft*[203]where the Court declared the claimants who were "permatemps" as employees and granted them full employee benefits and back pay as a result. Unfortunately, this ruling has not created a true change in Microsoft's policy of hiring temporary workers. Instead of labeling these workers as employees, the simply terminate their contracts and send them away.[204] These employers are incomparably richer that their workers and are super ready to buy their way out of the courts. This kind of regulatory outrage reveals the need for a third category that would identify the protections afforded to workers labour under intermediate arrangement.[205] In this connection, a business law professor, Stemler, commenting on the Uber drivers case, has suggested that instead of labouring to find these workers as employees, a new classification should be created that falls between the clear cut employees and traditional independent contractors. These new classification would enable regulators to think differently on how to fill regulatory gaps.[206]

Where the creation of this new category is achieved, the court will not find it burdensome to easily identify the category to which a worker belongs. Expressing the height of confusion the

[203]290F.3d1043 (2002)
[204] O, Lobel 'The Gig Economy & The Future of Employment and Labour Law' *University of San Diego School of Legal Studies Research Paper* No. 16-223, (2016) p. 10 available at http://ssrn.com/abstract=2848456 accessed on 28/01/ 2018.
[205]*Ibid*, p. II
[206] A, Sternler, 'Betwixt and Between: Regulating the Shared Economy' *FORDHAM Urban Journal*, vol. 43, (2016). P.61.

current situation poses to Judges. The judge in the case of *Cotter v. Lyft Inc.*[207] stated that the case was like being handed a square peg and asked to choose between two round holes. A legislative intervention becomes imperative to enable the courts to easily administer justice to those classes of workers.[208]

Flexibility and Relative Advantage over other Options

From an individual perspective, dependent self -employment may represent a better solution than being unemployed or in irregular employment. Particularly in creative occupations, perceived job satisfaction can occur despite a precarious status and/or low or unstable income.[209] Recognizing economically dependent workers arguably will promote some level of work flexibility and opportunities for the worker.[210]

Discouragement of Post-Employment Restrictive Covenants

Recognizing the inherently mobile realities of economically dependent workers could allow us to better interpret the duties of loyalty and post-employment restrictive covenants that employers regularly demand. Employers in nearly every industry require their employees to sign non-competitive and non-disclosure agreements and pre-innovation assignment clauses. From a human capital perspective, it would make sense to increase protections over the dependent workers mobility, ownership over skills and knowledge, all to a higher level than that of employees, who enjoy more job security in return for some constraints over future competition with their employer.[211]

[207] Case No. 3:13-cv-04065.
[208] M A, Cherry & A, Aloiso, *Op.cit* p. 36
[209] E,Werner,*Op.cit*pg 10.
[210] H T, Wandera,*Op.cit* p.188.
[211] O, Lobel,*Op.cit* p. 13

Promotion of Social Compact and Organised Labour

Since the wake of the 20th century, a social compact developed between employers and employees which protected employees from dangerous working conditions provided a minimum level of economic security, and defined norms of fairness. The social compact has served workers, employers and society well. This social compact is jeopardized by the classification of employees into independent contractor status.[212] There are many workers scattered in the labour market who do not know which category they belong to. This situation can be tackled by the creation of this new category of workers as it will provide an opportunity to connect workers to each other and organize in ways previously unavailable.[213]

Enhancement of Economic Efficiency

In an ideal labour market with no frictions and perfect information, the cost of many of the benefits that employers are legally required to provide to employees would be ultimately borne by the employees themselves in lower wages. With the recognition and formalisation of economically dependent workers, outsourcing acquires a positive outlook unlike the current situation where it is negatively interpreted. The gist is that the regulation of economically dependent workers will legitimize outsourcing by companies under labour law which will in effect boost the economic efficiency of the employer firms.[214]

Capturing the full importance of a clear classification of workers, the Taylor Review of Modern practices reports put it as follows:-

[212] S, Harris & AB, Knieger 'A Proposal for Modernizing Labor Laws for Twenty First Century Work: The Independent Worker' The Hamilton Project Discussion Paper 2015-w, December 2015 available at http://www.hamilonproject.org/assets/files/modernising-labour-laws-for-twenty-first-century-work-knieger-harris.pdf accessed on 25/01/ 2018

[213] O, Lobel, *Op.cit*,p. 14.

[214] S, Harris & A B, Knieger, *Op.cit*, P. 26.

> Determining whether you are an employee, a worker (i.e Economically Dependent Worker)[215] or genuinely self-employed, requires the ability to understand complex legislation, which is spread over many Acts, and be aware of a mountain of case law. For individuals, not knowing your employment status means not knowing what employment rights you deserve. For business, the situation can lead to uncertainty about their responsibilities and what can be demanded from workers. The situation does not need to be complicated.[216]

Apart from the United Kingdom, another country in support of a three tier approach is Canada. In the Canadian case of *Mc kee v. Reid's Heritage Homes Ltd*,[217] the court laid down the foundation on how cases bordering on economically dependent workers should be dealt with. It maintained that the first step is to decide whether the claimant is an employee or a contractor. Where it is found that the claimant is not an employee, the next step is to determine whether he is a dependent contractor or an independent contractor. The court further held that unlike an independent contractor, a dependent contractor is entitled to notice before termination.

Finally, commenting on the proposal for the creation of a new group, a learned writer stated that 'it is the clearest and simplest solution to the misclassification disputes and debates' He stated further that the proposal has a practical advantage in terms of implementation and has great potential for incrementally strengthening the rights of many employee-like workers without entirely rejecting the common law independent contractor distinction.[218]

[215]Emphasis mine.
[216]M, Taylor etal*op.cit* p. 34.
[217] (2009)ONCA 916.
[218] M P, Jost 'Independent Contractors, Employees and Entrepreneurialism under the National Labour Relations Act: A Worker by Worker Approach' *Washington and Lee Law Review* vol.68, issue 1, (2011) p 337.

3.1.5 Arguments against the Existence of Economically Dependent Workers

As has already been pointed out, the idea of an intermediate category is not without its detractors. As compelling as the arguments in support may appear, very strong arguments and issues have been raised in rebuttal, and more reasons have been shown to cancel the new category approach. Without much ado, these points will be briefly discussed below:

Denial of Employee Rights

It has been strongly argued that the creation of a new work category will open room for more victimisation of labour.[219] For instance, within the first decade of its introduction in Italy, undesirable effects occurred. Businesses increasingly began to hire workers under the category. The problem is that most of these economically dependent workers would have all previously been classified as employees. Simply put, therefore, the new category was used to hide bonafide employment relationships in order to reduce costs and evade the protections to which workers are entitled under the law. If only two work categories could pose problems to our labour system, then, the three categories could possibly create more room for mischief than two. Introducing a third category will usually introduce an arbitrary of classifications and increase in precarious work.[220]

Cumbersome Implementation

It has also been argued that creating a new category would not be ideal because of the unavoidable difficulties affecting the definition of a third category and what protections or exclusions it would contain.[221] In other words, the scholar is submitting that a new category will be difficult to manage and implement. He however, stated that instead of creating a new category there should be a change of the presumptions that exist *vis-à-vis* the two categories already known. For instance, it should be

[219] M A, Cherry and A, Aloisi,*Op.cit* p. 20.
[220]*Ibid,* p.33.
[221]*Ibid,* p.36

presumed that all workers are employees.[222] In other words, he prefers the broadening of the employee concept than creating a new category.

Low Job Satisfaction and Quality

One of the basic problems of economically dependent workers is that it is tainted with job dissatisfaction. An empirical analysis of the Italian labour force survey shows clearly that the vast majority of dependent self-employed workers are not satisfied with the type of contract they hold.[223] After some time, most of these workers often find themselves falling back to a self-employed status while only few move to permanent employee status similarly while the new category may be seen as an efficient type of employment, it undermines the principles of job quality and solidarity. Economically dependent workers compete in settings where price plays the most important role given that economizing on costs represents one of the key motives to employ dependent self-employed workers. This probably leads to erosion of job quality because of the acceptance of hourly wages and very flexible and insecure working conditions as a competitive advantage.[224]

Instability of Income

The wages gained by the economically dependent workers vary as much as their working conditions. Using the United Kingdom for instance, report has shown clearly that these workers face higher economic risk without having a real opportunity to benefit from the status of self-employment.[225] It is doubtful that most dependent self-employed workers sufficiently improve their income over time and save enough to compensate for insufficient public pension entitlements.

Degradation of Employee Standards and Rights

The growth of economically dependent workers increases the pressure on regular employees to likewise accept the lowering of social security standards and wages as well as increasing instability

[222] *Ibid*, p.37.
[223] E, Werner,*Op.cit* p. 53
[224] *Ibid*, p. 97.
[225] *Ibid*, p. 94.

in terms of job security.[226] Economically dependent workers constitute a preferable workforce for employers than employees. Therefore, increased in the use of economically dependent workers may hamper the terms of work of an employees as the later becomes pressurized and vulnerable to relatively lesser benefits or conversion to economically dependent worker or termination in worst cases.

Circumvention of Social Security Contributions or Taxes

Research has revealed that dependent self-employment is often chosen by employers to circumvent the payment of social security contributions or taxes.[227] In most countries, some laws are only applicable to companies that have a certain number of employees, which companies can avoid by formally lowering this number through the use of dependent self-employment. Furthermore, in UK and Slovakia, for instance, when economically dependent workers are taxed, it is found that they pay relatively lower taxes than employees. It is the writers' view that the use of economically dependent workers poses negative implications for both the government and the society at large.

Creating a new group is not the option towards resolving the current misclassification disputes. We have just seen a number of reasons why it may be necessary to look away from creating a new group, to other options that may be available. It has been stated that rather than creating a new category or replacing one subjective test with another, the legislature should put in place more objective criteria that will guide the judges in applying the law.[228] In other words, the researchers stand with the two tier approach but advocates for a legislative intervention. Kennedy maintained that, even where the two tier approach is replaced with a system of three categories, the lines between each category might still be just as uncertain. He stated further that, if a new category is

[226] *Ibid*, p. 96.
[227] *Ibid*.
[228] J V*, Kennedy, '*Three Paths to Update Labour Law for the Gig Economy' *Information Technology & Innovation Foundation, (*2016) pp. 10 & 11 available at http://www2.itif.org/2016-labor-law-gig-economy.pdf accessed on 30/01/ 2018.

created which to him will be a bad law, employers can also change their system and business model to respond to the bad laws.[229]

Finally, creating another category would eventually amount to succumbing to the forces of globalisation and creating a spacious room for employers to offload their duties under labour law given their ever readiness to adopt cost cutting measures. The implication is straight forward; it is safe to conclude that no sooner would the new group have been created than employers abruptly stopped the use of employees.

3.2 Appraisal of Standard Form Contract of Employment

Employment may give rise to a number of relationships. A person may be employed as an employee or as an independent contractor or as an agent.[230] There are different consequences attached to each relationship which makes a distinction of the relationships expedient. The essence of the distinction between an employee and an independent contractor in a contractor of employment are as follows:

(a) To know when the common law implied duties inherent in a contract of employment will become applicable.[231]

(b) Secondly, the common law doctrine of vicarious liability is confined to the relationship of employer and employee. An employer may be held liable for a tortuous act committed by his employee in the cause of employment.[232]

(c) Thirdly the various labour statutes do not apply generally to those who are not employees at common law[233]and those who are not covered by a statute cannot in any circumstance claim under that particular labour statute as employee. In other words, there must of necessity exist between the

[229]*Ibid*.
[230] E E, Uvieghara, '*Labour law in Nigeria*' *op cit*p.3.
[231] At Common law the employer has duties and as well, the employee has his own duties which the parties owe to each other in a contract of employment.
[232]*Iyere v B.F.M.* [2003]18NWLR (Pt. 1119) 300.
[233]*Iyere v B.F.M, Supra*.

employer and the employee or worker a master servant relationship.[234] Despite the existence of a master and servant relationship between the employer and the employee, a worker claiming under the labour Act must show that he is covered by the Act.[235]

Having ascertained the importance of the distinction between contract of service and contract for service otherwise called independent contractor, and that an employee in the former is regarded as a servant while an employee in the latter is regarded as an independent contractor, the task now is the difficulty in arriving at a proper status of an employee. This difficulty has been prevalent over the years leading the courts to evolve certain criteria for distinguishing an employee in contract of service and one who merely enters into a contract to personally execute work or service. These criteria or rules are referred to as the test for ascertaining a servant. They include the:

a) Control test,

b) Organisation test,

c) Multiple tests,

d) The modern approach.

A cursory glance at these tests is of necessity and they shall consequently be taken seriatim:

The control test is the original or traditional test. It is also referred to as the superintendent test. Under this test, an employee is a servant if he is subject to the control of the employer as to the manner of doing his work.[236] However, the control factor can be overshadowed by other non-employment factors such as the non-employment factors introduced in *Ready mixed Concrete (South East) Ltd v Minister of Pension and National Insurance.*[237] Examples of non-employment factors include situations where an employee is paid by way of fees, where an employee is allowed to delegate his duties, where an employee is to invest and provide capital for the work to progress and

[234]*Atedoghu v Alade* (1957) WNLR 84.
[235]*Olaja v Kaduna Textiles Ltd* (1972) 2WLRI 1;*Shena Security Co. Ltd v Afropack (Nig.) Ltd, Supra.*
[236]*Jordan and Harrison Ltd v Macdonald & Evens* (1952) 1LR 101.*Yewens v Noakes*(1886) 6 QBD530, 532-533*; United Bank Ltd v Ajagu*[1990]1NWLR (Pt. 328) 343.
[237](1960) 2 QB 497.

where no office accommodation and secretary is provided by employer. This means that whether or not an employer controls the manner the employee does his work, there must exist factors showing the existence of contract of employment.

Organisation Test

This is also known as integration test. It was propounded by Lord Denning L.J. (as he then was) in *Cassidy v Minister of Health*.[238] This test arose as a result of the inadequacies found in the control test in view of the sophistication of modern industrial establishments as well as high level of professionalism and skill of modern day employees. Modern day employees have acquired high level of technological knowhow that the employer may not be in a position to control the manner in which the employee does his work. The organization test even though did not destroy the control test, allows the employee some level of freedom from control, yet the employee remains the employee of the employer irrespective of the fact that the employer has no control over him as to the manner he shall do his work. Under this test, it becomes less difficult to assign a status to a professional or an expert employee because a professional or an expert employee is required to use his initiatives to perform the work assigned to him.

Yet this type of employee is still regarded and considered as a servant according to Lord Denning because he is employed as part and parcel of an establishment or organisation and his work is done as an internal part of the business.[239] According to Lord Denning:

> One feature 'which seems to run through the instances is that under a contract of service', a man is employed as part of a business and his work done as an integral part of the business, whereas under a contract for

[238](1951) KB 343.
[239]*Jordan & Harrison Ltd v Macdonald & Evans Ltd Supra.*

> service, his work, although done for the business is not integrated into it but is only accessory.[240]

It must be noted that the reason employers are still liable for any tort of their employees in such cases is not because the employer controls the manner in which the work is done, for they have no sufficient knowledge to do so but because they employ the staff and have chosen them for the task and have in their hands the ultimate sanction for good conduct and the power of dismissal.[241] The organization test did not in any way or manner displace the control test; rather it merely improved the control test to cover perceived difficulties in cases of experts and professional employee. To arrive at a conclusion that one is a servant of a master the two tests must be considered.[242]

The Multiple Tests

There exists a glaring difference between the organisation test discussed above and the multiple tests. Organization test merely widened the scope of the control test to accommodate professionals and experts without actually destroying the control test. Multiple tests posit that the organization inherent in employment is shown by multiple factors apart from control. Such factors include time of work, provision of working tools, holiday and gratuity or pension benefits. The multiple tests envisage that in any particular circumstance where two or more elements of employment point consistently to one direction or another, such may determine whether there exists a contract of service or contract for service.[243] It is important to state here that parties cannot by simply attaching a different label to their contract, alter the true nature of their contractual relationship under the common law.[244] However, where the nature of the relationship is ambiguous and there exist an agreement whether oral or written showing intention of the parties, the agreement will be decisive on

[240]*Cassidy v Minister of Health Supra.*
[241]*Cassidy v Minister of Health, Supra.*
[242]*Westell Richardson Ltd v Roalson*(1954) 2 All ER 440.
[243]*Murren v Swinton and Panddlebury Borough Council* (1965) ALL ER 349*; Ready Mixed concrete (South East) Ltd v Minister of Pension and National Insurance, Supra.*
[244]*Farguson v John Dawson & Partners (Contractors) Ltd* (1978) 1NLR 1213.

what the nature of the contract is.[245]The application of the multiple tests occurred in the Supreme Court case of *Shena Security Co. Ltd v Afropak (Nig) Ltd*[246] where the appellant supplied the respondent with security personnel for a fee on monthly bases and there existed agreement as to period of notice for each party to terminate the agreement. The respondent terminated the relationship contrary to the parties' agreement and the Court held that, where there is a dispute as to what kind of contract of employment parties entered into, there are factors which will usually guide the Court of law in arriving at a right conclusion. For instance:

(a) If payments are made by way of 'wages' or 'salaries', this is indicative that the contract is one of service. If it is a contract for service, the independent contractor gets his payment by way of 'fees'. In a like manner, where payment is by way of commission only or on the completion of job that indicates that the contract is one for service.

(b) Where the employer supplied the tools and other capital equipment, there is strong likelihood that, the contract is that of service. But where the person engaged has to invest and provide capital for the work to progress that indicates that it is a contract for service.

(c) In a contract of service/employment, it is inconsistent for an employee to delegate his duties under the contract. Thus where a contract allows a person to delegate his duties there under, it becomes a contract for service;

(d) Where the hours of work are not fixed, it is not contract of service;

(e) It is not fatal to the existence of a contract of service/employment that the work is not carried out on the premises of the employer. However, a contract which allows the work to be carried on outside the employer's premises is more likely to be contract for services;

[245]*Murren v Swinton, Supra.*
[246]*Supra.*

(f) Where an office accommodation and a secretary are provided by the employer, it is a contract of service/employment'

The Modern Approach

The modern approach to this issue renders intention of the parties not as paramount as the common law may seem to make it. This is because the modern approach is concerned with the elements in existence in the parties' contractual relationship as against what they intended. The modern approach finds support from the case of *Ready Mixed Concrete (South East) Ltd v Minister of Pension and National Insurance*[247] wherein MackennaJeshethen suggested that a contract of service exists if the following conditions are fulfilled:

a) The servant agrees that in consideration of a wage or other remuneration he will provide his own work and skill in the performance of some services for his master;

b) He agrees, expressly or impliedly, that in the performance of the service he will be subject to the other's control in a sufficient degree to make that other his master; and

c) The other provisions of the contract are consistent with its being a contract of service.

In addendum to the criteria for ascertaining the appropriate status of a worker or servant, Corker J. held in the case of *Market Investigation Ltd v Minister of Social Society*[248]that*:*

> The fundamental test to be applied is this: 'is the person who has engaged himself to perform these services performing them as a person in business of his own account? If the answer is 'yes', then the contract is a contract for service. If the answer is 'no' then the contract is contract of service. No exhaustive list has

[247]*Supra.*
[248](1963) 3 All ER 732, *Supra.*

> been compiled and perhaps no exhaustive list can be compiled of consideration which are relevant in determining that question, nor contract rules be laid down as to the relative weight which the various considerations should carry in a particular case.

The most that can be said is that, control will no doubt always have to be considered, although it can no longer be regarded as the sole determining factor, and Factors which may be of importance are matters such as whether the man performing the services provides his own equipment, whether he hires his own helpers, what degree of financial risk he takes, what degree of responsibility for investment and management he has and whether and how far he has an opportunity of profiting from sound management in the performance of his task.[249]The importance of the above is that the two above stated factors or test of control and organisation are mere guides and can no longer be very decisive. The modern approach is the consideration of all the facts and circumstance of a particular case to see whether sufficient employment factors present are consistent and point to one direction, that is, the direction of a contract of service, otherwise the employee becomes or is deemed an independent contractor. This is the current legal position on the issue of ascertainment of the requisite legal status of an employee as against an independent contractor. It must be borne in mind that the essence of this jurisprudential insight into the factors for ascertaining the requisite legal status of a worker or employee is to know who will be covered by this work in the event of cases of determination of employment and dismissal. Who can claim that his dismissal or termination of employment was unfair and may want to make recourse to ILO standards on unfair dismissal. Better still to ascertain those covered by the contractual relationship sought to be protected by ILO standards on unfair dismissal.

[249]*Market Investment ltd v Minister of Social Society, Supra.*

3.2.1 Classes of Employees

Employment relationship between an employer and an employee is based on contract. It is a relationship which assumes equality between the parties[250] and thus does not create any superior right beyond what the contract of employment provides.[251] It is important to note that under Nigeria labour law jurisprudence, contract of employment does not in any way create collective interest or right. This point was made clearly in the case *Bosah v Julius Berger Plc*[252] wherein the Court held that:

In the realm of 'master and servant relationship, even though ten or more persons are given' employment the same day under the same condition of service, the contract of employment is personal or domestic to each. In the event of breach, the persons do not have a collective right, to sue or be represented in the suit.This however, does not reflect the position in the public sector[253] It is also important to note that the position aforesaid does not accord with the current trend of the law to do justice to parties. The current position of the law permits the bringing of action in a collective capacity.[254] It is also my submission that despite the position in the cases of *Bosah v Julius Berger Plc*[255] and *Co-operative & Commercial Bank (Nig) Plc v Rose*,[256]fundamental rights actions emanating from labour and employment relationship can be brought collectively by virtue of the jurisdiction now conferred on the National Industrial Court.[257] The discourse under this subchapter is

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[250] C K, Op. Agomo, *National Justice and Individual Employment Law in Nigeria's in Current themes in Nigeria Law, Art. cit* p.95.

[251] *Chukwuma v S.P.D.C. (Nig.)* [1993]4 NWLR (Pt. 289) 512; *Daniels v Shell B.P. Petroleum Development Co.*(1962) 1 ALL NLR19.*Abaruonyev University College Hospital, Ibadan* (1959) WNLR 232; *Obo v Commissioner of Education, Bendel State* (2001) 9WRN 1.

[252][2005]15 NWLR (Pt. 948) 414; See also *Co-operative & Commercial Bank (Nig.) Plc v Rose* [1998] 4NWLR (Pt. 544) .37 C.A.

[253]C K, Agomo, *Nigerian Employment and Labour Relations Law and Practice (*Lagos: Concept Publications Ltd, 2011) 59.

[254]See the preamble to the Fundamental Human Rights (Enforcement Procedure) Rules 2009 which now allows actions for enforcement of fundamental Rights to be brought in a representative capacity.

[255] *Supra*

[256]*Supra.*

[257] Constitution of Federal Republic of Nigeria (3rd Alteration Act) 2010 S. 254 (C) and Preamble to the Fundamental Rights (Enforcement Proceeding) Rules, *op cit.*

important for purposes of knowing the categories of employees in Nigeria to whom the international labour organisation standards on unfair dismissal apply.

Domestic Servant

The Labour Act[258] defines a domestic servant as any house; stable or garden servant employed in or in connection with the domestic services of any private dwelling house, and includes a servant employed as a driver of a privately owned or used motor car. The Act does define domestic service thereby allowing the meaning to be derived in accordance with the facts and circumstances of individual cases in the light of the common law rules. Domestic servants are mainly engaged to be about their employer's persons for purposes of ministering to their needs, including the needs of those who are members of their employers' family or their guests. They are engaged under contract of personal service.

In *Olaniyan v Unilag*[259]Oputa J.S.C. (of blessed memory) noted that in this type of contract personal pride, personal feelings, personal confidences and confidentiality may all be involved. The consequence of this class of employment is that the employee is only entitled to reasonable notice to enable the employer terminate the contract of employment. The employer can terminate at will with reasonable notice or salary in lieu of notice. In *Todd v Kerrick,*[260] it was held that a governess could not be treated as a domestic servant entitling her only to the customary one month notice of termination of service available to that type of menial employment. Also in *Wilson v Uccelli,*[261] it was held that a private tutor is not a domestic servant. A domestic servant is not also entitled to fair-hearing. However, the position under the common law cannot override the agreement of the parties irrespective of the nature of the work the employee is employed to do particularly where the relevant

[258]*Op cit, S. 91.*
[259][1985]2NWLR (Pt. 9) 98.
[260](1852) 8 Exch. 152.
[261](1929) 45 TLR, 395.

employment factors present as was decided in the Supreme Court case of *Shena Security Co. Ltd v Afropak (Nig) Ltd*[262]are present.

Office Holder

At common law, persons who do not fit into the definition of servants but nevertheless enjoy the inherent advantages in the consequences of employment are referred to as office holders. The rationale for this, is that a holder of an office is usually not under a contract to personally execute any work for any person and his employment is not necessarily one of contract of service, rather holding office, he is entitled to a hearing before termination of his appointment and if he is wrongly removed from office, the court will order his reinstatement upon his application.In *Great Western Railway v Bater,*[263]Rowlatt J. defined an office as follows:

> A subsisting, permanent, substantive position which had an existence independently from a person who filled it, which went on and was filled in succession by successive holders.[264]

According to Emiola, a residual office holder may be defined as:

A holder of an office of emolument attached to an institution or institutional office, the appointment of which is vested in a person or body of persons who or which does not come within the legal definition of 'master' at common law or 'employer' under any statute.[265]An office holder ordinarily does not qualify to be an employee as there is no employer who engaged him in that relationship. Rather he is occupying an office but enjoys the consequences inherent in an employment. The position according to Emiola is that the appointment of an office holder can be made or determined only in accordance with the custom of the office or the established procedure laid down specifically

[262]*Supra.*
[263] (1923) KB 266 at p. 274.
[264]*Ridge v Baldwin* (1964) A.C. 40, at pp. 65-66.
[265] A, Emiola, *Nigerian Labour Law* (4th edn: Ogbomoso,Emiola Publishers Limited, 2008) p. 28.

for that purpose.[266] The importance of office holding lies in the remedy available at common law to a holder who is wrongfully removed from office.[267] Two consequences however attach to the tenure of employment of an office-holder.

Firstly, the power to remove an office holder is generally subject to the rules of natural justice.[268] This presupposes that an office-holder must be given adequate time and facilitates to make his representation in reaction to the allegation against him before he will be removed and he must also be given an opportunity to be heard. A holder of an office is not under any contract to personally execute any work for another and his employment is not necessarily one of contract of service but by virtue of holding an office, he has certain rights which entitles him to a hearing before dismissal and if he is wrongfully removed from office, the Court will on the application of the aggrieved employee make an order of reinstatement.

Private Sector Employee

This category of employees hitherto applies to employer-employee relationship regulated purely by the contract agreement of the parties without more. This operates mostly in private sector employment under Nigeria labour law jurisprudence where an employer who is referred to as the master is competent to "hire and fire" at will or without motive.[269] This is the ordinary master-servant relationship and upon wrongful dismissal, an employee will be entitled to damages only and not order of specific performance.

Public Sector Employees

This is also another category of employees whose true status and nature had been erroneously perceived. These categories of employees are those employed either by the Federal, State or Local

[266]*Igbe v Governor Bendel State & Anor* (1983)3NCLR 273.
[267]*Ridge v Baldwin, Supra.*
[268] Natural Justice consists of two essential principles *audialtermparten* and *nemoJudex* in *causa sua*.
[269]*Okomo oil palm Plc v.Iserhienrhieh* [2001] 6NWLR (Pt. 710) 660;*Adeniji v. Governing Council Yabatech* [1993] 6NWLR (Pt. 300) 426;*Steyer (Nig).Ltd v.Gadzama* [1995]7NWLR (Pt. 407) 305.

government or by statutory corporation or companies wholly owned or substantially owned and financed by any of the above tiers of government. Employees under this category are called public servants as defined in the Constitution.[270] Generally, the employment of employees in the public sector has statutory force.[271] It has been erroneously perceived that once a person is employed in the public service as defined by the Constitution, the person's employment will acquire statutory protection. This is erroneous as public servants do not have the same contract of employment just because the constitution or statute classifies them as public servants.[272]

Employment with Statutory Flavour

These are employees whose contract of employment is regulated, either by the Constitution, statutes or civil service rules whether of the Federal Civil Service or State Civil Service. An employee here is usually employed by an employer who is a creation of statute.[273] The implication of this class of employment is that the statute creating the employer protects the tenure of the employment of its employees by making statutory prescriptions which must be followed before any employee of that undertaking can be removed from his employment. The fact that an employer is a creation of statute does not *ipso facto* make his employee's employment one with statutory flavour.[274] It is also instructive to note that the fact that an employee is in public office does not also automatically qualify his employment as one with statutory flavour.[275]

The Court had held that conditions of service which will give statutory flavour to a contract of employment cannot be a matter of inference. There must be conditions which are set out in a statute

[270] CFRN *op cit* S. 318(1); see also the Interpretation Act Cap I23 LFN 2004, S. 18(1); *Shittta-Bay v. F.P.S.C* (1981) SC 46;*Iderima v. R.S.C.SC* [2005)16NWLR (Pt. 951) 378;F.*C.S.C. v.Laoye* [1989] 2 NWLR (Pt. 106) 652.
[271]CFRN, *op cit* S. 318(1).
[272]*Iyase v. University of Benin Teaching Hospital Mgt. Board* [2000]2NWLR (Pt. 643) 45 at 58; *Isioviore v NEPA* [2002]7NWLR (Pt. 784) 417.
[273]For instance employees of educational institution in Nigeria.
[274]*Ujam v. I.M.T.* [2007]2NWLR (Pt. 1019) 476 at p.477.
[275]*Fakuade v. OAUTH* [199]5NWLR (Pt. 291) 47 at p.490.*Haruna v.Uniagric, Makurdi* [2005] 3NWLR Pt. 912) 233 at p.246.

or regulation made pursuant to the statute.[276]Also on the meaning and nature of contract with statutory flavour, the Court in the case of *Oluseye v.Lawma*[277] held that an employment with statutory flavour arises where the body employing the man is under some statutory restriction as to the kind of contract which it makes with its servants and the grounds upon which it can dismiss the employee. Where an appointment is regulated by statutory provision such an appointment is said to enjoy statutory flavour or protection.[278] Any other contract other than the ones regulated by statute or regulation made pursuant to a power derived from a statute is governed by the contract of employment of the parties.[279] From what has been said so far on contract with statutory flavour, one can decipher certain salient points such as the fact that for an employment to be regulated by statute or a regulation, it must be made pursuant to a power granted by a statute or a regulation made pursuant to a power derived from the statute. It is also important to note here that if the employment is regulated by a regulation made pursuant to a power derived from a statute, the said regulation will have the same force of law as the enabling statute under which it was made provided it does not conflict with the provisions of the enabling statute.[280]

3.2.2 Judicial Attitude to the Nature of Contract of Employment

Over the years, there have been persistent efforts by jurists to ascertain the precise criteria for determining who are actually employees and their exact status as well as the requisite legal classification of contract of employment. This is caused by the prevarication of the nature and status of employees vides judicial authorities based on statutory interventions.

From the common law position on the criteria for ascertaining who a servant or worker is, one can see that the common law position placed emphasis on the 'control factor' which we have

[276]*Ujam v. U.M.T. Supra*; *Idoniboye – Obu v. NNPC* [2003]2NWLR (Pt. 805) 589; *U.M.THMB v.Dawa* [2001]16 NWLR (Pt. 739) 424; *Power Holding Company of Nigeria v.Offoelo*[2014]3 ACELR 1-39.
[277] [2003] 17NWLR (Pt. 849) 309-310.
[278]*Oluseye v.Lawma, Supra.*
[279]*C.B.N. v.Igwilo* [2007]14 NWLR (Pt. 1054) 396. See also *Evans Bros (Nig) Pub. Ltd v.Falaiye* [2003] 13NWLR (Pt.838) 570; *Salami v.New Nigerian Newspapers Ltd* [1999]13NWLR (Pt. 634) 315.
[280]*Osadebay v. A.-G., Bendel State* [1991] NWLR (Pt. 169) 525.

earlier discussed. From the control factor to the development of the organization test by Lord Denning (Master of Rolls), down to the multiple test which is *in tandem* with the present modern approach which posits that once there are two or more employment factors pointing consistently to one direction, that is the direction of employment, the employee will be deemed a servant and such contract will be one of service and not for service. This modern approach was espoused in the case of *Ready Mixed Concrete, (South East) Ltd v. Minister of Pension and National Insurance.*[281] The Supreme Court of Nigeria also lent credence to this development of the common law test of ascertaining a servant in the case of *Shena Security Co Ltd v. Afro Pak (Nig) Ltd.*[282] The Supreme Court in this case enumerated a lot of factors which will guide a court in the determination of whether there exist a contract of service between parties or not. Such factors include provision of equipment, office accommodation, office secretary and where payment is salary and wages. The Court's enumeration is indicative of the fact that the list is not exhaustive and there is no hard and fast rule for determining the existence of master-servant relationship. It also shows that each case will be decided based on its facts and circumstances. Therefore, the current attitude of Nigerian courts on the test of ascertaining whether an employee is a servant or an independent contractor is that the Court faced with such question will determine that question by searching for the existence of the employment factors and where two or more of the factors point consistently to the direction of contract of employment/service, the court will so hold.[283] As regards classification of contract of employment, judges have in the past classified contract of employment into domestic servant, master-servant relationship, office-holders and contract with statutory flavour.[284]

This classification which has been developed by judicial authorities particularly that of the Honourable Justice Oputa J.S.C. (of blessed memory) can be found in the case of *Olaniyan v*

[281]*Supra,* see also *Market Investigations Ltd v. Minister of Social Society,Supra*.
[282]*Supra.*
[283]*Shena Security Co Ltd v. Afro Pak (Nig) Ltd, Supra.*
[284]Oputa (J.S.C of blessed memory) in *Olaniyan v. University of Lagos. Supra.*

University of Lagos.[285] At this stage in the development of the classification of contract of employment, the Court's attitude is to the effect that there exists a contract of employment wherein personal pride, personal feelings, personal confidence and confidentialities may be involved and such employee is termed domestic servant.[286] Also there is another category wherein a person occupies a subsisting, permanent, substantive position which had an existence independent of the person who occupies the office and which went on and was filled by successive holders, the occupier here is termed office-holder while another category places emphasis on whether an employee is employed in a government owned establishment whether wholly or substantially owned or whether the employee is employed in a privately owned establishment. Before this time it was not certain whether employees at the state (i.e. government) were employed under a contract of employment.[287] The better view then was that servants of the state (Crown) were employed under contract but the crown could put an end to the contract at any time and for no reason and without any compensation for loss of job.[288] In the English Court of Appeal case of *Dunn v Queen,*[289] the Court stated that:

> There must be imported into the contract for the employment of the petitioners the term which is applicable to civil servants generally, namely that the crown may put an end to the employment of its employees at its pleasure.[290]

This common law position was later given statutory support by the provisions of the then Pensions Act[291] which provided that nothing in the Act shall affect the right of the crown to dismiss any officer at any time without compensation.[292] This shows that at common law what was termed public employment was at the pleasure of the government. That is to say that those public employees were

[285]*Olaniyan v. University of Lagos, Supra.*
[286]*Great western Railway v. Bater, Supra.*
[287]*Railly v The King* (1934) AC 176; *Okonkwo v P.S.C Anambra State* (1981) 2 PLR 359.
[288]E E, Uvieghara, '*Labour Law in Nigeria,*' *op. cit.* p. 17.
[289](1896) 1 QB 116.
[290]*Dunn v Queen, Supra.*
[291]Cap 147 LFN 1958.
[292]*Ibid* S. 6(1).

servants in the strictest sense of the word. However, even at common law, the right of the crown to dismiss its employees at pleasure could still be limited by law.[293] The position of public officers has however changed by virtue of section 6(6) b of theConstitution.[294] By virtue of the above section of the Constitution public officers can now sue the government for wrongful dismissal. This was followed in the case of *Shitta-Bey v. F.P. S.C*[295] wherein the Supreme Court held that the employment of public servants[296] are regulated by Civil Service Rules and also statutes for those employed in government establishments other than government ministries and departments *strictosensu.* In *Oguche v. Kano State Public Service Commission*[297] Wheeler J. stated that:

> It is now common ground, in the present case, that the public service regulations made under the now repealed (constitution) Order in Council 1954, originally published as NRLN 80 of 1960 and now published in vol. iv of the laws of Northern Nigeria, still regulates the procedure of the public service commission of Kano state… Reading these regulations, I am satisfied that they fetter the right of the state to dismiss its servants at will.[298]

This shows that the law has developed to the extent of the Constitution preventing the inhibition on the rights of the individual employee to sue the state as placed by the Petition of Rights Act.[299] It is also instructive to note that the development of the law as regards classification into public and private of the Court. This is because whether private or public, the current attitude of the court is to see whether the particular contract of employment is protected by statute, otherwise it will fall to the

[293]E E, Uvieghara, '*Labour law in Nigeria*' *op cit* p. 17.
[294]1979, and 1999 as amended.
[295]*Supra.*
[296] Which includes civil servants
[297](1974) 1 NMLR 128.
[298]. *Oguche v Kano State Public Service Commission,Supra*p 135.
[299] Cap 149 LFN, 1958.

realm of ordinary master-servant relation.[300] In *Registered Trustees, P.P. L.N. vShogbola*,[301] the Court of Appeal Lagos Division held thus on types of contract of employment:

> Contract of 'employment are of two types *viz*: simple contract of master and servant relationship' under common Law and contract of employment with statutory flavour. In simple contractual relationship of master and servant, actions in damages lie for its repudiation or breach by wrongful dismisses, so that if an employer wrongfully dismissed the employee either summarily or by giving insufficient notice, employment is all the same effectively terminated. On the other hand, employment with statutory flavour is where the appointment and dismissal of an employee are regulated by a statute in which case some rights and obligations are given and imposed respectively, usually beyond the ordinary contract of employment. A declaratory relief coupled with damages could be granted if the requirement of the statute is not complied with.[302]

But for the absence of office holders, I agree with the categorization above by the Court. However, in *Ujam v I.M.T,*[303] the Court stated that:

There are three types of employer/employee relationships with different consequences viz:

[300] *A-G,Kwara State v. Ojulari* [2007]1NWLR (Pt 1061) 551*Daodu v.UBA Plc* [2004] 9 NWLR (Pt. 878) 276 at p.278.
[301] [2004]11NWLR (Pt. 883) 3.
[302] *Registered Trustees, P.P. L.N. v.ShogbolaSupra;* see also *UBN Ltd v.Ogboh* [1995]5NWLR (Pt. 380) 647*Isioeveore v NEPA, Supra.*
[303] *Supr*,476.

(a) Under the common law where; in the absence of a written contract, each party could abrogate the contract on a week's or one month's notice or whatever the agreed period for payment of wages.

(b) Where there is a written contract of employment between employer and employee, in such a case, the Court has a duty to determine the rights of the parties under the written contract.

(c) (i) public servants-where their employment is provided for in a statute and/or conditions of service or agreement.

(ii) Public servants as in the civil service.

The foregoing analysis of the current attitude of Courts to classification of contract of employment shows that judicial opinion on what a particular contract of employment is prevaricates and is devoid of exactitude. This is seen from the opinions of the justices of the superior courts who will at one time say that there are only two classes of contract of employment which are ordinary master servant relationship and contract with statutory flavour and at another time classify contract of employment into three which include public employee as a class divided into public employee whose employment are regulated by statute and public employee in civil service. I cannot but stand on the existing classification given by his Lordship *Oputa J.S.C* (of blessed memory) in *Olaniyan v University of Lagos*[304] which is to the effect that a contract of employment is classified into domestic servants, office-holders, master-servant relationship and contract with statutory flavour.

This concurrence of mine is influenced by the fact that what ought to determine a particular class of contract of employment is the procedure involved in the event of termination of the employment or dismissal of the employee as well as the remedies available in the event that an employee is wrongfully or unlawfully removed from his employment. What determines each class is also dependent on the contract of employment or the statute regulating the employment. The judicial

[304] *Supra*

attitude to the exact nature of a contract of employment has moved away from the class of employment hitherto referred to as private or public employment to now show that such classification of contract of employment is now of no moment. This is because the opinion of the Court at present is that contract of employment hitherto called private sector employment can either be an ordinary master-servant relationship or contract with statutory flavour.The point made above is that the fact that an employer is a creation of statute does not by that very fact make a contract of employment one with statutory flavour rather it must be shown that a statute regulates the particular employee either expressly or by necessary implication.[305] In the same vein, where an employee in a private sector has his employment backed by statute or regulations made pursuant to a statute, the employee's employment is said to be with statutory flavour.[306] This class of employees in the private establishment whose employment is with statutory flavour is majorly seen in employment created pursuant to the provisions of Companies and Allied Matters Act.[307]

This is made manifest in the case of a director of a company incorporated under the Companies and Allied matters Act.[308]The removal of a director is regulated by section 262(1)[309] which provides that a company may by ordinary resolution remove a director before the expiration of his office notwithstanding anything contained in the articles or in the agreement between the company and the director. The effect of this provision is that even a person appointed as a director for life or as a permanent director by the articles or by agreement may nevertheless be removed by the general meeting, subject of course to his right to compensation if any.[310] The procedure statutorily prescribed by Companies and Allied Matters Act[311] is provided in section 262(2) of

[305]*UMTHMB v. Dawa, Supra,* p 424;*Azenabor v.Bayero University Kano* [2009]17NWLR (Pt. 1169) 100; *(UNTHMB v.Nnoli [*1994] 8 NWLR (Pt. 362) 374.
[306]*Longe v.First Bank of Nig. Plc, Supra.*
[307]Cap C 20 LFN 2004.
[308]CAMA *Ibid.*
[309]CAMA *Ibid*.
[310]J O, Orojo, *Company Law and Practice in Nigeria* (5th edn, Royet & Day Publications Ltd, 2008) p. 254; N C S, Ogbuanya, *Essentials of Corporate Law Practice in Nigeria.*(Ikoyi: Novena Publishers Ltd, 2010) p. 379; CAMA *op cit* s. 262(6).
[311]*Op.cit.*

CAMA.[312] Where a director is removed in contravention of the provision of the Act, the purported removal is null and void and will be set aside upon an application by the aggrieved director or an interested party. It is not an answer to plead the master's common law right to dismiss an employee since there is a statutory provision for the removal.[313]

From the above analysis, it is obvious that an employee director of a company registered under the Companies and Allied Matters Act can only be removed as provided in section 262 of CAMA.*[314]* This means that such employee director's employment has statutory flavour since the director employee cannot be removed except as allowed by the Companies and Allied Matters Act and consequently any purported removal other than as permitted by CAMA will be null and void. When an act is void, it is in law a nullity and it is deemed not to have happened. This informed the reasoning of the Court in the case *Longe v First Bank of Nigeria*[315] wherein the Court held that a director whose contract of employment is terminated in contravention of the provision of the Companies and Allied Matters Act regulating the procedure for removal of a director is entitled to an order of reinstatement.

In effect, such a contract though in a private establishment is deemed to be with statutory flavour. What this then means is that where an employee in a private sector has his employment protected by statute or regulations made pursuant to a statute, such as the cases of a director of a company,[316]a secretary of a public company[317] and an auditor of a public company,[318] by prescribing statutory procedure which must be followed before such employee is removed, the employee cannot be removed without compliance with the laid down procedure.[319] It is important to point out here

[312]*Ibid.*
[313] J O, Orojo, *Company Law and Practice in Nigeria, op cit* p. 255; See also *Iwuchukwu v.Nwizu* [1994] 7 NWLR (Pt. 251) 379
[314]*Op cit.*
[315]*Supra.*
[316]CAMA *op cit* s. 262 (1-6).
[317]*Ibid* s. 296 (1-4).
[318]*Ibid* s. 357.
[319]*Longe v.First Bank Plc Supra.*

that under the Banks and Other Financial Institutions Act,[320] the Governor of the Central Bank of Nigeria is vested with the power to remove directors of banks without regard to the procedure laid down in CAMA.

In *Longe v. First Bank of Nigeria Plc*[321], the appellant who was elevated to the office of a managing director from the office of an executive director of the Respondent bank granted an unauthorized loan to a customer of the respondent. The respondent sought to remove the appellant for granting unauthorized loan contrary to the respondent's banking policy. The respondent first suspended the appellant and thereafter convened a meeting where the appellant was removed by a resolution of the respondent. Notice of the meeting where the appellant was removed was not given to the appellant and the provisions of section 262 (1-3) of CAMA regulating the procedure for removal of a director of a company was not complied with. The appellant sued and pursued his suit to the Supreme Court and the Supreme Court held that:

> By virtue of the combined effect of Sections 266 (1) and 262 of the Companies and Allied Matters Act, a director to be removed must be given a notice of the meeting where he is sought to be removed and the procedure prescribed in Section 262 of CAMA must be complied with otherwise the removal will be null and void and the director who is unlawfully removed will be entitled to an Order of reinstatement.

The Court therefore ordered the reinstatement of Mr. Bernard Longe to his office in First Bank of Nigeria Plc which is a private sector employment. This is the most recent judicial attitude to private

[320] Cap B3 LFN, 2004 s. 35
[321] *Supra*

sector employment to the grant of an order of reinstatement which was before now taken to be in the realm of mere master-servant relationship.

3.2.3 Formation of Contract of Employment

Contract of employment is a species of contract and governed by the general principles of contract.[322] These general principles of contract will be appraised in this subchapter. For a contract of employment to be validly formed, all the essential elements of a valid contract must be present. They include offer and acceptance, consideration, intention of parties to create legal relation, capacity of the contracting parties and legality of the contract.There must be offer and acceptance which are in effect the contract between the employer and the employee in a contract of employment.[323] There must also be consideration which is the exchange of promises or actual performance of work on the part of the employee and payment of wages and salaries on the part of the employer. In offering and accepting a contract of employment, there must be consideration, unless the contract is made under seal. It is therefore, the law that consideration in a contract of employment is the salary and other fringe benefits which an employee earns on the one part and the services which an employer receives on the other part. This is why a contract of employment which is bereft of consideration is not enforceable in Law.[324]

Parties must also possess the requisite legal intention to enter into a contract of employment. One common category of contract of employment that has consistently been taken to lack intention to create legal relationship between employer and employee is a contract of employment which arose from a collective agreement.[325] Another essential element which must be present for a contract of employment to be said to have been validly formed is the requisite capacity of the contracting

[322]*Nwobosi v. ACB* [1995] 6 NWLR (Pt. 404) p. 655.
[323]*Appleby v. Johnson* (1874) 9 L.R 158; *Agomo v.Guiness (Nig) Ltd* [1995] 2 NWLR (Pt. 38) 672 to the effect that there must be offer and valid acceptance to the offer before a contract of employment can be validly formed. See also *Ajayi Oba v. Executive Secretary, F.P.C.N.* (1975) 3 SC 1.
[324]*Ajayi v. R.T. Briscoe (Nig) Ltd* (1962) ALL NLR 673.
[325]*Ford Motors Co. Ltd v. Amalgamated Union of Engineering and Foundry Workers* (1962) 2 GB 303; *A.C.B. v. Nwodika*[1996] 4 NWLR (Pt. 404) 658; *Shauibu v. Union Bank of (Nig) Plc* [1995] 4 NWLR (Pt. 338) 173

parties. Except in a contract of apprenticeship, no person under the age of sixteen years shall be capable of entering into a contract of employment as provided in section 9 (3) of Labour Act.[326] What this provision means is that a person under the age of sixteen years can validly enter into a contract of apprenticeship. It also shows that such contract of employment which the section prohibits a person under the age of sixteen years from entering into must be a contract of employment regulated by the Act.[327]

Another special class of employees with protection is women employees. Section 91 which is the definition section of the Labour Act[328] defines a woman to mean any member of the female sex, whatever her age or status at work. The protection granted to women employees under the Labour Act includes maternity protection, night work and underground work. With respect to maternity protection, working pregnant women enjoy protection in relation to maternity leave, maintenance benefits and security of employment. Apart from these elements, a contract of employment must not be tainted with illegality just like the principles of formation of contract generally. What this means, is that contract of employment is formed like any other contract and the basic principles of formation of contract apply to a contract of employment.

3.2.4 Formation of Electronic Contract of Employment

A discussion on the formation of contract of employment by electronic means is no longer an academic exercise; it is of so much importance for commercial consideration as electronic transactions are fast growing. People now enter into contracts including contracts of employment electronically. Employers of labour now find the Internet as a viable means of advertising vacancies which exists in their establishments and receive applications online as well as employ people without the necessity of the parties meeting physically.E-contract of employment are usually concluded electronically by means of e-mail, telephone, telex and fax machines. There is no reason to suppose

[326] *Op. cit*
[327] *Ibid,* section 9(3)
[328] *Ibid.*

that the development of e-mail or the World Wide Web will affect the application of the current principles of law of contract though the internet raises unique technological issues when examining the formation of e-contract of employment.[127] It is these technological issues that often times cloud our analysis of e-contract of employment.

3.2.5 Extant Laws on E-Contracts

The first question to be addressed with regard to e-contract is whether such virtual contracts are permissible by the current state of our Laws. If the question is resolved in the affirmative, we can then move on to more complex issues such as when is a contract of employment concluded electronically and what are the terms and regulatory laws of such contract of employment. In Nigeria today, there is no law which specifically provides for electronic contracts including electronic contract of employment. Contracts concluded electronically are guided by the general laws on contracts *simpliciter* and the common law principles deducible from case law. It is also interesting to note that Nigerian Courts are yet to be faced with the issue of validity of an electronic contract of whatever class including electronic contract of employment.

Many contracts today are devoid of formalities, and as such may be concluded in writing, orally or electronically. Where contracts are required to be in writing or have some other form of formal requirement such as the attachment of a physical signature or attestation by witnesses to be effective, certain practices have been accepted as meeting such requirements especially for purposes of e-contracts. These formal requirements can no longer cause problems when the principles of e-contract are applied. Reference will usually be made to the Interpretation Act[128] which defines writing as including typing, printing, lithography, photography and other modes of representing or

[127]Entering into Contracts Electronically: The Real W.W.W. Andrew D. Murray, accessed 28/8/2012.
[128]*Op. cit.*

reproducing word in a visible form. Also the provisions of Evidence Act[329]on the admissibility of electronically generated evidence will come to aid in electronic contract of employment.

The United Kingdom Department of Trade and Industry having recognized the place of e-contract and communication in the growth of the United Kingdom economy, recommended equivalence for electronic documents and for digital signatures as part of Electronic Communication Bill. This bill was later enacted as the Electronic Communication Act 2000. Equivalence is a commonly used method of integrating new systems or technologies into a developed legal system; this is a replacement of the function of a specific document or rule with a replacement which is deemed to be functionally equivalent to it. E.g. a written document may communicate information, provide a formal record and be used as evidence of the parties' intentions. All the rules of the written document may be equally well met by the use of electronic documents particularly in the light of the new Evidence Act.[129] Therefore, in such cases, an electronic contract may be the functional equivalent of a written document, and simply replacing the one with the other has no wider impact on the specific contractual/evidential rules of the system in question. The United Kingdom Act[130], unlike many of its counterparts, does not simply provide blanket equivalence for electronic communication. It instead empowers ministers to give full legal effect to electronic communication by sub-ordinate legislation.

3.2.6 Legal Status of Electronic Contract of Employment

An analysis of the legal status of a thing is a determination of whether the thing in question satisfies the legal requirements for its validity. In analyzing the legal status of e-contracts, we must bear in mind that electronic contract of employment is like any other contract, the only difference being that e-contract is negotiated and concluded electronically and in many cases the employee earns his or her salary without the necessity of the employer knowing him or her and vice versa.

[329]2011 s. 84
[129]Evidence Act, 2011 (Nigeria) Sections 258 and Section 84.
[130] Electronic Communication Act, 2003(UK) Section 8

E-contract of employment is a contract and for it to be valid, it must have embedded in it the elements of a valid contract which are offer, acceptance, consideration, intention to create legal relation, requisite legal capacity of the parties and legality of the contract. In actual reality, parties to a contract of employment see each other while negotiating and at the conclusion of the negotiation, if the parties are agreed to the terms, a contract is consequently formed, but in e-contract of employment though parties do not see each other, they negotiate online and agree on terms and a contract results from their agreement. Once there is an offer and acceptance and other conditions or constituents are present, the validity of an e-contract of employment cannot be questioned.At present in Nigeria, there is no known legal regime regulating e-contract of employment. Nigerian courts will definitely fall back to the well-known principles of law of contract to determine the rights and liabilities of parties to an e-contract of employment.

CHAPTER FOUR

LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF ECONOMICALLY DEPENDENT WORKERS

4.1 LEGAL FRAMEWORK FOR THE PROTECTION OF ECONOMICALLY DEPENDENT WORKERS

The Constitution of the Federal Republic of Nigeria[330]

The Constitution contains some laudable provisions which when applied to labour generally reveals some protections for all classes of workers including economically dependent workers. Section 40 of the Constitution guarantees the right of a worker to freedom of association and in particular, the right to belong to any trade union or any association for the protection of his interest. This provision is the bedrock for the right of economically dependent workers to form or join any trade union of their choice. Section 36 of the Constitution[331] also embodies the principle of fair hearing. This provision would be useful and applicable in cases where the contract of an economically dependent worker is terminated without notice and/or where an economically dependent worker is accused of any allegation by the employer. This research does not also lose sight of Section 42 the constitution which prohibits all forms of discrimination. Where this provision is applied to labour, it would imply that unfair practices such as unequal treatment of workers by employers constitute a gross violation of the constitution. The scope of application of the Constitution is not questionable as it does not draw any line between different types of workers. In other words, it has a general application to all persons. Therefore an economically dependent worker who approaches the NICN on the strength of these provisions may obtain some redress whether or not distinct from basic labour remedies.[332]

[330] 1999 as amended.
[331] *Ibid.*
[332] See section 46 of the Constitution which enables any person who feels his constitutional rights have been violated to approach the court redress.

A cursory look at order II of the Fundamental Rights (Enforcement Procedure Rules)[333] shows clearly that the Court can in such cases, make orders such as declaration, injunction, damages, etc. Ruling on the provision, the court in the case of *Minister of Internal Affairs v. Shugaba*[334] held that the orders which the court will make in such circumstances would be such "requisite and relevant to redress the infraction of the fundamental right" which was violated.

Labour Act

This is the major law regulating employment and labour in Nigeria. Unfortunately, it does not contain the definition of an 'economically dependent worker'. Section 91 of Labour Act defines a worker to mean:

> any person who 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 generally to execute any work or labour.

It can be gleaned from this provision that the lawmakers probably intended to cover virtually all types of worker in one definition. This attempt has proven so far to be rather counter- productive. The definition is extremely complex and confusing. It does not cover recent work relationships includingeconomically dependent workers. It is submitted that this is a clear case of legislative ineptitude and nonchalance as no effort has been made since 1971 when the Act was enacted to make the law amenable to current labour situations. In the United Kingdom, for instance, the Employment Relation Act, carefully and extensively defined terms such as "employee," "worker","Contractor of employment",etc. to avoid or reduce confusion.[335]

[333] 2009
[334](1982) 3 NCLR 915 at 994.
[335] See chapter III of the Employment Relations Act, UK 1996.

However, there are some provisions of the Labour Act which appear to be of some protection and importance to economically dependent workers in relation to written term and conditionsof work and outsourcing, etc. Section 7(1) of the Labour Act provides that not later than three months after the beginning of a worker's periodof employment with an employer, the employer shall give to the worker a written statement specifying among other things, the nature of the employment, the special condition of the contract, etc. This provision captures the importance of having the terms and conditions of work put in a written form and therefore make it mandatory for the employer to present same to the worker not later than three months of resumption of work. The importance of the provision to all workers cannot be over-emphasized so that the non -compliance with it practically proves to be heavily visited on the worker. In the case of *FaccoWest Africa Limited v. OluwatosinMuyiwaOjewusin and Anor*,[336] the claimant's case failed woefully as the NICN refused to venture into the ascertainment of the rights, privileges and obligation of the parties because the claimants had failed to provide evidence of his terms and conditions of work. Another area which the Labour Act extensively dealt with is that of outsourcing. Most of the economically dependent workers acquire their precarious status through the practice of outsourcing. Employers engage them through a third party whose major task is to pay salaries. They are technically termed "contract staff" and as such, denied the benefits accruing to their counterpartpermanent employees. Their employers continue to use them but immediately disown them when disputes arise. Therefore, section 23 of the Labour Act[337] specifically requires a recruiting agent not only to obtain a formal letter from a company commissioning him/her to recruit for it, but also a written permit/license by a serving Minister of labour. Section 24 of the Act further requires the intending employer to formally apply to the Minister in writing stating among other particulars, the place where the work is to be performed, the nature of the work, the wages to be paid, the duration of the proposed contract, etc. Subsection 6 of section 24 further compels the recruiters to ensure that the environments where those recruited are

[336] Suit No: NICN/LA/534/2014 *delivered on* 13/12/2017.
[337] *Op.cit*

to work with ethical standards. Unfortunately, no matter how beautiful and beneficial these provisions of the Labour Act appear, economically dependent workers have not been able to benefit from them. This is basically owing to the uncertainty pertaining to its scope of application and the poor implementation of the law.

The Act[338] defines a Trade union as any combination of workers or employers whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers.[339] The above definition indicates that workers no matter their status have the right to join or form a trade union. An employer is mandated by section 24 of the Act to automatically recognize a trade union on registration and this recognition is interpreted to be for the purpose of collective bargaining. This implies that a trade union can bargain collectively on behalf of members whether temporary or permanent and that any collective agreement reached should be applicable to every category of workers. This position is not challengeable as it is supported by section 40 of the Constitution and Article 10 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act[340]which frown at any restriction whatsoever to the right to freedom of association. Furthermore, by Section 24 (2) of the Trade Unions Act[341], an employer who deliberately fails to recognize any such registered trade union shall be guilty of an offence and be liable on summary conviction to a fine of N100. It is humbly submitted that in as much as conviction in this case will leave the employer with an indelible mark of an ex-convict, the penalty should be increased to a reasonable extent that can constitute deterrence to employer.

[338] *Op.cit.*
[339] *Op. cit.*
[340] Cap A 9 LFN, 2004.
[341] *Op.cit.*

Employees Compensation Act[342]

The law makes comprehensive provision for the payment of compensation to employees who suffer from occupational disease or sustain injuries arising from accident at work place or in the course of employment.[343] The law extends its application to any person employed by an employer under oral or written contract of employment, whether on continuous, part time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the employers family or any person employed in the federal, state and local government, and any of the government agencies and in the formal and informal sectors of the economy.[344] Many writers have commended this provision as being laudable and wide enough to encompass all classes of workers.[345] On the strength of the provision, the court in the case of *Abel v. Trevi FoundationNigeriaLtd*[346] held that a contract staff was an employee and thus entitled to compensation under the Act. In as much as the law did not expressly mention economically dependent workers, it is submitted that its scope is arguably wide enough to cover those workers unlike the Labour Act whose scope is tainted with uncertainty. Based on the analysis of the various Nigerian laws above, it appears in principle that economically dependent workers in Nigeria should be entitled to the following rights:

1. right to form or join a trade union;
2. right to enforce their fundamental human rights in relation to labour such as discrimination, unfair treatment, fair hearing etc.
3. right to have their terms and conditions of employment carefully put in writing and given to them;
4. right to a danger-free work environment;
5. right to a reasonable pay for work;

[342]Employees compensation Act, 2010.
[343]*Ibid, parts III & IV.*
[344]*Ibid,*Section 73.
[345]A G, Eze and T C, Eze, 'A Cross National Survey of the Legal Framework for the Protection of Casual Work Arrangements in Some Selected Countries*' Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, vol. 4, No. 1 (2013) p. 57
[346] Suit No: NIC/PHC/55/2013 delivered on 2014-06-03.

6. right to compensation for injuries incurred in the course of employment;

Unfortunately, it is practically difficult to understand how enforceable these rights are made available to these classes of workers due to the following reasons:

1. our laws do not define who economically dependent workers are neither do they prescribe any criteria for identifying them;
2. the institutions responsible for the enforcement the rights are not effectively carrying out their duties.
3. these workers do not fully appreciate their right under the law.

4.2 Legal Status of Casual Workers in Nigeria

One of the major factors fueling casualisation in Nigeria is the absence of a defined legal framework for the regulation of the practice. The weakness of our labour laws shall be exposed by a critical appraisal of some relevant statutes, case laws vis-à-vis the status of casual workers in Nigeria.

One of the labour related constitutional provisions worthy of consideration here is section 40 of the Constitution:

> 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 interest.[347]

The import of the above provision is that all Nigerian workers (whether or not casual) appear to have the right to form or join any trade union of their choice. In the case of *Management of Harmony House Furniture, Fixtures and Wood Workers v. National Union of Furniture, Fixtures and*

[347]Constitution of the Federal Republic of Nigeria, *op.cit*, section 40.

Workers[348] the court held that the dismissal of the chairman of the workers union, because of his union activities violated his right to freedom of association.

However, it is unfortunate to underscore that this constitutional status has been denied casual workers in Nigeria. Employers have continued to violate this constitutional right with impunity because there are no provisions for sanctions by the state against erring employers. In fact, attempts by unions in the industry to organize contract workers and negotiate on their behalf are sometimes met with sack threat and police violence.[349]

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 for this arrangement. This is a motivating factor for the increasing use of casualisation by employers.[350] 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 personally to execute any work or labour.

Many writers agree that this definition is rather narrow as it does not recognize workers in non-standard work arrangements.[351] This is more so because the Labour Act was enacted in an era when non-standard work was unknown to the Nigerian labour relations. However, over the years, several calls on the legislature for the amendment of the Act have fallen on deaf ears. Section 7 (1) of the labour Act provides that:

[348]NIC/3/86; Digest of Judgments of National Industrial Courts (NIC) 1978 – 2006, p 187.
[349]'The Degradation of work: Oil and Casualisation of Labour in the Niger Delta' (A Report by the Solidarity Center Washington, DC 2016) p. 14, http://www.solidaritycentre.org, accessed 20/09/2017.
[350]D T, Eyongndi, 'An Analysis of Labour under Nigerian Law' (2016)7.*Grantas Review of Business & Property Law*, No.4, p 108.
[351]*Ibid* see also C S, Ibekwe *Op.cit*,p. 83, see also P S, Christopher, O B, Ifeanyichukwu & D T O, Kizito 'Casualisation of Labour Laws: A Critical Appraisal', *International Journal of Innovative Research in Social Sciences & Strategic Management Techniques*, vol.4 No.1 (2017) p 43.

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 whereappropriate of the undertaking by which the worker is employed?

(b) the name and address of the worker and the place and date ofhis engagement;

(c) the nature of the employment;

(d) if the contract is for a fixed term, the date when the contractexpires;

(e) the appropriate period of notice to be given by the party wishingto terminate the contract due regards being had to section 11 ofthis Act.

(f) the rates of wages and method of calculation thereof 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.

2. If after the date to which the said statement relates there is a change in the terms to be included or referred to in the statement, the employer -

(a) shall, not more than one month after the change, inform theworker of the nature of the change by a written statement; and

(b) if he does not leave a copy of the statement with the worker,shall preserve the statement and ensure that the worker hasreasonable opportunities of reading it in the course of hisemployment, or that it is made reasonably accessible to theworker in some other way.

3. A statement under subsection (1) or (2) of this section may, for all or any of the particulars to be given by the statement, refer the worker to some other document which the worker has reasonable

opportunities of reading in the course of his employment or which is made reasonablyaccessible to the worker in some other way.

4. If the employer, in referring in the said statement to any such document, indicates to the worker that future changes in the terms particularized in the document will be entered in the document or recorded by some other means for the information of persons referred to in the document, the employer need not under subsection (2) of this section inform the worker of any such change which is duly entered or recorded not more than one month after the change is made.
5. If not more than six months after the termination of a worker's period of employment, a further period of employment is begun with the same employer and the terms of employment are the same, no statement need be given under subsection (1) of this section in respect of the second period of employment, so however that this subsection shall be without prejudice to the operation of subsection (2) of this section if there is a change in the terms of employment

The provisions of this section in respect of written statementsshall not apply if-

(a) a worker has a written contract of employment which coverseach of the particulars mentioned in subsection (1) of this section;and

(b) he has a copy of that written contract.

This shows that a worker should not be employed for more than three months without a formal recognition of such employment. Every worker must be given a written statement stating the terms and conditions of his employment within 3 months of being employed. This was upheld in the case of *Management of Harmony House Furniture Company ltd v. National Union of Furniture, Fixture and Wood Workers*.[352] Some companies have devised means to undermine this provision by employing casual workers for three months or less, dismissing them, requesting new applications and

[352]*Supra*

re-employing them again.[353] Most legal scholars[354] agree that section 7(1) of the labour Act does not apply to non-standard employment. Trade unions, on their own part, interpret the section 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.[355] While the researchers appreciate the plight of trade unions,[356] the writers distance themselves from their conclusion that the labour Act in section 7 envisages casual labour. However, where workers have been in the employment of their employer for a continuous period of time, it will be wrong to tag them as casual workers so as to deny them their workplace rights. This view was upheld by the National Industrial Court Nigeria in the case of *OlabodeOgunyale& 64 Ors v. Globacom Nigeria Ltd*[357]. The claimants were employed as drivers by the defendant in 2003. Five years later, they were suddenly informed that they have been outsourced to another company. They claimed that the defendant also denied them their labour benefits such as sick leave, annual leave, etc. They prayed the court to declare the outsourcing as unjust and illegal and to recover all their labour benefits from the employer. This was substantially granted by the NICN. According to the court:

> The point is that there is no legislation in place in Nigeria recognizing, regulating or protecting casual workers. The evidence before the court indicates that the claimants had worked continuously for the respondent as employer and the respondent made varying statutory deductions including PAYE, NSITF, etc. when all these are added to the fact that the labour Act is silent on the issue of casual workers, the claimants, in our opinion, qualify as permanent employees, not as

[353] C S, Ibekwe, *Op.cit,* p
[354]*Ibid*, see also P S, Christopher *et al, Op.cit,* p 110.
[355]*Ibid.*
[356] A, Alfred 'Casualisation of Work: How Nigerians are being Enslaved' The Independent, 15th June, 2015 available at http://independent.ng/casualisation-nigeria-enslaved-3/accessed on 20/09/2017, see also T, Agboola 'Union Decries High Rate of Casualisation' The Nation August 11, 2017 available at http//thenationonlineng.net/ union-decries-high-rate-casualisation/ accessed on 20/09/2017.
[357] Suit No: NICN /30/ 2008 delivered 2012/12/13

> casual workers and so should be accorded all the workplace rights envisaged by the labour Act and we so hold.

The period of time within which a worker needs to spend in the employment to qualify him as a permanent worker is not certain. It depends on the circumstances of each case. Thus, there is need still for a legislative intervention. This uncertainly is absent in some jurisdictions. In some jurisdictions, there are guides for determination of casualisation of work.

In Ghana, a casual worker is defined as a worker engaged on a work which is seasonal or intermittent and not for a continuous period of more than six months and whose remuneration is calculated on a daily basis.[358] The Act also provides that the contract of a casual worker need not be in writing[359] and he must be employed continuously or intermittently for less than 6 months per year.[360] A casual worker must be given equal pay for equal work.[361] It is submitted that although the problem of the Ghanaian casual workers lies with the poor enforcement of the Labour Act, their legal status is comparably defined than the casual workers in Nigeria.

By virtue of section 73 of the Employees Compensation Act, an employee means 'a person employed by an employer under oral or written contract of employment whether on continuous, part-time, temporary, apprenticeship or casual basis'. Happily, it is clear from the above definition that casual labour has received some sort of statutory recognition. In the case of *Abel v. Trevi Foundation Nigeria Limited,*[362]the NICN relied on the above definition 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 employment with the defendant. It was in

[358]Labour Act, No.651, 2003, (Ghana) section 77.
[359]*Ibid*, Section 74 (1).
[360]J, Barrientos, N, Anarfi, A, Lamhange, N, Castaldo& N A, Anyidoho, 'Social Protection for Migrant Labour in the Ghanaian Pineapple Sector', *Working Paper*. Published by Development Research Centre on Migration September 2009, p. 30 available at http://www.migration,globalisation Arts C-226 University of Sussex Brighton BNIGSJ accessed 20/09/2017.
[361]*Op cit*, Section 74 (2)(a)
[362] Unreported Suit No: NIC/PHC/55/2013 delivered on 26th June, 2014.

relation to this that a learned writer[363] thought that the Nigerian labour regime has adequately covered casualisation of labour. Similarly, another writer[364] suggests that even though there is no statutory protection for casual workers under the Nigerian Labour Act, the Employees Compensation Act should be relied upon to furnish a more encompassing definition of employees to as to protect them.

However, with due respect, the researchers disagree with both writers. First, a particular labour statute does not apply to every employee at common law. Each statute determines the employees to whom it may apply. An employee who does not fall within a given definition in a statute or who is expressly excluded by a statute cannot claim a benefit under a statute nor be made liable there under.[365] Secondly, a perusal of sections 1 and 2 of the Employees Compensation Act reveals that the scope of the Act basically deals with compensation for any death, injury, disease or disability arising out of and in the course of employment. This is comparably narrow in relation to the scope of the labour Act. Thus, the interpretation of the labour Act must be guided by the spirit and letters of its own scope otherwise it can be challenged by any person whose interest is at stake.[366] Thirdly, a careful study of the case[367] cited by the two writers in support of their views reveals that the claim was basically for compensation for injuries sustained in the course of employment so that the ECA rightly applied to interpret the contract staff as employee of the defendant company. This is because the scope and application of the Act as provided in section2 and 3 of the E.C.A is very clear. Therefore, it is submitted that while the definition of an employee under the ECA is commendable, its application is limited to the scope of the Act. For a casual worker to enjoy this definition in cases other than compensation for injuries, etc., the labour Act must be amended.

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[363] D T, Eyongndi, *Op.cit* pp 109, 110, see also Oserogho& Associates 'Casual Contract Employees in Nigeria-Any Legal Rights?' September, 2016 available at https://www.humanresourcemag.com/news/417/casual-contract-employees-en-nigeria-any-legal-rights, accessed 20/09/2017.

[364] C S, Ibekwe, *Op.cit*, p 83

[365] E E, Uvieghara, *Labour Law in Nigeria* (Ikeja: Malthouse Press Limited, Ikeja, 2011) p 11.

[366] See *A-G, Ondo v. A-G, Federation* (2002)9 NWLR (Pt.772)241.

[367] *Abel v. Trevi Foundation, Supra*

Section 1 of the Trade Unions Act guarantees the right to freedom of association through the formation or joining of trade unions. This is in line with the constitution and the African Charter on Human and people's rights.[368] The right is available to both casual and permanent workers in Nigeria. This was upheld in *Patovilki Industrial Planners Limited v. National Union of Hotels and Personal Services Workers*.[369] In practice, however, workers in casual employment are not usually permitted to unionise, hence, they lose their rights to collective bargaining.[370] Absence of right to unionise has a consequence of depriving causal workers the benefits of collective agreements.

4.3 Legal Status of Contract Staff/Workers in Nigeria

Contract staffing is a form of casualisation of labour. Thus, the absence of a clear legal framework to regulate casual workers also heavily affects contract staff. It has become apparent that the definition of a worker as it is currently in our Labour Act is inadequate because it does not specifically cover the broad range of different categories of employees and their employment status. In Ghana for instance, their Labour Act clearly defines terms such as "casual workers" and "temporary workers"[371] it also provides the regulation, duration and general terms and conditions of such employment.[372] This is worthy of emulation by our law makers and will go a long way to remove the inadequacy of the current labour laws.

Another issue affecting the legal status of contract staff is that of enforcement of the available labour provisions. By the combined reading of section 40 of the constitution of the Federal Republic of Nigeria, Section 10 of the African Charter on Human and People's Right Act and section 1 of the Trade Unions Act, the right to form or join a choice trade union is guaranteed to all workers whether casual, temporary or permanent. Furthermore, the Trade Union (Amendment) Act[373] provides that

[368] African Charter on Human Rights and Peoples Rights (Ratification and Enforcement) Act Cap A10, LFN, 2004, section 10.
[369] Suit No: NICN/12/89/Digest of Judgment of National Industrial Court (1978-2006) pp 288 - 289.
[370] T, Awodipe, 'Casualisation: earner of the Nigerian Workforce', available at http://guardian.ng/sundaymagazine/newsfeature/casualisation-cancer-of-the-nigeria-workforce/>, accessed on 20/09/2017.
[371] Labour Act, 2003 (Ghana) *op. cit*, section 78.
[372] *Ibid*, (Ghana) Sections 74 and 75.
[373] 2005, Section 12 (4).

notwithstanding anything to the contrary in this Act, membership of a trade union shall be voluntary. Unionisation is a constitutional, statutory and internationally recognized right of workers. The National Industrial Court has shown in a number of cases that it would reinstate a worker whose basis for dismissal is due to involvement in union activities.[374]

However, it is regrettable to underscore that this constitutional status has not been fully extended to contract staff. This is because their employers do not see them as employees strictly speaking and only contracts them for a temporary work. In any case, it is strongly argued that this reason is lame and the NICN is urged to rule in favour of casual/contract staffs if they can take up the gauntlet to approach the court[375]. Section 234 C (2) of the constitution empowers the NICN to apply international conventions, treaty, or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.[376]

Another important aspect of the legal status of contract staff is as it relates to compensation for injuries sustained in the course of employment. Happily, in this regard, there is statutory recognition of all forms of work arrangement including contract staffs.[377] Therefore, in the case of *Abel v. Trevi Foundation Nigeria Limited*[378] the NICN held that the claimant who was employed by the defendant as a contract staff is an employee of the defendant within the meaning of the Employees Compensation Act, and therefore entitled to compensation for injuries sustained in the work place in the course of his employment with the defendant. In other words, as it affects injuries sustained during work, this decision is sufficient authority for all contract staffs to approach the NICN for compensation.

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[374]*NUFBTE v. La Casera Company Plc*. Suit No NICN/LA/416/2015. See also *Metallic and Non-metallic Mines Senior Staff Association v. Mettallic and Non-metallic mines workers Union and Nigerian Mining Corporation* Suit No. NIC/17/85 Digest of judgment of the 1978 -2006 pp 198-199.

[375]*Aero Contractors Corporation of Nigeria v. National Association of Aircrafts Pilots and Engineers,* Suit No. NICN/LA/120/2013 delivered on February 4, 2014.

[376] Nigeria has ratified the Freedom of Association and Protection of the Right to Organize Convention 1948 and the Right to Organize and Collective Bargaining Convention 1949.

[377]Employees Compensation Act, 2010, section 73.

[378]*Supra*

4.4 Legal Status of Outsourced workers in Nigeria

Despite the growth of outsourcing in the Nigerian labour relations, there is yet no comprehensive legal framework to regulate the practice. The Labour Act does not define who an outsourced worker is. However, the recruitment of labour is recognized and regulated under sections 23 to 37 of the Labour Act. Section 23 of the Labour Act provides that no recruiting firm or individual shall recruit any citizen for employment as a worker in Nigeria or elsewhere except in pursuance of an employers' permit or recruiter's licence. Section 24 (2) provides that the application for the licence shall contain particulars such as the number of workers required, the place where the work is to be performed, the nature of the work, the wages to be paid, the duration of the proposed contract, etc. By the combined effect of sections 25 and 26 of the Act the employer's permit and the recruiter's licence are both mutually compulsory so that a recruiter who has a licence shall not recruit workers for an employer who does not have an employer's permit. Section 28 of the Labour Act requires that every recruited worker shall be medically examined under section 8 of the Act. Section 29 and 30 of the Act places the liability for transport, expenses and maintenance of the recruited worker on the employer or the recruiter. An opportunity to elaborate these provisions came before the NICN in the case of *PENGASSAN v. Mobil Producing Nigeria Unlimited*[379]but the court did not direct its mind to those provisions as submitted by the appellant's counsel.

Sadly, these sections of the Labour Act have been totally ignored by employers as workers continue to be engaged for long period of time without confirmation[380]. Apart from the fact that the provisions suffer enforcement problems, they are inadequate to constitute a comprehensive framework for the regulation of outsourcing in Nigeria. This has left a lot questions unanswered. Outsourcing creates a relationship between the employer firm, the user firm and the worker. A basic problem raised in such relationship is who should be considered the "employer" of the worker in question. This is the flip side of the age-old legal problem of identifying whether one is an employee

[379] Suit No: NIC/LAI/47/2010 delivered on the 21/03/2012
[380] P S, Christopher et al, *Op.cit* p 44.

(as opposed to an independent contractor).While there is no doubt, in such relationship, that most of the workers are "employees" strictly speaking, the question is who should assure that legal responsibilities of the employer, whether the agency or the user firm. In this connection, it is important to distinguish between two different scenarios.

First, there are the traditional services supplied by the agencies: workers who perform short-term temporary work for another firm, then moving to do the same work for another user firm. However, the only longer term and stable relationship that these workers have is with the labour broker. On the other hand, there are cases in which the only service rendered by the agency (labour broker) is "pay rolling". Here the worker is engaged for a long term usually independently and performs his work just like any employee of the firm. The only difference from other employees is that these workers get his pay check from the agency[381]. Based on the above analysis, it appears that where the worker is in a long term work for the user company while the labour broker only controls the payment of the worker, then the user company should be held as the employer and vice versa.

With the silence of the law on this, recourse will be made to the decisions of the court to resolve the confusion affecting the status of outsourced workers. In the case of *A H, Bull & Co v West African Shipping Agency Ltd,*[382] the Privy Council held that the responsibility for the act of a transferred servant lies on him in whose employment the man was at the time when the act complained of were done. Here, the employer is recognized to be the person who has a right at the moment to control the doing of the act. In the case of *Donovan v Laing*[383]it was held that generally a transferred servant is a servant of the master who assigns him to a bailee i.e. "patron habitual" but upon practical point of responsibility when he is doing the work of and under the orders of the other employer to whom he is sent, he is, in the eyes of the law, the servant of the latter and the latter is, in the eyes of the law, his employer. Also the very important case to consider here is the case of

[381] G, Magnum, D, Mayall& K, Nelson 'The Temporary Help Industry: A Response to the Dual Internal Labour Market*", Industrial & Labour Relations Review*, vol. 38, (1985), p 604.
[382][2004] 1 NLLR (Pt. 1) 172 at 177.
[383](1893) IQB 629.

Petroleum and Natural Gas Senior staff (PENGASSAN) v. Mobil Producing Nigeria Unlimited[384]. In that case, the appellant is a union of workers employed by a body known as forum of contractors to work for the respondent company. The appellant made a strong case of its contention that the contractors are merely agents of the respondent in its employment relationships with the contract staff members of the appellant union in the employment of the respondent and that the latter exercises control over the recruitment, assignment, appraisal, discipline and separation of the contract staff, including industrial relations process, collective bargaining, fixing and payment of allowances as well as salary, administration and as such, determines the employment status of the contract workers, contrary to what the respondent urged the Industrial Arbitration panel to believe. The appellant then proceeded to submit that the contractors were recruiters within section 24 and 25 of the Labour Act and that the contractors failed to show a recruiting licence neither was there evidence of the employees permit and thus breached the provisions of sections 24, 25 and 26 of the Labour Act. In support of his argument, to hold the respondent as the employer, the appellant cited the cases of *A.H. Bull and Co. v. West African Shipping Agency*[385] and *Donovan v. Laing.*[386]

In response, the respondents argued that the contractors were its independents contractors engaged to provide various services in the course of normal business. It argued that, the appellant workers were typically auxiliary support services workers, whose employment or disengagement as the case may be, are not directly negotiated with the respondent but with the contractors who employ such workers under their specific contract of employment agreements. These contract workers unionize and negotiate their terms and conditions of service with their employers, the contractors. The respondent submitted that the appellant workers had a written contract of employment with the contractors and since the terms of the contract are clear and unambiguous, the parties cannot move out of them in search of more favorable terms.

[384]*Supra.*
[385]*Supra*
[386]*Supra*

Relying on the ILO convention on employment relationship, the NICN held that the determination of the existence of an employment relationship should be guided by the facts of what was actually agreed and performed by the parties and not by the name they have given the contract. This is known as the principle of primacy of facts. In this connection, the NICN held that there was no evidence to support the facts presented by the appellant. The court rejected the judicial authorities cited by the appellant on the basis that they represent the law on cases of vicarious liability and not cases of employment relationships. The basic reason why the NICN preferred the submission of the respondent is that there was evidence of a contractual nexus between the appellant members and the contractors as opposed to the respondents.

It is apposite to note that this case does not hold that in all cases of triangular employment, that the user company cannot be held as the employer. Therefore, in appropriate cases, the courts have upheld the fact of co-employer status between two employers in relation to an employee. The question as to whether two employers would be held to be 'one' in respect of an employee will depend on the contract of employment and the surrounding circumstances. The position of the law is that, where two companies are such that the subsidiary company is totally integrated into and under the control of the parent company, the court will hold that there is co-employment relationship and both companies would be held bound by the duties and obligations in respect of the employment.[387] As it relates to the status of outsourced works vis-à-vis the Employees Compensation Act, the foregoing argument is fundamental because the courts will first determine, as between the user company and the labour contractor, who should be treated as the employer. It is the employer that will bear the liability.

Apart from case law, it is also important to consider some international Labour Convention provisions relating to outsourcing. The first is the Employment Relationship Recommendations.[388] It

[387] See *Onumalobi v. NNPC and Warri Refining & Petro Chemical Company*. [2004] 1 NLLR (Pt. 2) 304

[388] ILO Employment Relationship Recommendation 2006 (No. 198) Adoption: Geneva, 95th ILC Session (15 June, 2006).

provides that for the purpose of the national policy for protection for workers in an employment relationship, the determination of the existence of such a relationship, the court should be guided by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement or otherwise, that may have been agreed by the parties. It also recommends that there should be a broad range of means for determining the existence of an employment relationship. It is this recommendation that encapsulates the principle of primacy of facts in determining who should be treated as the employer in confusing employment relationships. It is uncertain whether this recommendation has been codified in Nigeria but represents international best labour practice in the industrial relationship. Thus, the NICN applied it in the case of *PENGASSAN v. Mobil Oil Producing Unlimited*.[389]

Another plausible convention is the Private Employment Agency Convention.[390] Article 4 of the convention provides that measures should be taken to ensure that the workers recruited by private employment agencies providing the services are not denied right to freedom of association and the private employment agencies must treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability. Article 7 provides that private employment agencies shall not charge directly or individually in whole or in part, any fees or cost to workers. Article 9 provides that a member country like (Nigeria) shall take measures to ensure that child labour is not used or supplied by private employment agencies. Article II enjoins the member country to enact laws that guarantee the following rights to workers employed by private employment agencies:

a. Freedom of association
b. Collective bargaining
c. Minimum wages

[389] *Supra*
[390] ILO Convention [No. 181] Adoption: Geneva, 85th ILC Session (19th June, 1997).

d. Working time and other working conditions

e. Statutory social security benefits

f. Access to training

g. Occupational safety and health

h. Compensation in case of occupational accidents or diseases.

i. Compensation in case of insolvency and protection of workers claims.

j. Maternity protection and benefits, parental protection and benefits.

These provisions, to mention but a few, provide some legal framework for the triangular employment relationships. At least, they recognize some basic employee rights such as right to unionise, collective bargaining, occupational safety and health, remuneration, etc. By virtue of section 254C (2) of the 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.

Unfortunately, the ILO convention No. 181 and its recommendation No. 188 have not been ratified by Nigeria. It is settled law as was upheld in the case of *Abacha v. Fawehinmi*[391] and reiterated in the case of the *Registered Trustees of National Association of Community Health Practitioners of Nigeria v. Medical Health Workers of Nigeria*,[392] that for a treaty to have the force of law in Nigeria it must be enacted into law by the National Assembly.[393] Interestingly, by the combined reading of section 254C (1) (f) and (h) of the constitution and section 7 (6) of the National Industrial Court Act (NICA) 2006, the NICN is given the powers to promote and protect international labour standards and best practices in labour and industrial relations. However, there is a stipulation within the provision of section 7 (6) of the NICA which states that what amounts to

[391](2001) WRN vol. 51, 29).
[392](2008) 2 NWLR (Pt. 1072) 575.
[393] The Constitution of Federal Republic of Nigeria, *op.cit*, section 12. It is submitted that a combined reading of this section with section 254 c (2) reveals that only ratification suffices for the NICN to apply the ILO conventions.

good or international best practice in labour or industry relations shall be a question of fact. This stipulation, as it were, will involve the calling of evidence in order to determine what is the best labour practice and this can lead to delay and subjective standard on the part of the person urging the court to invoke the section. To solve this problem, Honourable Justice BabatundeAdejumo has suggested that the provision obviously will permit the court to borrow from foreign jurisdiction labour principles which are International best labour practices.[394]

4.5 Institutional Framework for the Protection of Economically Dependent Workers

In as much as economically dependent workers are newspecies of workers, they are affected one way or the other by the institutional and regulatory framework in Nigerian labour jurisprudence.

4.5.1 National Labour Advisory Council

This council is saddled with the responsibility of reviewing the existing or proposed labour laws and the examination of the implications of such amendments on the public in general and the working class especially. Although its power is advisory, but when it does review any law, such law normally sails through all stages with ease including the National Assembly.[395] Stressing the relevance of this council, the Honourable Minister of Labour and Productivity, Dr. Chris Ngige has stated as follow; "The National labour Advisory council is important because it is the equivalent of the public hearing which they do at the National Assembly". He added that the revival of the council would afford tripartite committee opportunity to fashion out ways to solve some problems like casualisation and contract staffing.[396]

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[394] F, Sunday 'Jurisdiction of the National Industrial Court of Nigeria: A Critical Analysis', *Journal of Law, Policy and Globalization*, vol. 28, (2014), p. 58.

[395] O, Okaka& E, Eriaguna, 'Government Agents in Nigeria's Industrial Relations System' *JORIND* vol. 9 No. 1 (2011) p. 189.

[396] S, Opejobi 'National Labour Advisory Council to be Reviewed Soon-Ngige' published in the Daily Post Newspapers on Dec. 15, 2015-available at http://daily-posting/2015/1/15/national-labour-advisory-council-to-be-revised-soon-ngige accessed on 25/01/2018.

4.5.2 The Board of Inquiry

This is an institution through which the government intervenes in the industrial relation system. The Minister of labor has the power to set up a board of inquiry pursuant to section 33 of the Trade Dispute Act. The board normally investigates the facts, causes and circumstances of a dispute.[397] Its role in the protection of economically dependent workers is arguably minimal or insignificant.

4.5.3 The Federal Ministry of Labour

This is the major federal agency of labour saddled with the responsibility to promote industrial harmony through the encouragement of voluntary collective bargaining between workers and employers. It is the institution through which the government makes policies pertaining to labour. One of the areas which the ministry has contributed to the protection of economically dependent workers is the formulation of the guidelines with regard to staffing and outsourcing in the oil and gas industry.[398] Commenting on this development, Danesi argued that, although the guidelines are a step in the right direction, they still fall short of providing a long term solution.[399] Therefore, the Federal Ministry of Labour and Employment should not stop at the formulation of a policy but should continue to press towards the effective implementation of same.

4.5.4 Trade Unions

Trade unions constitute a strategic platform in the protection of all workers including economically dependent workers. By the combined force of section 40 of the constitution of the Federal Republic of Nigeria, Article 10 of the African Charter on Human and Peoples Rights, section 1 of the Trade Unions Act and section 9 of the Labour Act, the right to join or form a trade union is constitutional, fundamental and unchallengeable by the employer. This was buttressed in the case of *Golden Silk v*

[397] E O, Okaka& E, Eriaguna,*op.cit*, p. 190.
[398] See 'Guidelines on Labour Administration: Issues in Contract Staffing/Outsourcing in the Oil and Gas Industry' Issued on 25th May, 2011 at Abuja, Nigeria
[399] R M, Danesi*Op.cit*, p. 2.

Steel&Engineering.[400] Based on these authorities, economically dependent workers can come together to create a formidable force in bargaining with their employers and it will provide a strong and uniform platform for making their grievances known to the government. However, it is observed that the following bottlenecks hinder the effective unionisation of the most of these workers;

i. They fear that their employers may sack them if they decide to join a trade union[401]
ii. There is no internal democracy in most of the trade among as most of the members are not usually carried along in union activities.[402] The leaders of these unions make check of dues and levies the driving force for the formation of the unions. That is why in some cases, two unions are seen battling in court over who has the right to organize the workers.[403]

4.5.5 National Industrial Court of Nigeria

The National Industrial Court of Nigeria is currently established by section 1 of the NIC Act. In addition, section 254C of the Constitution of the Federal Republic of Nigeria[404], confers exclusive jurisdiction on the NICN with respect to civil and criminal matters relating to labour including trade unions and industrial relations, environment and conditions of work, health, safety and welfare of the workforce and matter of industrial relations. In fact, the NICN is the major institutional framework for extension of justice and protection to the economical dependent workers. It has risen up in most cases to do justice to this great task placed on its shoulders. The flexibility of the court system is not just geared at an impassioned zeal to do justice but from the deep bowels of the realisation that the court's jurisdiction is invoked not for the enforcement of mere contractual rights but for preventing labour practice regarded as unfair and for restoring industrial peace. Therefore, it has reached out to

[400] Suit No: NICN/ABJ/413/2015 delivered on 16/12/2016.
[401] R M, Danesi, *op.cit*, p. 13.
[402]T, Adefolaju, 'Trade Unions in Nigeria and the Challenge of Internal Democracy' *Mediterranean Journal of Social Sciences*, vol.4 No.6 (2013) p. 111.
[403] See *National Union of Hotel and Personal Services Workers v. Maritime Workers Union of Nigeria* (unreported suit No: NICN/ABJ/260 2015 delivered on 28/09/2016.
[404](Third Alteration) Act, 2010.

these workers in the areas of compensation for injuries, unionisation, contract staffing/ outsourcing, etc as we see in some of its decisions.

In the case *of Mr. Simeon Chukwu v. Arab Contract Nigeria Limited*[405] the claimant brought claim for compensation due to him having sustained severe injuries while working for the respondent company. He asserted that he was an employee while the company denied it holding that he was only a contract worker. There was omission on the parts of the claimant to specify the law under which he is bringing his claims for compensation as counsel only mentioned the Employees Compensation Act for the first time in his written address. This built up a heavy weather for the claimant's cases but the NICN intervened. The court did not buy the submission of the respondent's counsel that the claimant was contract worker probably because of the insignificance of the argument to the issue of compensation given that the applicable law to the claim i.e. the Employees Compensation Act has widened the scope of the term "employee" to also extend to contract staff. With respect to the omission of the claimant to specify the applicable law the court held by virtue of section 14 of the NIC Act that it has the power to grant absolutely or on such terms and conditions as the court thinks just, all remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any claim. On this basis, the court dispensed with technicality and granted the claimant compensation/damages for work place injury he has suffered. Again, in the case of *Golden silk industry Nigeria v. Steel and Engineering Workers Union of Nigeria*,[406] it was argued strongly by the appellant company that the respondent union cannot unionise its junior Staff as their business activities are not covered by the union. Meanwhile, this junior staffs were mostly contract workers. Rejecting the contention, the NICN held that the junior workers by jurisdictional scope belong to respondent union. In otherwords, the NICN has put beyond doubt that eligibility of workers to join a trade union is not determined by how many years of work experience with the employer or nature of work so that the right to unionise is not exclusively reserved for permanent employees.

[405] (Suit No: NICN/CA/23/2015 delivered on 2016-06-16)
[406] (Suit No: NICN/ABJ/413/2015 delivered on 2016-12-16)

The NICN also showed its mandate to render justice in the case of *Anthony Agum v. United Cement Company Ltd*[407] where it arrested the deliberate use of contract staffing and outsourcing to avoid employers' duties under the law. In this case, the defendant company argued strongly that the claimant was a contract staff in the employ of a third party who works as an independent contractor. The defendant maintain that it has no contractualprivity whatsoever with claimant and therefore cannot be liable for the several claims of the claimant. Without venturing into long analysis, the court held that in cases like this, it would most appropriately uphold that a triangular employee relationship existed. It also held that the principle of joint and several liabilities applies in such circumstance so that either or any of the employers can be liable for the whole claims. In as much as the court has not been able to define who economically dependent workers are, the above can show that it has been addressing some of the victimisation of these workers face in their work places.

The category of workers in Nigeria whose work situation do not ordinarily correspond to the traditional standard form of employment relationship but who are economically dependent on a single employer for their sources of income are brought together under the concept of economically dependent workers. They include casual workers, contract staff/workers and outsourced workers. However, there are workers who by their work arrangement correspond to the traditional definition of employee or worker. These work relationships are referred to as standard form contract of employment. Workers in such standard form work arrangement enjoy certain employment benefits that workers in non- standard form work relationship do not enjoy. Standard form work relationship affords workers in such relationships protections provided by labour laws both in Nigeria and other jurisdictions which are lacking in non-standard form contract of employment. In Nigeria, workers in standard form contract of employment are those workers whose employment relationships are created and regulated by a contract of employment duly executed by the parties expressly stating the terms and conditions of the employment relationship. This category is referred to as contract of service. Another category is one which is created and regulated by statute and is referred to as

[407] (Suit No: NICN/CA/71/2013 delivered on 2017-03-03).

contract with statutory flavour. To appreciate the legal status of economically dependent workers otherwise known as non-standard form contract of employment, the nature and status of standard form contract of employment needs to be appraised in this work. This will enable a prospective reader of this work decipher the difference between the legal status of these different categories of work relationships. The aim of this chapter of the work therefore, is to appraise the nature of a standard form contract of employment in contradistinction with the concept of economically defendant workers.

2.6 Lessons from Other Jurisdiction on the Legal Status of Outsourced Workers

Having considered the status of an outsourced worker under the Nigerian Labour Jurisprudence, it is pertinent to have a look at the labour jurisprudence of some other countries regarding the legal status of these workers. In this connection, countries like the United States of America, Canada, Britain and China will be considered in a nutshell. The choice of these countries is informed by the fact that these countries are considered advanced economics both in terms of their laws and economic activities.

The United States of America

The American Labour Jurisprudence has a concept of "single employer" as well as a concept of "joint employer". The former is used to treat as one employer, different entities that are nominally independent but in reality constitute only one integrated enterprise. The latter is used to treat as "co-employers", separate entities that "share or co-determine those matters governing the essential terms and conditions of employment.[408] In order to be considered as an employer, one must meaningfully affect matters relating to the employment relationship such as hiring, tiring, discipline, supervision and direction, but when these are shared between two entities, labour boards and courts have been willing to consider them as "joint employers". Using this doctrine, they have found temporary work

[408]*NLRB v. Browning Ferris Industries*, 691 F. 2d 1117, 1123 (3rd Cir. 1982).

agencies and user firms to be joint employers for the purpose of the National Labour Relations Act.[409] It is submitted that this approach is commendable because it will reduce casualization as it relates to outsourcing. That is, although the remuneration and discipline of the workers is done by the temporary work agency, where it is found that the worker is under the control of the user firm the court should hold both bodies as co-employers of the workers. The implication is that the workers would be allowed to enforce their labour rights and benefits under the law from either of the bodies. In this connection, the user firms will be prevented from casualizing the rights of the workers knowing fully well that the latter may enforce their rights against them.

In Nigeria, although there is no clarity as regards the regulation of outsourcing under the labour law, most academic and judicial authorities agree that the element of control cannot be dispensed with for instance in the case of *Francis Dila v Cecilia John*[410], the court laid down the rule that an employee is a person who is under the control of an employers as to what he does, when, where and to whom.[411] In the Nigeria labour realm, it is clear that the labour contractors only control the payment, discipline and may be, disengagement of the workers while the user firms actually control the workers on not just what to do but also how to do. The whole idea of outsourcing is a deliberate attempt by these user firms to avoid legal liabilities by purportedly shifting them to the labour contractors.

Canada

In Canada, the determination is generally made on a case by case basis. User firms economically attempt to avoid a "joint employer' status by minimizing their control over agency workers, or at least creating the appearance that these workers are being solely controlled by the agency[412] in some areas in Canada, The joint responsibility, is presented in the legislation or part of licensing

[409] See for example *Holyoke Visiting Nurses Association v. NLRB*, (2000). NLRB No. 173.
[410](1973) 1 NMLR 58.
[411] D T, Eyongndi,*Op.cit.*p 110.
[412] L F, Vosko, *Temporary Work: The Gendered Rise of a Precarious Relationship*, (Toronto: University of Toronto press, 2000) p 716.

requirements but such regulations are defined to include only on-going, indefinite arrangements, explicitly excluding temporary ones.[413] What this implies is that Canadian labour regime recognizes the user firm as a joint employer with the labour contract only in cases where the worker is to be used indefinitely or for a long term by the user firm. The position is not absolutely fair given that most of these outsourced workers are employed on a temporary basis.

Britain

In England, the legal status of the outsourced worker is neither here nor there. While based on a formalistic contextual analysis, British courts maintain that the user firm cannot be the employer,[414] in practice, based on the dubious is mutuality of obligation and the lack of significant control, the courts also deny the existence of an employment relationship between the agency and the worker.[415] Workers through temporary work agencies in Britain are thus neither employees of the agency nor employees of the firm. However, this failing has been corrected in some specific instances by the legislature, to ensure minimal protection for those workers. Agency workers are explicitly included within the scope of the following pieces of legislation: Employment Rights Act[416] (for the purpose of protecting whistle blowers), Public Interest Disclosure Act,[417] (for the same purpose of protecting whistle blowers) and the Employment Relations Act,[418] (for the purpose of the right to be accompanied at a disciplinary or grievance hearing.

China

In China, the temporary staffing industry is on the rise due to its economic reform and opening up of its economy to the outside world. Those who support the practice see it as cost cutting measure and a means to reduce unemployment. Although the Chinese government supports and encourages flexible

[413] G, Magnum, D, Mayall& K, Nelson, 'The Temporary Help Industry: A Report to the Annual Internal Labour *op cit*, p. 604.
[414] *Montgonomery v. OVK, Ovenstein and Kopple Ltd.* (2000) WL. 491 412 (ETA)
[415] See for example *Wickens v. Champion Employment* (1984) I.C.R. 365 (EAT); *Constain Building and Civil Engineering Ltd. v Smith* (2000) I.C.R. 215 (EAT)
[416] 1996, Section 43.
[417] 1998, Section 1.
[418] 1999, Section 13

work force, it must be noted that the system is much more organized and less informal with more government intervention than equivalent employment in many other developing countries.[419]The recent intervention of the Chinese government for the regulation of the temporary staffing industry has provided the following:

1. It makes provisions for the staffing industry and as such gives it legitimacy.
2. It has increased the protection of worker's right in the workplace.
3. It also provides more detailed and enforceable regulations to protect worker's right, and entitlements.[420]

Casual workers are hired for user firms through labour dispatch firms and are engaged under fixed term contracts for duration of not less than two years. The labour dispatch firm remains the employer of the dispatched worker and shall pay the worker the remuneration due to him/her. The user company is bound by law to ensure that the dispatched worker's remuneration and working conditions should be of the same standards of the location where it is situated.[421] The dispatched worker must be paid overtime, performance bonuses and benefits relevant to the post irrespective of employment status and must earn the some pay as that received by workers of the accepting entity.[422] The law also provides that they have the right to join or form a trade union while in employment to safeguard their lawful sights and interest.[423]

This intervention by the Chinese government through legislation is a laudable development and implemented property will go a long way in protecting the rights of outsourced workers in the workplace as well as protecting them from exploitation. It will also become less attractive in the long run to employers who have previously before the law used labour dispatched workers as a substitute for their regular workforce. This may eventually faze out the growth of labour dispatch firms.

[419]F, Xu 'The Emergence of Temporary Staffing Agencies in China', *Labour Law & Policy Journal*.Vol 30, (2012) p. 440.
[420] The Labour Contract Law was enacted on 29 June 2007 and came into effect on 1 January, 2008.
[421]Labour Contract Law (China), Article 61.
[422]*Ibid*, Articles 62 & 63.
[423]*Ibid*, Article 64.

Without much ado, I posit that based on the cross national comparative analysis above, the position in China is more preferable and should be followed by the Nigerian legislature.

CHAPTER FIVE

INTERNATIONAL LABOUR STANDARDS ON THE LEGAL STATUS OF ECONOMICALLY DEPENDENT WORKERS

5.1 Background to International Labour Organisation.

The call for just and equal labour standards and improved working and living conditions for the world's workers had begun to be heard long before the outbreak of World War I.[424] As the Industrial Revolution swept from France and Britain across the rest of Europe over the course of the 19th century, it completely altered the economic and social landscape of the continent and eventually the world. Among the early advocates of an international organisation to regulate labour were Robert Owen, a Welsh socialist and the founder of the first, short-lived British trade union in 1833; Charles Hindsley (1800-1857), a cotton spinner and member of the British parliament from 1853 to 1857; and Daniel Legrand, a French industrialist, philanthropist, and writer.[425]

Though these 19th-century thinkers were ahead of their time, the unparalleled destruction wrought by the Great War of 1914-1918 led to increased support among the world's leaders for such an organisation, not only to regulate labour standards for the steadily growing international population of industrial workers, but also to preserve peace in the volatile atmosphere of the post-war world.[426]

The creation of an international labour organisation as a separate but affiliated agency of the League of Nations was seen by its founders as a necessary and vital part of the League itself.

The ILO Constitution, written between January and April 1919, by a commission of representatives from nine countries—Belgium, Cuba, Czechoslovakia, France, Italy, Japan, Poland, the United

[424] W, Sengenberger, *The International Labour Organization Goals, Functions and Political Impact* (Germany: Friedrich Ebert Stiftung, 2005) p. 9
[425] *Ibid*, p. 12
[426] This Day in History, 'International Labour Organisation Founded' <http://www.history.com/this-day-in-history/international-labour-organization-founded> accessed on 27th January, 2018

Kingdom and the United States—and chaired by Samuel Gompers, head of the American Federation of Labour (AFL), eventually became Part XIII of the Treaty of Versailles.[427]

Its preamble began with a statement of purpose—The League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice—and went on to lay out the threefold motivation behind the creation of the ILO. First, there was a necessity to improve the conditions of the average worker, who without regulation was increasingly subjected to exploitation by industrial management, including long hours of work, low wages and harsh treatment. There was also a political motive: if conditions did not improve, the growing discontent among the workers in the world would threatento explode into large-scale demonstrations unrest and possible revolution, as had occurred in Russia in 1917 and to a lesser extent in Germany and Austria-Hungary near the end of the war. Thirdly, without universal standards of labour that could be enforced across international borders, any country that instituted social reform would find itself at a disadvantage economically.[428]

The ILO as created in April 1919 was a tripartite organisation—half of the members of its governing body, the executive council, were representatives of various governments, one-fourth were employers' representatives and one-fourth were workers' representatives. The first annual conference of ILO referred to as the International Labour Conference which was convened in Washington, D.C., on the 29th day of October 1919 at the Pan American Union Building in Washington, issued the organisation's first six International Labour Conventions. These Conventions addressed among other issues, limitations on working hours, unemployment, maternity protection, minimum working age, night work for women, and night work for young persons in industry. Also

[427] Wikipedia, International Labour Organisation, http://www.wikipedia/international-labour-organization
[428] This Day in History, *op.cit*

at the 1st International Labour Conference in 1919, public job creation was advocated as an effective remedy against economic depression and unemployment. This was a plus for the organisation.[429]

The prominent French Socialist Albert Thomas became its first director-general. The International Labor Office, the ILO's permanent secretariat, was set up in Geneva, Switzerland. A Committee of Experts was set up in 1926 as a supervisory system on the application of ILO standards. The Committee, which exists today, is composed of independent jurists responsible for examining government reports and presenting its own report each year to the Conference. In 1930, the ILO adopted the first future fundamental convention: the Forced Labour Convention (No.29), which prohibited all forms of forced labour unless exempted by certain conditions. However, during the worldwide economic crisis in the early 1930s, the ILO campaigned timidly for public job - creation measures to mitigate the consequences of the crisis, despite the intellectual advocacy by the British economist John Maynard Keynes. Due to the opposition of the Anglo - Saxon member states, agreement could not be reached on a joint conference planned for 1931 on the subject.[430]

Harold Butler succeeded Albert Thomas in 1932. He realized that handling labour issues also requires international cooperation. With the onset of the great depression, the United States joined the ILO on 22 June 1934 although it continued to stay out of League of Nations. Within this period, the ILO emphatically advocated the rights of workers to collective organisation and for collective bargaining in the 1930s.

American John Winant took over in 1939 just as the Second World War became imminent. He moved the ILO's headquarters temporarily to Montreal Canada in May, 1940 for reasons of safety but left in 1941 when he was named US Ambassador to Britain. His successor, Edward Phelan, had helped to write the 1919 Constitution and played an important role once again during the Philadelphia meeting of the International Labour Conference in the midst of the Second World War.

[429] W, Sengenberger, *op. cit*, p. 19
[430] W, Sengenberger, *op. cit*, p. 29

The meeting was attended by representatives of governments, employers and workers from 41 countries. The delegates adopted the Declaration of Philadelphia annexed to the Constitution, which still constitutes the Charter of the aims and objectives of the ILO.[431]

ILO broadened its mandate with the Declaration of Philadelphia signed during the 26th general conference session in 1944. The Declaration of Philadelphia, which is attached to the general constitution of ILO, foreshadows some of the ILO's earliest future fundamental conventions including the freedom of expression and association which was adopted in 1948 as Freedom of Association and Protection of the Right to Organise Convention No. 87. Throughout the history of the League of Nations, ILO is the only League-affiliated organisation that the United States joined. ILO became the first specialized agency of the United Nations after the demise of the league in 1946. Its constitution, as amended, includes the Declaration of Philadelphia on the aims and purposes of the organisation.[432]

America's David Morse was Director-General from 1948-1970 when the number of Member States doubled and the Organisation took on its universal character, industrialized countries became a minority among developing countries, the budget grew five-fold. ILO established the Geneva-based International Institute for Labour Studies in 1960 and the International Training Centre in Turin in 1965. ILO played an important role in the fight against the apartheid regime in South Africa when the opposition put pressure on the government and called for international labour standards. Furthermore, ILO has been in support of movements for freedom and democracy in Greece in the 1960s. . The Organisation won the Nobel Peace Prize on its 50th anniversary in 1969.[433] Under Britain's Wilfred Jenks as Director-General from 1970-73, ILO advanced further in the development of standards and mechanisms for supervising the application of its standards particularly the

[431] *op. cit*
[432] International Labour Organization, Origins & History available on http://www.ilo.org/global/about-the-ILO-/history/lang--en/index.htm accessed on 21st January 2018.
[433] Nobel-Prizes .Org. 1960, International Labour History available on http://www.nobelprise.org/nobel-prizes/peace/laureates/1969/labour-history.html accessed on 18th January, 2018.

promotion of freedom of association and the right to organize. In July, 1970, the United States withdrew 50% of its financial support to ILO following the appointment of an assistant Director-General from the Soviet Union. However, the funds were eventually paid.

His successor Francis Blanchard of France, expanded ILO's technical cooperation with developing countries and averted damage to the Organisation, despite the loss of one quarter of its budget following US withdrawal. What led to US withdrawal is that on 12 June, 1975, ILO voted to grant the Palestinian Liberation Organisation observer status at its meetings. Representatives of the United States and Israel walked out of the meeting. The U. S. House of Representatives subsequently decided to withhold funds. The United States gave notice of full withdrawal on 6th November, 1975 stating that, the organisation had become politicized. The United States also suggested that representation from communist countries was not truly "tripartite"—including government, workers, and employers—because of the structure of these economies. The withdrawal became effective on 1st November, 1977. Irrespective of this, ILO also played a major role in the emancipation of Poland from dictatorship, by giving its full support to the legitimacy of the Solidarnosc Union based on respect for Convention No. 87 on freedom of association, which Poland had ratified in 1957.[434]

The United States returned to the organisation in 1980 after extracting some concessions from the organisation. It was partly responsible for the ILO's shift away from a human rights approach and towards support for the Washington Consensus. ILO quietly ceased to be an international body attempting to redress structural inequality but became one that promotes employment equity. Belgium's Michel Hansenne succeeded Francis Blanchard of France in 1989 and guided ILO into the post-Cold War period, He emphasized the importance of placing social justice at the heart of international economic and social policies. He also set ILO on a course of decentralization of activities and resources away from the Geneva headquarters Though the League

[434] International Labour Organization, ILO and the United States: Brief History and Timeline available on <http://www.ilo.org/washington/ilo-and -the-united-states-brief-history-and-timeline/lang-en/index.htm accessed on 16th January, 2018.

of Nations faltered in the post-war years, ILO flourished even as its mission expanded from setting universal labour standards to guarding against more general human rights violations worldwide and facilitating technical cooperation to assist developing nations.[435]

In March 1999, Juan Somavia of Chile took over as Director-General. He emphasized the importance of making decent work a strategic international goal and promoting a fair globalisation. He also underlined work as an instrument of poverty alleviation and ILO's role in helping to achieve the Millennium Development Goals including cutting world poverty half by 2015.[436]

Based on these efforts, the 7th day of October every year was mapped out as the World Day for Decent Work and it is celebrated at the initiative of the international trade unions. Its purpose is to draw attention to ILO's Decent Work Agenda and its role in economic development and the fight against poverty and social injustice. ILO has been among the most important proponents of an active employment and labour market policy. A days in October 2011, was the occasion to point out the growing trend of precarious employment in virtually all countries and to discuss possible remedies.[437]For several years, ILO has explored and advocated the promotion of green jobs and climate - friendly technologies and energy sources which were seen as having a positive net employment effects. Recently, ILO has won widespread support for its claim that access to decent work is key to ending poverty. When the organisation celebrated its 90th anniversary in 2009, its Geneva headquarters was decorated with images of government leaders who have visited ILO over the years, who were committed to its goals, and who pledged support for its activities.

In May 2012, a trade unionist was elected for the first time as Director - General of the International Labour Office. Guy Ryder, a citizen of the United Kingdom, who was previously General-Secretary of International Trade Union Federation (ITUC) was elected. Guy Ryder was

[435] International Labour Organization, ILO and the United States: Brief History and Timeline, *op. cit*
[436] International Labour Organization, International Labour Organization: Origins & History 1996-2018, available on http://www.ilo.org/global/about-the-ilo/history/lang-en/index.htm 1996- 2018 accessed on 12th January, 2018.
[437] *Ibid*

elected as the tenth Director-General of ILO. He was re-elected to his second five-year term in November 2016 and the term started on 1st October, 2017.[438] ILO's creation marked the first instance of multiple major international actors coming together in an attempt to reach a consensus on universal workers' rights. Despite lack of any formal means of coercion, ILO embodies a vision of universal, humane conditions of work to attain social justice and peace among nations. The contemporary expression of this vision is the Decent Work Agenda. ILO's original and most important task has been the development, promotion, and monitoring of international labour standards. To date, the organisation has created 189 globally applicable and legally binding Conventions and 202 legally non – binding Recommendations for the regulation of work conditions. Many of these standards are still enforced.[439]

The establishment of ILO can be seen as a response to the fast economic growth in domestic demand and in particular, the expansion of international trade and international investment in the then industrialized countries and their colonies during the three decades prior to the First World War. Enabled by a wave of free - market - inspired deregulation of the labour market. The development resulted in sharply intensified cross - border competition, which brought employers to seek to undercut labour costs and / or resort to the excessive use – and indeed exploitation – of labour, notably by lengthening the hours of work.[440] It is no coincidence that at its first International convention in 1919 ILO called for the introduction of the 8 – hours per day and the 48 - hours per week of work in industries. At the same time, the Conference agreed on the protection of workers in case of unemployment, maternity, night work by women and youth, and the introduction of a minimum age for employment in the industrial sector.

ILO Constitution states explicitly that fair and humane conditions of labour should be applied, both at home and in individual countries to which their commercial and industrial relations

[438] International Labour Organization, International Labour Organization: Origins & History 1996-2018, *op. cit*

[439] *Ibid*

[440] W, Sengenberger, *op. cit*, p.27

extend.ILO has two main decision making bodies: The International Labour Conference held in June each year – also known as World Parliament of Labour– and the Governing Body. In each of the two bodies, the national governments hold half of the seats, and employers' and workers' organisations one quarter each of the voting power. This feature of tripartite representation is to ensure that the views of the social partners are closely reflected in labour standards and in shaping policies and programmes. It makes ILO unique within the family of the United Nations and more democratic than other organisations in the multilateral system.ILO is a global center for research and publications on the world of work. It offers consulting, technical assistance, and development cooperation services for its more than 180 member states. The work takes place in the International Labour Office which is the secretariat of the organisation with headquarters in Geneva, and in about 50 offices in all continents and all major countries. The International Training Centre of the ILO in Turin, Italy, provides training, learning, and capacity development services for governments as well as for employers' and workers organisations and other international partners. The following are the principles which influence the establishment of ILO and the principles were incorporated in Part-XIII of the Treaty Versailles as follows:

1) universal peace can be established only if it is based on social justice and social justice implies the creation of an equitable condition of labour.
2) regulation of labour conditions must be accomplished internationally because, 'the failure of any nation to adopt human conditions for labour is an obstacle in the way of the other nations that desire to improve the conditions of labour in their own countries.
3) examples of methods for improving conditions of labour are indicated as below:
    a. establishment of maximum working days and week;
    b. prevention of unemployment;
    c. provision of adequate living wage;
    d. protection of labour against sickness, disease and injury arising out of employment;
    e. protection of children, women and young persons;

f. provision for old-age.

To achieve the above and to implement these principles, the Peace Treaty prescribed that a permanent organization should be established and thus, I.L.O came into existence in the year 1919. ILO Constitution therefore stipulated that a permanent organisation is hereby established for the promotion of the objectives set forth in the preamble to this constitution[441].

The aims and objectives of ILO were set forth in the preamble to its constitution, drawn up in 1919. The preamble declares that "universal and lasting peace can be established only if it is based upon social justice." Hence, the basic objective of the organization is to help improve social conditions throughout the world.[442] In 1944, during its meeting in Philadelphia, the International Labour Conference adopted a declaration that rephrased and broadened the aims and objectives of ILO and the principles which should inspire the policy of its members.[443]Thus the objectives of ILO are therefore are enunciated in the preamble to its Constitution, supplemented by Article 427 of the Peace Treaty of Versailles, 1919 as well as by the Philadelphia Declaration of 1944. The Declaration of Philadelphia set out objectives which International Labour Organisation was to further promote among the Nations of the world. The theme underlying these objectives is social justice. The objectives which ILO sets out to achieve are as follows:

(a) full employment and the raising of standards of living;

(b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;

(c) the provision of facilities for training as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;

[441] Article 1 ILO Constitution
[442] W, Sengenberger, *op. cit*, p.29
[443]M, MaheswaraSwamy, 'Impact of ILO Standards on Indian Labour Law,'(2007) p.

(d) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;

(e) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;

(f) the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;

(g) adequate protection for the life and health of workers in all occupations;

(h) provision for child welfare and maternity protection;

(i) the provision of adequate nutrition, housing and facilities for recreation and culture;

(j) the assurance of equality of educational and vocational opportunity.[444]

In achieving these set objectives ILO has widened the target groups of the labour force. Whereas originally the organisation was primarily concerned with industrial workers, agricultural workers, and miners, the ILO focusses as well on service workers and minorities, indigenous peoples, migrants, domestic workers, and the so – called informally employed without rights also known as non-standard workers or economically dependent workers who in some countries make up as much as 90 per cent of the workforce. Notwithstanding its call for Decent Work for All Workers, the ILO concentrates on gainful employment. From the objectives of ILO, one can safely conclude that the status of economically dependent workers in Nigeria runs short of the objectives, ILO is targeted at

[444]Article 111 of the International Labour Organisation (Declaration of Philadelphia).

ensuring right to collective bargaining, social security, maternity protection, provision of medical and health facilities for workers and a host of other work benefits which are not made available to workers in non-standard employment in Nigeria.

Originally, membership of ILO was identical with membership of League Nations since adherence to the League carried with it participation in the ILO. However, several countries that were not members of the League were admitted to ILO, notable among them is the US, which joined in 1934. In 1946, ILO became the first specialized agency associated with the United Nations (UN). The constitution[445] of ILO now provides for Membership of the organisation.

The procedure for becoming a Member of ILO differs depending on whether the State is, or is not, a member of the United Nation. The Constitution of International Labour Organization lays down the procedure for the admission into the Organisation of Members states of the United Nations. It provides:

> Any original member of the United Nations and any State admitted to membership of the United Nations by a decision of the General Assembly in accordance with the provisions of the Charter may become a Member of the International Labour Organisation by communicating to the Director-General of the International Labour Office its formal acceptance of the obligations of Constitution of the International Labour Organisation.[446]

Where a state takes the step of communicating to the Director General, the Constitution went on to provide that:

> 1. The acceptance of membership of the International Labour Organisation in pursuance of paragraph 3 of article 1 of the Constitution of the Organisation by a Member of the United Nations shall take effect on receipt by the Director-General of the

[445]Article 1 & 3 of ILO Constitution.
[446] Article1 (3) of ILO Constitution

> International Labour Office of a formal and unconditional acceptance of the obligations of the Constitution of the Organisation.
>
> 2. The Director-General shall inform the Members of the Organisation and the International Labour Conference of the acceptance of membership of the International Labour Organization by a Member of the United Nations.[447]

There is attached a model letter[448] accepting the obligations of the Constitution on the basis of paragraph 3 of article 1 of the Constitution of International Labour Organisation. This letter should be signed by a person entitled to assume binding obligations on behalf of the State. The formal acceptance of the obligations of ILO Constitution on behalf of a new Member is customarily signed by the Head of State or by an authorized minister of the Government, such as the Prime Minister, the Minister of External Affairs or the Minister of Labour

This means that, a Member of United Nations becomes a member when she has communicated her acceptance of the obligations of the ILO Constitution to the Director General who upon receiving such communication has to inform the other members of ILO of the Membership of that member of the United Nations.

The procedure for membership of ILO will differ where the prospective Member state is not a member of the United Nations. In this case, the Constitution of International Labour Organisation lays down the procedure for the admissionof states which are not Members of the United Nations into the Organisation. It provides as follows:

> The General Conference of International Labour Organisation may also admit Members to the Organisation by a vote concurred by two-thirds of the delegates attending the session, including two thirds of the Government delegates present and voting. Such

[447] Article 27 (1) & (2) of ILO Standing Orders
[448] The model letter is ILO Constitution Annex 1

admission shall take effect on the communication to the Director-General of International Labour Office by the government of the new Member of its formal acceptance of the obligations of the Constitution of the Organisation.[449]

Aside the above, the Standing Orders of the International Labour Conference[450] adds the following:

1. the admission of new Members to the International Labour Organisation by the General Conference in accordance with article 1 paragraph 4 of the Constitution of the Organization, shall be governed by the provisions of the present article;
2. each application for admission made to the Conference shall be referred in the first instance to the Selection Committee;
3. unless the Selection Committee is of the opinion that no immediate action should be taken on the application, it shall refer the application to a subcommittee for examination.
4. before submitting its report to the Selection Committee, the subcommittee may consult any representative accredited to the Conference by the applicant;
5. the Selection Committee, after considering the report of the subcommittee, shall report on the question to the Conference.
6. in accordance with article 1 paragraph 4 of the Constitution of the Organization:

(a) a vote concurred in by two-thirds of the delegates attending the session, including two-thirds of the Government delegates present and voting shall be necessary for the admission of a new Member by the Conference;

(b) the admission shall take effect on the communication to the Director-General of the International Labour Office by the Government of the new Member of its formal acceptance of the obligations of the Constitution of the Organisation.

[449]Article 1 (4) of the ILO Constitution.
[450]Article 28 of the Standing Orders of ILO.

It is customary that a State applying for admission nominates a tripartite delegation which may be consulted by the subcommittee of the Selection Committee in accordance with Article 28 paragraph 4 and which may become the delegation of that Member State as soon as admission becomes effective.There is attached a model letter[451] accepting the obligations of the Constitution on the basis of paragraph 4 of article 1 of the Constitution of International Labour Organisation. This letter should be signed by a person entitled to assume binding obligations on behalf of the State. The formal acceptance of the obligations of ILO Constitution on behalf of a new member is customarily signed by the Head of State or by an authorized minister of the Government such as the Prime Minister, the Minister of External Affairs or the Minister of Labour.

Membership of International Labour Organisation has Obligations attached to it. And it is these obligations that the intending members are to accept and communicate to the Director General. ILO members have obligations which are spelt out in the ILO constitution. The members are expected to carry out those obligations. Nigeria as a Member State of the United Nations and International Labour Organisation and by implication accepted to abide by the obligations have been broken down into international labour standards entrenched in ILO creative, conventions and recommendations that regulates labour and employment relationships in member state. These labour standards have in so many ways helped some Members States to reshape their labour laws in ways that are *in tandem* with international labour standards.

5.2 International Labour Standards.

International labour standards are legal instruments drawn up by the ILO's constituents such as governments, employers and workers and set out basic principles and rights at work.[452]International labour standards also refer to conventions agreed upon by international actors, resulting from a series

[451]Annexure 2 of ILO Constitution.

[452] International Labour Organization, 'Introduction to International Labour Standards/ Conventions and Recommendations available on <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions- and-recommendations/lang--en/index.htm> accessed on 15th January, 2018

of value judgments set forth to protect basic workers' rights, enhance workers' job security, and improve their terms of employment on a global scale. According to the International labour Organisation (ILO), international labour standards are primarily tools for government which in consultation with employers and workers are seeking to draft and implement labour law and social policies in conformity with internationally accepted standards. Thus, international standards serve as targets for harmonizing national laws and practices in a particular field.[453] Labour standards are the rules that govern how people are treated in a working environment. Compliance with those standards does not require application of complex legal formulae to every situation. It is sufficiently complied with by ensuring that basic rules of good sense and good governance apply in the working environment.[454]

International labour standards have grown into a comprehensive system of instruments on work and social policy backed by a supervisory system designed to address all sorts of problems in their application at the national level. Since 1919, ILO has maintained and developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and dignity.[455] In today's globalized economy, international labour standards are essential component in the international frame work for ensuring that the growth of the global economy provides benefits to all. The intent of such standards is to establish a worldwide minimum level of protection from inhumane labour practices through the adoption and implementation of the said measures. They are found in either conventions, which are legally binding international treaties that may be acceded to, and ratified by member states, or recommendations, which serve as non-binding guidelines. In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation

[453]ILO, 'Introduction –to-international-Labour-Standards' <http://ilo.org/global/standards/introduction-to-international-labour-standards/lang--en/index.htm>; accessed on 27th January, 2018.

[454]O P, Obi, 'The Concept and Purpose of International Labour Standard' *NJLIR* Vol. 5 (2008) p. 66.

[455] ILO, Standards to Introduction to International Labour Standards- Conventions and Recommendation< http://ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> accessed on the 18th January 2018.

supplements the convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, i.e. not linked to any convention.[456]

Conventions and recommendations are drawn up by representatives of governments, employers and workers and are adopted at the ILO's annual International Labour Conference. Once a standard is adopted, member states are required under the ILO Constitution to submit them to their competent authority for consideration. In the case of conventions, this means consideration for ratification. If it is ratified, a convention generally comes into force for that country one year after the date of ratification. Ratifying countries commit themselves to applying the convention in national law and practice and reporting on its application at regular intervals. ILO provides technical assistance if necessary. In addition, representation and complaint procedures can be initiated against countries for violations of a convention they have ratified.[457]

International labour standards are rule which evolve from a growing international concern that action needs to be taken on a particular issue, for example providing working women with maternity protection, or ensuring safe working conditions for agricultural workers. Developing international labour standards at the ILO is a unique legislative process involving representatives of governments, workers and employers from around the world.[458] As a first step, the Governing Body agrees to put an issue on the agenda of a future International Labour Conference. The International Labour Office prepares a report that analyses the laws and practices of member States with regard to the issue at stake. The report is circulated to member States and to workers' and employers'

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[456] *Ibid*

[457] Wikipedia, 'How International Labour Standard Are Adopted' available on http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> accessed on 20th January, 2018.

[458] International Labour Organization, 'Fact Sheet for Business: International Labour Standards' https://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy Areas/international_labourstandards/EN> accessed on 25th January, 2018.

organizations for comments and is discussed at the International Labour Conference. A second report is then prepared by the Office with a draft instrument for comments and is submitted for discussion at the following Conference, where the draft is amended as necessary and proposed for adoption. This “double discussion” gives Conference participants sufficient time to examine the draft instrument and make comments on it. A two-thirds majority of votes is required for labour standards to be adopted.

ILO's Governing Body has identified Eight conventions as "fundamental", covering subjects that are considered as fundamental principles and rights at work; freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These principles are also covered in the ILO's Declaration on Fundamental Principles and Rights at work. ILO's Governing Body has also designated another four conventions as "priority" instruments, thereby encouraging member states to ratify them because of their importance for the functioning of the international labour standards.

The various sessions of the International Labour Conference had built up the edifice of the international labour code through the adoption of 189 conventions and 203 recommendations, covering a broad range of work issues.[459] Areas covered by International Labour Standards *include*

a. basic human rights,
b. employment and unemployment; national development programs, and provisions for unemployment benefits;
c. various aspects of conditions of work; wages, hours of work, weekly rest periods, annual holidays with pay, and allied topics;
d. employment of children and young persons; minimum age of employment, medical examination for fitness for employment, vocational training and apprenticeship, and night work;
e. employment of women, maternity protection, night work, and employment in unhealthy work;
f. industrial health, safety, and welfare;
g. social security;
h. industrial relations;
i. labor inspection;
j. social policy in nonmetropolitan areas and concerning indigenous and tribal populations;
k. protection of migrants;
l. trade unionism and collective bargaining; and
m. labour administration and inspection.[460]

[459]International Labour Standard, 'International Labour Organization Activities' available on http://www.nationsencylopedia.com/united-nations-relatedagencies/international-labour-organization-ilo accessed on 29th January, 2018.

[460]*Ibid.*

According to ILO's own wording, international labour standards are aimed at promoting decent and productive work in conditions of freedom, equity, security, and dignity.[461] They are part of an international framework of governance designed to ensure that the global economy provides benefits for all. The intent of such standards then, is to establish a worldwide minimum level of protection from inhumane labour practices through the adoption and implementation of the said measures. It has been maintained on ethical grounds that, there are certain basic human rights that are universal to humankind.[462] Thus, it is the aim of international labour standards to ensure protection of some rights in the workplace such as rights against workplace aggression, bullying, discrimination and gender inequality and to ensure working diversity, workplace democracy and empowerment. International Labour Standards are also set out to-

1. give the same right to workers who are in a very poor bargaining position *vis a vis* their employers and other workers. To achieve this purpose, it stipulates minimum wages; written contracts, minimum rest periods, regulation of working time and holidays, social security, maternity protection and complaint procedures in case of violations of such standards;
2. protect the highly vulnerable workers worldwide against unfair competition through the regulation of wages and social benefits, minimum age of employment, working time and rest periods, accommodation, food, health, and safety on board; minimum manning standards, medical care and social security.[463]
3. ensure that everyone on earth enjoys at least basic income security sufficient for making a living and be guaranteed through transfers in cash or in kind, such as pensions for the elderly and persons with disabilities, child benefits, income support benefits, and/or employment guarantees and services for the unemployed and working poor.

[461] W, Sengenberger, *The International Labour Organizations Goals, Functions and Political Impact, Op.cit*,p. 55.
[462] W, Sengenberger, *Globalisation and Social Progress: The Role and Impact of International Labour Standards* (Germany: Friedrich-Ebert-Stiftung, 2005) p. 34.

[463] M, Bongensee, 'The Role of International Labour Standard in a Global Economy' <http://www.grin.com/document/181048> accessed on 29th January, 2018.

4. consolidate social peace, promote social justice and consolidate national labour legislation.[464]
5. prevent what is variably called "unfair trade", social dumping, endangered by unregulated international competition that depresses wages and other labour conditions and cause hardship and deprivation to workers.
6. remedy the structural deficiency of the labour market.
7. provide for freedom of association of workers and employers, the right to collective bargaining, tripartite consultation at the national level and participation and co-operation at the level of the undertaking;
8. protect workers from the abuse of power by employers or the state and also from destructive competition by other workers;
9. prohibit the work of children, forced and compulsory labour and discrimination in employment and occupation, they set maximum hours of work, minimum periods of rest, minimum holidays with pay, and minimum leave in case of maternity.[465]
10. provide special protection for women, youth, night workers, home workers, migrant labour, indigenous and tribal people and for special occupational groups such as seafarers, dockworkers, fishermen, and plantation workers; they stipulate the fixing of minimum wages; they call for timely payment of wages;
11. protect workers' claims in case of employer insolvency.
12. provide protection against accidents and occupational diseases and worker's protection in case of sickness, invalidity, termination of employment, unemployment and old age;
13. stipulate policies for full, productive and freely chosen employment; human resource development through vocational education and training and vocational guidance; vocational rehabilitation and employment of disabled persons, public employment services and fee-

[464] M. Bongensee, *op. cit.*
[465] *Ibid.*

charging employment agencies, care and other welfare facilities, labour statistics, labour inspection and labour administration;[466]

14. set a minimum floor or a ceiling for the use of labour and thus preventing under-payment and over-use of labour, exploitation and 'sweating;
15. serve as institutional mechanism to mediate between the narrow interests of firms and the wider interests of the economy and society as a whole; between the interests of labour and capital, between the interests of the present and future generations of workers and finally between the interests of different countries. Standards are the product of endeavours to accommodate these conflicting interests.
16. provide a repository of international knowledge about how to treat labour issues. They embody the accumulated international wisdom on the use of labour, incorporating experience gained from both good and bad working arrangements.
17. serve as a road-map for newly emerging economies that are confronted with the labour effects of trade.

5.3 Benefits of International Labour Standards

The challenges of globalisation have made international labour standards more relevant than ever. This is because of the avalanche of benefits accruing from International Labour Organisation standards. The benefits are as follows

International Labour Standards are Paths to Decent Work. International labour standards are first and foremost about the development of people as human beings. In an ILO Declaration,[467] the international community recognized that labour is not a commodity and indeed labour is not like an apple or a television set, an inanimate product that can be negotiated for the highest profit or the

[466] M. Bongensee, *op. cit.*
[467] Declaration of Philadelphia of 1944.

lowest price.[468] Work is part of everyone's daily life and is crucial to a person's dignity, well-being and development as a human being.[469] Economic development should include the creation of jobs and decent working conditions in which people can work in freedom, safety and dignity.[470] In short, economic development is not undertaken for its own sake but to improve lives of human beings. International labour standards are focused on improving human life and dignity.

International Labour Standards are International Legal Frameworks for Fair and Stable Globalisation. Achieving the goal of decent work in the globalized economy requires action at the international level. The world community is responding to this challenge in part by developing international legal instruments on trade, finance, environment human rights and labour. International labour standards therefore lay down the basic minimum social standards agreed upon by all players in the global economy.

International Labour Standards Ensure a Level Playing Field in the Global Economy. It helps governments and employers to avoid the temptation of lowering labour standards in the belief that this could give them a greater comparative advantage in international trade. Because international labour standards are minimum standards adopted by governments and the social partners, it is in the interest of everyone to see that these rules are applied across board so that those who do not put them into practice do not undermine the efforts of those who do.

International Labour Standards are Means of Improving Economic Performance. This may occur by employment protection which can lead workers to take risk and to make innovations.[471]

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[468] International Labour Standard, Introduction to International Labour Standard; the Benefits of International Labour Standard, available on http://www.ILO.org/global/standards/introduction-to-internationa-labour-standards/thebenefitsofinternationallabourstandards Accessed 1/7/14.

[469] *Ibid.*

[470] *Ibid.*

[471] World Bank: *World Development Report 2005: A Better Investment Climate for Everyone* (Washington DC, 2005), Pp. 136-156.

International Labour Standards are Safety Net in Times of Economic Crisis. Strengthening social dialogue, freedom of association and social protection systems such as protection of employment can be better safeguards against economic downturn.[472]

International Labour Standards Are Strategies For Reducing Poverty. Economic development has always depended on the acceptance of rules, legislations and functioning legal institutions to ensure protection of property rights, respect for procedure and the enforcement of contracts. A market such as labour by a fair set of rules and institutions is more efficient and brings benefit to everyone. Fair labour practices set out in international labour standards and applied through a national legal system ensure an efficient and stable labour market for workers and employers alike. International labour standards call for the creation of institutions and mechanisms which can enforce labour rights. In combination with a set of defined rights and rules, functioning legal institutions can help formalize the economy and create a climate of trust and order which is essential for economic growth and development.[473]

International Labour Standards are the Sums of International Experience and Knowledge. International labour standards represent international consensus on how a particular labour problem could be tackled at the global level and reflect knowledge and experience from all corners of the world. Governments, employers' and workers' organisations can benefit from the standards by incorporating them in their labour policies. The benefits of international labour standards are all needed in Nigeria wherein the concept of termination and dismissal at will has led to tremendous social and economic problems. There is, therefore, a need for Nigeria to look inward and pursue policies that will lead to achieving the ratification and application of labour standards particularly the International Labour Organisation standards on unfair dismissal found in ILO Termination of

[472] E, Lee, *The Asian Financial Crisis: The Challenge for Social Policy* (Geneva, ILO, 1998).
[473] ILO: Decent Work and The Informal Economy', *Report VI, International Labour Conference* (90th Session, Geneva, 2002) Pp. 39-54.

Employment Convention.[474] Application of these standards will in no small measure bring sanity into labour and industrial relations in Nigeria as it will definitely bring to an end arbitrary exercise of power of dismissal and termination for bad or no reason at all in relation to these vulnerable classes of workers referred to as economically dependent workers..

5.4 International Labour Standards on the Legal Status of Economically Dependent Workers.

International labour standards have been designed since the inception of ILO in 1919. These standards aim at promoting opportunities for decent and productive work under the conditions of freedom, equity, security and dignity. The benefits of international labour standards cannot be underestimated in member states because the standards are paths to decent work agenda whereby workers are seen as human beings and not a commodity that needs to be treated without dignity.[475]

The concept of economically dependent workers has been discussed in the previous chapter to refer to those who do not correspond to the traditional definition of an employee – essentially because they do not have an employment contract but who are economically dependent on a single employer for all or most of their sources of income. The main concern of this segment is to appraise international labour standards which give protection to these groups of workers referred to as economically dependent workers and also to determine the extent to which Nigerian laws have complied with these international labour standards with respect to these classes of workers.

Apart from the exception of ILO standards that are directed at specific occupations or economic sectors, ILO standards apply in principle to all workers regardless of theiroccupational status, and are therefore important for regulating various aspects of

[474] *Op cit.*.
[475] G K, Ishola, 'ILO and the International Labour Standards Setting: A Case of Nigeria Labour Act', *Journal of Human Resource Management* vol. 1 No. 1 (2013) pp. 15-20.

economically dependent workers. To ensure that economically dependent workers are covered, ILO has at its recurrent discussion on fundamental principles and rights at work at the One Hundred and First Session of the International Labour Conference approved a resolution that adopted conclusions on how to ensure that fundamental principles and rights at work were accessible to all[476]. In addition, the 1998 ILO Declaration on Fundamental Principles and Rights at Work prescribe that all member States of ILO even if they have not ratified these Conventions, have an obligation arising from the very fact of their membership of the Organisation to respect, promote and to realize in good faith and in accordance with the Constitution, the principles concerning the fundamental rights that are the subject of these Conventions[477]. The most relevant provisions on the legal status of economically dependent workers are briefly presented below.

ILO Convention on Termination of Employment No.158 of 1982

This convention deals with unfair dismissal. Unfair dismissal can be defined as termination or dismissal without a reason or with reasons not connected with the work of the employee or his capacity.[478] Under the common law, an employer can terminate an employment relationship with reason or for no reason at all. This position has been affirmed by Nigeria courts in an avalanche of cases.[479]Happily, however, there is an international breakthrough in this regard as the International Labour Organization has created an obligation on the employer to show reason for terminating a contract of employment. Article 4 of the ILO Convention 158 on the Termination of Employment at the Initiative of the Employer, 1982 provides that the employment of a worker shall not be terminated unless there is valid reason for such termination connected with the capacity or conduct of the undertaking, establishment or service. On what constitutes valid reason, a learned writer has

[476] ILO: Resolution Concerning the Recurrent Discussion on Fundamental Principles and Rights at Work, Adopted on 13 June 2012.
[477] ILO Report: 'A fair Globalisation- Creating Opportunities for all' Report of the World Commission on Social Dimension of Globalisation (Geneva publication,2004) .
[478]M I, Anushiem 'The Status of ILO Standards on Unfair Dismissal in Nigeria: Imperative for a Legislative Action' *NJLIR* Vol.8 No.1 (2014)P. 57; M I, Anushiem, 'Unfair-Dismissal in Nigeria: the Role of the National Industrial Court,(2014) *UNIZIK J.P.P.L*,P.151.
[479] See for instance *Chukwumah v SPDC* (NIG) Ltd (1993) 4 NWLR 289.

maintained that a reason is valid only if it is connected with the capacity or conduct of the employee. Such reasons like gross misconduct, incompetence, disobedience, negligence and such reasons that may be deemed to be connected with the operational requirement of an undertaking, establishment or service may be reasons like transfer of undertaking, privatization as in Nigeria, merger and acquisition or takeover of an undertaking as provided in Nigerian Laws.[480]

Article 5 of the convention simplifies the whole thing by providing a list of what constitutes invalid reasons:

i. union membership or participation in union activities outside working hours or with working hours with the consent of the employer;
ii. seeking office as, or acting or having acted in the capacity of a worker's representative;
iii. filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
iv. race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
v. absence from work during maternity leave.

The convention also created an obligation on the employer to observe fair hearing in determining a contract of employment. Article 7 of the Convention provides that the employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot be reasonably expected to provide this opportunity. The implication is that where an employee is dismissed based on any of the above reasons contained in Article 5 of the Convention; the court will discountenance such dismissal. It is immaterial that the employee is employed under the ordinary master-servant relationship or falls under the category of economically dependent workers. This is

[480] GG, Otuturu, 'The Limits of the Application of the Rules of Natural Justice in Contract of Employment'*NJLIR*, Vol. 2 No. 1 (2008)p. 80.

because article 2 of the Convention states that the convention shall apply to all branches of economic activities and to all employed persons.

The issue of unfair termination came before the NICN in the case of *ChukwudiOkwume v Airtel Networks Ltd*.[481] Clause 17 of the employment contract made the following provision for termination of employment:

> The company may terminate your employment any time after confirmation of appointment without advancing reasons if your performance falls short of expectation, by giving you one month's notice or one month's salary in lieu of notice.

The letter of termination also contained no reason for the termination of the claimant's employment. The NICN believed that it was unfair for the employer to remove the employee without giving any reason. In *Maiya v The Incorporated Trustees of Clinton Health Access Initiative,*[482] the claimant was dismissed because she was pregnant. She successfully proved that the dismissal was a violation of her fundamental right to freedom from discrimination under the Constitution of the Federal Republic of Nigeria, the African Charter on Human and Peoples Right Act[483] and against international best practice. What is deduced from this case is that the NICN recognized that dismissal on grounds of pregnancy amounted to unfair dismissal. It awarded damages on that basis but could not reinstate the claimant. But, in the case of *Mr. Matthew Ebong Udo v National Examinations Council (NECO)*[484] the defendant argued that the basis for the dismissal of the claimant was that the latter's service was no longer required by the council and that an employer is not obliged to give any reason for terminating an employment. The NICN rejected this contention and held the termination null and void. The NICN further ordered the automatic reinstatement of the claimant. The point worth noting from the above is that a new obligation is imposed on the employer to show reason and observe fair hearing in the determination of contract of employment.

[481] Suit No: NICN/LA/176/2014 delivered on October 12, 2015.
[482] Suit No: NICN/ABJ/13/2011 delivered on December 21, 2011.
[483] Cap A9 LFN, 2004
[484] Suit No: NICN/CA/75/2013 delivered on April 24, 2015.

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (N0. 87)

This ILO Convention encapsulates ILO Standards which provides for the right for workers and employers to establish and join organisations of their own choice without previous authorization.[485] The Committee on Freedom of Association has clarified that by virtue of the principles of freedom of association, all workers – with the exception of members of the armed forces and the police – should have the right to establish and join organisations of their own choice and therefore, the entitlement to that right should not be based on the existence of an employment relationship, which is often non-existent. For example, agricultural workers, self-employed workers in general or those who practise liberal professions should nevertheless enjoy the right to organize. Temporary workers should also have that right according to the Committee on Freedom of Association and should be able to negotiate collectively.[486] To buttress this, the Convention provides that, "Workers and employers, withoutdistinction whatsoever shall have the rights of the organisation concerned, to join organisation of their own choosing without previous authorisation.[51]"This convention is fundamental to the existence of collective labour rights by trade unions and unionists.

It is obvious from the usage of the phrase that Workers and employers without distinction whatsoever' in the above provision[52] means that all employers and workers in the private and public sectors, including subcontracted workers, dependent workers, and self-employed workers, have the right to freedom of association under Convention No. 87 of 1948. Nigeria became a signatory to this Convention No. 87 on 17th October, 1960.[487] This convention is similar to the right guaranteed by section 40 of the Constitution Federal Republic of Nigeria on the right to associate freely and form trade union. It is also one of the rights guaranteed under the African Charter on Human and Peoples' Rights which is directly applicable in Nigeria by virtue of the African charter on Human and People'

[485] G G, Otuturu, 'Freedom of Associations and Trade Unions Membership in Nigeria' *Nigerian Journal of Labour and Industrial Relations*; vol. 3 No 19 (2009)p. 64.
[486] *Ibid.*
[487] S E, Mbah, & C O, Ikemefuna, 'Core Conventions of the International Labour Organisation (ILO): Implications for Nigeria Labour Laws' *International Journal of Business Administration*, Vol. 2 No. 2(2011) P5.

Rights (Ratification and Enforcement Act, 1990) and also the provision of the Trade Union Act.[488]According to Nigeria constitution[489] which provides as follows:

> Every person shall be entitled to assemble freely andassociate with other persons and in particular he may formor belong to any political party, trade union or any otherassociation for the protection of his interest.

The above provision of the constitution shows that Nigeria recognized this right as fundamental and the phrase 'every person' also shows that it is a right that should accrue to all citizens including economically dependent workers. Despite this constitutional provision however, it is unfortunate to note that this constitutional status has not been accorded to casual workers in Nigeria. Employers have continued to violate this constitutional right with impunity because there are no provisions for sanctions by the state against erring employers.[490] In fact, attempts by unions in the industry to organize contract workers and negotiate on their behalf are sometimes met with sack threat and police violence.[491] This therefore, is contrary to ILO convention No. 87which deals with freedom of association.

Right to Organize and Collective Bargaining Convention (No. 98) of 1949

This is another International Labour Convention which encapsulates international labour standards covering economically dependent workers. The primary purpose of this convention is the application of the principle of the right to organize and bargain collectively among the actors in labour and employment relationships.[492] This is because many individuals do not have the freedom to negotiate

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G G, Otuturu, *Op. cit. see also* African Charter on Human and Peoples Right (Ratification and Enforcement} Act *Op.cit;* Trade unions Act, Cap 14 LFN 2004.

[489] Constitution of Federal Republic of Nigeria 1999, section 40.

[490]S E, Mbah, & C O, Ikemefuna*Op. cit*, p. 5.

[491]'The Degradation of Work: Oil and Casualisation of Labour in the Niger Delta' (A Report by the Solidarity Center Washington, DC 2016) p. 14, http://www.solidaritycentre.org, accessed 20/09/2017.

[492]G G, Otuturu, 'Freedom of Associations and Trade Unions Membership in Nigeria' *Nigerian Journal of Labour and Industrial Relations*,*Op.cit*, p 67.

the terms and conditions of their contract on an equal basis. Where this takes place, collective labour interest becomes relevant and functional for the workers.[493] Thus, for workers to have any effective power in the employment relations, they must come together to further their demands on collective basis. Workers can then stand the chance of counter balancing the powers of the employer.[494]The convention seeks to protect the rights of stakeholders in industrial relations to bargain voluntarily. It prohibits anti-union discrimination against workers such as making the employment of workers subject to the condition that they shall not join a union or shall relinquish trade union membership, or causing the dismissal of or other prejudice to a worker by reason of union membership or participation in union activities[495]. The right of workers to bargain freely with employers is essential.

According to the convention, collective bargaining is a voluntary process through which employers and workers discuss and negotiate their relationship particularly in terms of conditions of work. Under the Convention, recognition of the right to collective bargaining is general in scope and all organisations of workers in the public and private sectors must benefit from it, including organisations representing categories of workers such as casual workers, self-employed and temporary workers, outsourced or contract workers, and part-time workers.[496]

Nigeria also ratified this convention on the 17thday October 1960. In Nigeria, collective bargaining is regulated by many statutes among which are the Trade Union Act,[497] the Trade Dispute Act,[498] the Wages Boards and Industrial Council Act,[499] to mention a few.

Here this work will concentrate on Trade Union Act.[500] Under the Trade Unions Act,[501] membership of a trade union is generally open to all persons employed in a particular trade. The Act provides that no person who is otherwise eligible for membership of a particular trade union shall be refused admission to membership of that union by reason only that he is of a particular community, tribe,

[493] S, Deakin, & G S, Morris, *Labour Law*, (London: Butterworth, 1995) p. 594.
[494]*Ibid.*
[495]*Ibid.*
[496]S E, Mbah& C O, Ikemefuna, *op. cit.*
[497]*Op.cit.*
[498]*Op.cit* .
[499] Cap 470 LFN, 1990.
[500]*Op.cit*
[501] Trade Union (Amendment) Act 2005.

place of origin, religion or political opinion.[502] This provision means that membership of a trade union by employees shall be voluntary and no employee shall be forced to join any trade union or be victimized for refusing to join or remain a member. The right is available to both casual and permanent workers in Nigeria. In practice, however, workers in casual employment are not usually permitted to unionise, hence, they lose their rights to collective bargaining.[503] Absence of right to unionise has a consequence of depriving causal workers the benefits of collective agreements. This is also contrary to ILO standards on Rights to Organize and Collective Bargaining Convention.

ILO Occupational Safety and Health Convention No 155 of 1949.

This convention applies to all employed persons including public employees and covers all places where the workers need to be or to go by reason of their work which are under the direct or indirect control of the employers.[504] Nigeria became a signatory to the convention on the 22nd day of June, 1981.[505] In Nigeria, relevant laws have been enacted to achieve this ILO Convention No. 155 of 1949. The Occupational Health and Safety laws are contained in the Employees Compensation Act.[506] Employees Compensation Act made a commendable effort in defining an employee as 'a person employed by an employer under oral or written contract of employment whether on continuous, part-time, temporary, apprenticeship or casual basis.

Unlike the Labour Act, Employees Compensation Act covers the economically dependent workers.[507] By virtue of section 2(1) of the Employees Compensation Act, 2010, the Act applies to all employers and employees in the public and private sectors in the Federal Republic of Nigeria. This means that, ordinarily, once a person qualifies as an employee or employer under the Act, the person becomes covered by the Act and thus becomes entitled to benefit from the compensation provisions of the Act in the event of any of the workplace disabilities. However, by section 3 of the

[502] *Ibid*,section 12.
[503] T, Awodipe, 'Casualisation: Enemy of the Nigerian Workforce', available at http://guardian.ng/sundaymagazine/newsfeature/casualisation-cancer-of-the-nigeria-workforce/>, accessed on 20/09/2017.
[504] Articles 2 and 3 of Convention No 155 (Occupational Safety and Health convention of 1949).
[505] F, Omokhodion,'Occupational Health and Safety in Nigeria' *Oxford Journal of Occupational Medicine*, vol. 59 Issue 3 (2012) p 201.
[506] 2010.
[507] Employee Compensation Act,*Op.cit*, Section 73.

Act, the Act does not apply to any member of the Armed Forces of the Federal Republic of Nigeria other than a person employed in a civilian capacity.[508] It then becomes expedient to ascertain the meaning of employer as well as employee under this Act.

The Act defines an employee to mean:

> A person employed by an employer under oral or written contract of employment, whether on a continuous, part-time, temporary, apprenticeship or causal 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.[509]

The implication of the above definition of employee is that the Act has given the term "employee" a wider coverage than can be seen in any other labour legislation. The Act tries to cover every person who is engaged in a paid employment in Nigeria. Employer is also defined to include:

> Any individual, body corporate, Federal, State or Local Government or any of the government agencies who has entered into a contract of employment to employ any other person as an employee or apprentice.[510]

The meaning of employer under the Act shows also that once a person engages another in a paid employment, that person is an employer irrespective of the nature and status of the supposed employer. The provision of sections 2 and 73 of the Employees Compensation Act, when read together, show that every person who engages or is engaged in a paid employed is covered under the Act as employer or employee. What this depicts is that, apart from an employee employed in the Armed Forces of the Federation other than in a civilian capacity, the Act applies to every other

[508] See also E A, Oji & O D, Amucheazi, *Employment&LabourLawinNigeria* (Lagos: Mbeyi& Associates Nig. Ltd, 2015) p. 165.
[509] See section 73.
[510] *Ibid*

employee whether the employee is employed in a purely master-servant relationship or in a public sector employment that is protected by statutes.[511] One point that also needs to be emphasized is that, while the Act gives a closed or definitive definition of "employee" by the use of the word "means", the categories of who an employer is, is not closed. This is because the Act uses "includes", rather than "means" in its definition of "employer", thus suggesting that the word can still admit of other meanings other under than those mentioned in section 73 of the Act. The above analysis shows that the Employees Compensation Act, 2010 applies to workers in non-standard employment otherwise referred to as economically dependent workers with the same force as it applies to standard form employment relationship. There is no gainsaying the fact that the 2010 Act is a laudable step in the right direction, as long as workplace compensation is concerned under Nigerian labour and industrial relations jurisprudence.

According to Atilola,[512]

> The New Employees' Compensation Act, 2010 is a watershed in the history of employee compensation schemes in Nigeria in that it ushered in a new regime of compensation for workplace injuries or disabilities. The Act opened new frontiers in employees' compensation schemes and extended the scope of compensable injuries including the quantum of compensation for workplace injuries, diseases and related hazards.

Notwithstanding this applause, there are issues surrounding the interpretation, application and/or operation of the Employees' Compensation Act 2010 that call for a review in order to further improve the compensation regime in Nigerian labour jurisprudence. The first noticeable is that the scope of the Act is streamlined. It is just for the compensation of a worker when he suffers or dies of

[511] See the following cases on the distinction between master-servant employment relationship and employment protected by statutes – *Adeniyi v. Governing Council of Yaba College of Tech.*(1993) 6 NWLR (Pt. 300) 426; *Idoniboye-Obu v. NNPC* (2003) 2 NWLR (Pt. 805) 589 at 652; *Iserhienrhieh v.Okomo Oil Palm Plc* (2010) 6 NWLR (Pt. 710); *Olaniyan v.Unilag*(1985) 1 NWLR (Pt. 4) 755

[512] B, Atilola, 'Right of Appeal Under the Employees Compensation Act, 2010' (2010) *NJLIR*, Vol. 8 No. 1 , p. 1

an injury or disease as a result of his work. It does not cover other rights of an employee. But it is in line with the ILO Standards in ILO Convention 155 of 1949. Another issue is in the enforceability of the Act. No matter the commendation that greeted the enactment of the Employees Compensation Act 2010, there must be strong machinery for enforcement of the provisions of the Acts before workers in Nigeria can feel the impact of the innovations brought by the Act

The Equal Remuneration Convention (No. 100) of 1951 and the Discrimination (Employment and Occupation) Convention (No. 111) of 1958

These conventions contain ILO standards against unequal treatment and discrimination at work place. Convention No. 100 is aimed at eliminating discrimination between men and women with regard to remuneration by ensuring the application to all workers of the principle of equal remuneration for men and women for work of equal value[513]. The concept of remuneration is broadly defined under Convention No. 100. Under Convention No. 111, member States undertake "to declare and pursue a national policy designed to promote … equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination which has the effect of nullifying or impairing the equality of opportunity or treatment in employment or occupation. These conventions also take economically dependent workers into consideration.[514]

In Nigeria, the aims of the convention are yet to be attained especially in the case of casual workers. The employers determine what he offers as remuneration. Casual workers of equal work earn differently depending on what each of their employer wishes to pay. More so, Nigeria seems not to have any local legislation embodying these ILO Standards.

The Maternity Protection Convention (No. 183), 2000

This Convention which embodies ILO standards on maternity protection provides for its application to all employed women including those in economically dependent work in recognition of significant role of women found in casual work. This convention sets out to protect the status of casual workers

[513] ILO Normlex website [http://www.ilo.org/dyn/ normlex/en/f?p=1000:12000:0::NO:::].
[514] *Ibid*

especially women[515]. In Nigeria, the only legislation that attempts to encapsulate this ILO standard is the Labour Act. [73]It does not extend to all classification workers and its area of coverage does not include casual workers. What seems to be obtainable is that once a casual worker takes a maternity leave that marks the end of her employment. She is automatically replaced with another casual worker by the employer without her consent.

The Workers with Family Responsibilities Convention (No. 156) 1981

This also applies to all branches of economic activity and to all categories of workers. It concerns men and women workers whose family responsibilities restrict their possibilities of preparing for, entering into, participating in or advancing in economic activity, and is therefore particularly relevant for workers who have entered non-standard employment arrangements in order to combine work and family responsibilities.[516] Nigeria also is still very far in upholding these standards.All these ILO standards analyzed above and many more protect the interest of the workers grouped under economically dependent workers. Nigeria, as a signatory to several of the ILO conventions, is obliged to comply with the standards contained therein. It is also obvious that it has made considerable efforts in domesticating some of these standards in her local legislations as mentioned above. But for the aspect of enforcement in order to ensure compliance in Nigeria, more still need to be done. Nigeria as a nation has failed to comply with these standards especially on the part of the casual workers and 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 Obligation. For these ILO Standards to work perfectly, the regulatory authorities must ensure that employers obey the law and anyone who is found to have breached these laws breach must be made to face punitive measures. Workers' rights must be protected especially in the area of the right to organize and remedies against unfair labour practices provided for in relevant laws to be enacted on specific labour issues. The governing authorities should also remember the constitutional obligation of every

[515] ILO, 'Non-Standard Forms of Employment' Report for Discussion at the Meeting of Experts on Non-Standard Forms of Employment (Geneva: International Labour Office, 2015).

[516]ILO, International Labour Standard http://www.ilo.org/dyn/normlex/en/ f?p=1000:13100:0*op. cit*

member of ILO in ratifying Conventions. The constitution requires the members to take such action as may be necessary to make effective the provisionsof the ratified Convention. This includes giving the provisions effect in law and implementing them in practice, including in court decisions, arbitration awards or collective agreements.[517]

Again, most of the ILO conventions are essentially only a catalyst to states to enact labour legislations. ILO's power of enforcement is weak, if not non-existent. Therefore, the supervisory bodies of ILO must do more to ensure vivid implementation of ratified conventions, failure to comply by the member states should called for stiff penalty. In order to achieve this, the work strongly suggest a full empowerment to ILO supervisory bodies to ensure absolute enforcement among member state who has ratified the conventions rather than ILO acting as a toothless bull-dog that bark but cannot bite. In doing so, Nigerian government needs to put machineries in place to ensure effective implementation of national laws like Trade Unions Act and others and also ensure that they are effectively utilized to protect the legal status of economically dependent workers.

Finally, 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.

[517]Articles 19 & 5 (d).

CHAPTER SIX

LEGAL STATUS OF ECONOMICALLY DEPENDENT WORKERS IN SOME OTHER JURISDICTIONS COMPARE TO NIGERIA. A CASE STUDY OF CASUAL WORKERS

Economically dependent workers are called different names in different jurisdictions. In some countries they are non-standard workers while in others are called irregular employees. Some countries also refer to them as triangular employees. Whatever the name they referred to, what is important is that the work arrangement fits into the definition of workers who are dependent on a single employer for all or most of their sources of incomes and who do not correspond to the traditional definition of employee. In all the countries under review in this chapter as well as in Nigeria, certain categories of workers fall into the group of economically dependent workers. Prominent among them are casual workers. This chapter therefore will employ casualisation as a case study in appraising the legal status of economically dependent workers.

Employment casualisation is the process by which employment shifts from a preponderance of full time and permanent positions to casual and contract positions.[518] The altering of work practices so that regular workers are re-employed on a causal or short term basis.[519] In Europe and United States economically dependent works are referred to as non-standard work arrangements (NSWAs) and these work arrangements refer to fixed contract, contract work, on-call work, part time and temporary work.[520] Other categories include day work, outsourcing, sub-contracting, home work, self-employment, zero hour employment and so forth.[521] The common characteristics of nonstandard jobs are that they differ in terms of hours worked, job security, payment system and even location of work from the traditional full time permanent employment which has been a dominant feature ofindustrial relations in many developed economies.[522] On the global scene, the increase in capital mobility and the deregulation of labour market are some of the major causes of casualisation.[523] In response to these challenges, employers tend to adopt cost cutting measures. This chapter will look at the legal status of

[518] C S, Ibekwe, 'Legal Implications of Employment Casualisation in Nigeria: A Cross-National Comparison' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence,* Vol.7 No.22 (2016) p. 79.
[519] Collins *English Dictionary- Complete and Unabridged* (12th edn, Glasgow: Harper Collins Publishers, 2014).
[520] A L, Kalleberg, 'Non-Standard Employment Relations: Part Time, Temporary and Contract Work', *Annual Review of Sociology,* (2000) p. 341; see also S ,Erugo, *Introduction to Nigerian Labour Law Contract of Employment and Labour Practice,* (2nd Edition: Lagos, Princeton & Associates Publishing Co. Ltd, 2019) p. 66.
[521] E E, Okafor, 'Non-Standard Employment Relations and Implications for Decent Work Deficits in Nigeria' *African Research Review*, vol. 6 No. 3(2012) p. 93.
[522] C S, Ibekwe, *Op cit.*
[523] P O, Kalejaiye, 'The Rise of Casual Work in Nigeria: Who Loses? Who Benefits? *African Research Review*, Vol.8 No.1(2014) p. 156.

economically dependent workers in some other jurisdictions. In other to achieve this, this work will look at the legal framework and statutes protecting them if any, as well as legal protection of this category of workers.

6.1 Legal Status of Economically Dependent Workers in Some African Countries

South Africa

The choice of South Africa is informed by the fact that South Africa is an African country with a somewhat developed economy and also with different colonial lineage with Nigeria. In South Africa, workers under part-time work, contract work, temporary, fixed term, seasonal, causal, piece-rate work, to employees supplied by employment agencies, home workers and those employed in the informal economy are referred to as non-standard workers.[524] These workers are often paid for results rather than time. Their vulnerability is linked in many instances to the absence of an employment relationship or the existence of a flimsy one. In most cases, some of these workers are unskilled or work in sectors with limited trade union organisation and limited coverage by collective bargaining, leaving them vulnerable to exploitation.[525]

In South Africa, casual work is often used to refer to all forms of non-standard work. It applies in fact to workers who are employed in irregular employment. Casual workers are often found in labour intensive sectors such as retail, domestic and agricultural sectors.[526]

This category of workers is left with limited legislative protection. Causal work has obvious disadvantages and is the most severely affected form in terms of lack of protection, especially as regards job security. Casual work is of a temporary nature, and income and liability of casual workers are uncertain. These jobs are created mostly in low-paid occupations and present few opportunities for the training that would offer the hope of advancement, as employers would rather train permanent employees.[527]The Basic Condition of Employment Act[528] (BCA), a South African legislation, was designed to protect full-time employees only and excluded certain part-time workers

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[524] E S, Fourie, 'Non-Standard Workers: The South African Context, International Law and Regulation by the European Union' available at http://www.scielo.org.za/scielo.php?script=sc-arttext&pid assessed on 08/11/ 2017.

[525] *Ibid.*

[526] Bezuidenhout et al., 'Non-Standard Employment, a Report Submitted to the Department of Labour as a Research Carried Out by Sociology of Work Unit' University of Witwatersrand and Labour and Enterprise Project, University of Cape Town on 30th June 2003.

[527] *Ibid.*

[528] No 75 of 1997.

from significant benefits. The Act[529]is aimed at protecting vulnerable employees and employees in non-standard employment and develops appropriate employment standards for employees in the unorganised sector.[530]However, it does not differentiate between casual, temporary or seasonal employees who work for less than 24hours a month for an employer.[531]

Certain methods are introduced by the Act to extend its protection to the vulnerable workers. Under the Act,[532] the minister[533] may, if it is consistent with the Act, make a determination to replace or exclude any basic condition of employment as provided for by the Act. This determination otherwise known as sectorial determination, may not alter any core rights, but can be made in respect of any category of employees or employers.

Sectoral determinations are used to introduce minimum wage levels rather than to vary basic conditions of employment for those in unorganised sectors and areas where there is very little or no collective bargaining. If there appear to be a conflict between the provisions of the Act and a sectoral determinationover matters that are regulated in this Act, the provision in the sectoral determination will prevail.[534] It is clear from a number of sectoral determinations that the Minister is not hesitant to use this powerful tool to extend protection to those in need. A number of sectoral determinations have been used effectively to provide protection to non-standard workers. The sectoral determination for the retail sector provides part-time workers with an option to receive benefits, for example with regard to leave similar to those of full-time employees. The success of sectoral determinations depends on the enforcement of such determinations.[535]The Minister may, on advice of the Employment Conditions Commission and by notice in the Government Gazette, deem any category of persons specified in the notice to be employees for purposes of the whole or any part of the Act or any other employment law or sectoral determination.[536]Certainly, the above section indicates the importance attached to the extension of protection to vulnerable and non-standard workers. This means that once non-standard workers are pronounced employees by the Minister they are free to join unions.

This position is clearly different from what is obtainable in Nigeria. The Nigerian labour Act does not have any provision for any category of work that forms part of non-standard work otherwise

[529]*Ibid.*
[530] E S, Fourie, *Op cit.*
[531] Basic Conditions of Employment Act No 75 (South Africa) 1997 s. 6(1)(c).
[532] *Ibid,* s. 50.
[533]South African Minister of Labour.
[534]*Ibid,* s. 57.
[535]*Ibid,* s. 50(1)(a), 51 and 55.
[536] Basic Conditions of Employment Act, *Op.cit*,s. 83.

known as economically dependent work. Neither does it provide for a legal framework for the regulation of the terms and conditions for this work arrangement. This seems to be a motivating factor for the increasing use of economically dependent work in Nigeria by employers.[537]The Act[538] 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 personally to execute any work or labour.

This definition according to some authors is rather narrow as it does not recognize workers in non-standard work arrangements.[539] This is more so because the labour Act was enacted in an era when non-standard work was unknown to the Nigerian labour relations. However, over the years, several calls on the legislature to amend the Act have fallen on deaf ears. What seems to be close to adeemed regularisation of employment of non-standard workers can only be found in section 7 of the Labour Act[540] of Nigeria.Section 7 (1) of the said labour Act[541] provides that:

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

(h) the name of the employer or group of employers, and where appropriate of the undertaking by which the worker is employed?

(i) the name and address of the worker and the place and date of his engagement;

(j) the nature of the employment;

(k) if the contract is for a fixed term, the date when the contract expires;

(l) the appropriate period of notice to be given by the party wishing to terminate the contract due regards being had to section 11 of this Act.

(m) the rates of wages and method of calculation thereof and the manner and periodicity of payment of wages.

(n) 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

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[537] D T, Eyongndi, 'An Analysis of Labour under Nigerian Law' *Gravitas Review of Business & Property Law*, Vol.7 No 4 (2016) P.108.

[538]Labour Act CapL1 LFN, 2004.

[539]*Ibid* see also C S, Ibekwe *Op.cit*, p. 83, see also P S, Christopher, O B, Ifeanyichukwu & D T O, Kizito 'Casualisation of Labour Laws: A Critical Appraisal', *International Journal of Innovative Research in Social Sciences & Strategic Management Techniques*, vol.4 No.1 (2017) p 43.

[540]*Op.cit.*

[541]*Ibid.*

(h) any special conditions of the contract.

2. If after the date to which the said statement relates there is a change in the terms to be included or referred to in the statement, the employer -

(c) shall, not more than one month after the change, inform the worker of the nature of the change by a written statement; and

(d) if he does not leave a copy of the statement with the worker, shall preserve the statement and ensure that the worker has reasonable opportunities of reading it in the course of his employment, or that it is made reasonably accessible to the worker in some other way.

3. A statement under subsection (1) or (2) of this section may, for all or any of the particulars to be given by the statement, refer the worker to some other document which the worker has reasonable opportunities of reading in the course of his employment or which is made reasonably accessible to the worker in some other way.

4. If the employer, in referring in the said statement to any such document, indicates to the worker that future changes in the terms particularized in the document will be entered in the document or recorded by some other means for the information of persons referred to in the document, the employer need not under subsection (2) of this section inform the worker of any such change which is duly entered or recorded not more than one month after the change is made.

5. If not more than six months after the termination of a worker's period of employment, a further period of employment is begun with the same employer and the terms of employment are the same, no statement need be given under subsection (1) of this section in respect of the second period of employment, so however that this subsection shall be without prejudice to the operation of subsection (2) of this section if there is a change in the terms of employment.

The provisions of this section in respect of written statements shall not apply if-

(c) a worker has a written contract of employment which covers each of the particulars mentioned in subsection (1) of this section; and

(d) He has a copy of that written contract.

This shows that a worker should not be employed for more than three months without a formal recognition of such employment. Every worker must be given a written statement stating the terms and conditions of his employment within 3 months of being employed. This was upheld in the case of *Management of Harmony House Furniture Company ltd v. National Union of Furniture, Fixture and Wood Workers*.[542] Some companies have devised means to undermine this provision by employing casual workers for three months or less, dismissing them, requesting new applications and re-employing them again.[543] Most legal scholars[544]agree that section 7(1) of the Labour Act does not apply to non-standard employment. Trade unions, on their own part, interpret the section 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.[545] While the researchers appreciate the plight of trade unions,[546] the writers distance themselves from their conclusion that the Labour Act in section 7 envisages casual labour. However, where workers have been in the employment of their employer for a continuous period of time, it will be wrong to tag them as casual workers so as to deny them their workplace rights. This view was upheld by the National Industrial Court of Nigeria in the case of *OlabodeOgunyale& 64 Ors v. Globacom Nigeria Ltd.*[547]The claimants were employed as drivers by the defendant in 2003. Five years later, they were suddenly informed that they have been outsourced to another company. They claimed that the defendant also denied them their labour benefits such as sick leave, annual leave, etc. They prayed the court to declare the outsourcing as unjust and illegal and to recover all their labour benefits from the employer. This was substantially granted by the NICN. According to the court:

> The point is that there is no legislation in place in Nigeria recognizing, regulating or protecting casual workers. The evidence before the court

[542]Suit No*:*NICN/30/2008DELIVERED 20/12/2013.
[543] C S, Ibekwe, *Op.cit,* p
[544]*Ibid*, see also P S, Christopher *et al, Op.cit,* p 110.
[545]*Ibid.*
[546] A, Alfred 'Casualisation of Work: How Nigerians are Being Enslaved' The Independent, 15th June, 2015 available at http://independent.ng/casualisation-nigeria-enslaved-3/accessed on 20/09/2017, see also T, Agboola 'Union Decries High Rate of Casualisation' The Nation August 11, 2017 available at http//thenationonlineng.net/ union-decries-high-rate-casualisation/ accessed on 20/09/2017.
[547] Suit No: NICN /30/ 2008 delivered 2012/12/13

> indicates that the claimants had worked continuously for the respondent as employer and the respondent made varying statutory deductions including PAYE, NSITF, etc. when all these are added to the fact that the labour Act is silent on the issue of casual workers, the claimants, in our opinion, qualify as permanent employees, not as casual workers and so should be accorded all the workplace rights envisaged by the labour Act and we so hold.

This presupposes that there is no clear legal protection upon which a court in Nigeria can rely and specifically pronounce the employment of an economically dependent worker to be permanent as it is the case in South Africa if the worker had been in employment for more than three months without the employer providing him with a formal written statement as provided for in section 7 of the Labour Act.The period of time within which a worker needs to spend in the employment to qualify him as a permanent worker is not certain. It depends on the circumstances of each case. Thus, there is need still for a legislative intervention. This uncertainty is absent in some jurisdictions such as South Africa. In South Africa, there are guides for determination of casualisation of work.

However, it could be asked, why the South African Act does not regulate the position of non-standard workers directly? Though it is not wise to leave a matter of such importance to the discretion of the Minister to adopt measures when he/she deems it appropriate, however, this may be because the South African Constitution makes its scope of protection very wide as it is evident from the provisions of the Constitution. The Constitution[548] grants all workers the right to fair labour practices – ie the right to strike, form and join a union, participate in their activities and programmes, and bargain collectively.

The entrenchment of these rights in the Constitution is a clear recognition of their significance to South African workers. There are several indications that the scope of the constitutional right to fair

[548]The South African Constitution of 1997 s. 23.

labour practices is wider than the concept of unfair labour practices as provided for in the Labour Relations Act of South Africa.[549]

A South African court in *Mondi Kraft's case,*[550]held that the right to fair labour practices enshrined in the Constitution protects both the employer and the employee.[551] However, consideration should be given to subsection1[552]of section 23 of the Constitution which provides protection to non-standard workers who do not fit into the definition of employees as provided for in the Labour Relations Act. The said subsection (1) of section 23 of the South African Constitution grants the right to work to everyone. The Employment Equity Act[553]prohibits unfair discrimination which is similar to prohibition of unfair discrimination under the South African Constitution.

Non-standard workers are excluded by the definition of employee in the Employment Equity Act, they can notwithstanding seek protection under the Promotion of Equality and Prevention of Unfair Discrimination Act.[554] This Act is not intended to overlap or displace the Employment Equity Act, as it applies to the workplace in respect of matters that do not fall within the ambit of the Employment Equity Act. For instance, the Act[555] prohibits unfair discrimination on grounds of gender or race. This is very important because white women have historically comprised the majority of non-standard workers. Also, sectors characterised as vulnerable are often comprised of black unskilled workers.[556]

Taking a closer look at the profile of non-standard workers in South Africa, one will find out that majority of them are those previously disadvantaged by the apartheid regime, comprising women, black and unskilled workers. And the exclusion of these workers from labour and social protection can be seen as a form of the discrimination prohibited by almost all labour legislation in

[549] ES
[550] *Man v Mondi Kraft* (2000) ILJ 213 (LC)
[551] The South African Constitution ,*Op.cit*,s. 23.
[552]*Ibid*, s. 23(1)
[553] No. 55 of 1998
[554]The Promotion of Equality and Prevention of Unfair Discrimination Act No.4 of 2000 s. 7.
[555]*Ibid*.
[556]*Ibid*, s. 8.

South Africa.[557] Bearing in mind the commitment of the Constitution to ensuring equality, human dignity and reconciliation, it is essential to note that solutions to the plights of non-standard workers in South Africa abounds in the above South African legislations.

Ghana

In Ghana, economically dependent workers are referred to as non-standard workers.

Ghana is a developing country in the Western part of Africa with a similar economy like Nigeria. Ghana also shares the same history of British colonisation with Nigeria and got her independence at the same time that Nigeria got hers. In view of the common experience of these countries, a study of the legal framework for non-standard work arrangement in Ghana is important as it might help in drawing a pattern that would assist in curbing the menace of non-standard work arrangement in Nigeria.[558]

The Constitution of Ghana[559] sets out the legal framework for the protection of non-standard workers otherwise known as economically dependent workers.The Constitution[560]provides for the right to equal pay for equal work under the fundamental rights and freedoms. The provision states that every person has the right to work under satisfactory, safe and healthy conditions and shall receive equal pay for equal work without distinction of any kind. It follows therefore, that since the Constitution uses the phrases 'every person' it is applicable to every person irrespective of one's employment status.[561]

Moreso, the Labour Act of Ghana[562] embraced nearly all other pieces of local legislation on labour as well as international conventions and protocols to which Ghana is a signatory. Ghana as a signatory to ILO convention reflected its provisions in the Labour Act which seeks to balance the interest of workers and their employers and reasonably address the perennial and thorny issues of

[557]Especially women and black unskilled workers.
[558] A G, Eze and T C, Eze, 'A Cross National Survey of the Legal Framework for the Protection of Casual Work Arrangements in Some Selected Countries'*Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, Vol. 4 (2013) p 66.
[559]The Constitution of Ghana.
[560]*Ibid.*
[561]*Ibid*, s. 24(1).
[562]Labour Act(Ghana) 2003.

casual and temporary workers.[563] The Labour Act covers protection of the employment of persons with disabilities, employment of young persons, employment of women, fair and unfair termination of employment, protection of remuneration, temporary and casual employees, unions, employers' organizations and collective agreements, strike, establishment of the National Labour Commission.[564]

The Ghanaian Labour Act also provides a legal framework for the regulation and protection of employment of casual and temporary workers in Ghana. [565] Of particular importance is the fact that the Act defined the two concepts and prescribes the remuneration that should accrue to them as well as the procedure for the enforcement of its provisions in the event of a breach by the employer.

A casual worker according to the Act[566] is defined as a worker engaged on a work which is seasonal or intermittent and not for a continuous period of more than six months and whose remuneration is calculated in a daily basis; and it also provided that the contract of a casual worker need not be in writing[567]and that a casual worker must be given equal pay for work of equal value.[568] According to the Ghanaian Labour Act, a permanent worker is employed for twelve months per year continuously, while a temporary worker is someone working for a maximum of six months per year whether continuously or intermittently but less than twelve months. A casual worker is employed less than six months per year whether continuously or intermittently. Where however, he/she is employed for a continuous period of six months and more for the same employer but less than twelve months, he/she shall be treated as a permanent worker.[569] The Act also made provision with regards to the breach of its provisions and provided that wherean employer breaches these provisions, the

[563]G, A,Eze and T C, Eze, *op cit.*
[564]*Ibid*, p.67.
[565]Special provisions relating to temporary workers in the Ghanaian Labour Act 2003 part x.
[566] Labour Act (Ghana),*Op.cit*, s. 77.
[567]*Ibid*, s. 74(1).
[568]*Ibid*, s. 74(2)(a).
[569]*Ibid*, s. 75(1).

temporary or casual worker may present a written complaint to the Commission for determination and its decision shall be binding on both parties.[570]

This position is clearly different from what is obtainable in Nigeria. The Nigerian Labour Actneither defines what casualisation is nor provides a legal framework for the regulation of the terms and conditions for this work arrangement. This is a motivating factor for the increasing use of casualisation by employers.[571]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 personally to execute any work or labour.As has been stated before now, this definition is rather narrow as it does not recognize workers in non-standard work arrangements.[572] These may not be unconnected to the fact that the Labour Act was enacted in an era when non-standard work was unknown to the Nigerian labour relations. However, over the years, several calls on the legislature for the amendment of the Act have fallen on deaf ears.

By section 7 of Labour Act of Nigeria, a worker should not be employed for more than three months without a formal recognition of such employment. Every worker must be given a written statement stating the terms and conditions of his employment within 3 months of being employed. This was upheld in the case of *Management of Harmony House Furniture Company ltd v. National Union of Furniture, Fixture and Wood Workers*.[573] Some companies have devised means to undermine this provision by employing casual workers for three months or less, dismissing them, requesting new applications and re-employing them again.[574] Most legal scholars[575] agree that section 7(1) of the labour Act does not apply to non-standard employment. Trade unions, on their own part, interpret the section to mean that if workers are employed for over three months, then they

[570]A G, Eze and T C, Eze, *Op cit,* p. 67.
[571]D T, Eyongidi, 'An Analysis of Labour under Nigerian Law' *Op.cit,* p 108.
[572]*Ibid* see also C S, Ibekwe *Op.cit,* p. 83, see also P S, Christopher, O B, Ifeanyichukwu & D T O, Kizito 'Casualisation of Labour Laws: A Critical Appraisal', *Op.cit, P.43*
[573]*Supra.*
[574] C S, Ibekwe, *Op.cit,* p
[575]*Ibid,* see also P S, Christopher *et al, Op.cit,* p 110.

cease to be casual or contract workers and become permanent employees.[576] While the researchers appreciate the plight of trade unions,[577] the researchers distance themselves from their conclusion that the Labour Act in section 7 envisages casual labour. However, where workers have been in the employment of their employer for a continuous period of time, it will be wrong to tag them as casual workers so as to deny them their workplace rights. This view was upheld by the National Industrial Court of Nigeria in the case of *OlabodeOgunyale& 64 Ors v. Globacom Nigeria Ltd.*[578]The Court stated as follows:

> The point is that there is no legislation in place in Nigeria recognizing, regulating or protecting casual workers. The evidence before the court indicates that the claimants had worked continuously for the respondent as employer and the respondent made varying statutory deductions including PAYE, NSITF, etc. when all these are added to the fact that the Labour Act is silent on the issue of casual workers, the claimants, in our opinion, qualify as permanent employees, not as casual workers and so should be accorded all the workplace rights envisaged by the Labour Act and we so hold.

As earlier stated, the time within which a worker needs to spend in the employment to qualify him as a permanent worker is not certain. It depends on the circumstances of each case. Thus, there is need still for a legislative intervention. This uncertainly is absent in some jurisdictions. In some jurisdictions, there are guides for determination of casualisation of work. In Ghana, the commission ensures that undue casualisation of workers does not occur under condition that coincides more to

[576]*Ibid.*
[577] A, Alfred 'Casualisation of Work: How Nigerians are Being Enslaved' *Op.cit;*see also Agboola, 'Union Decries High Rate of Casualisation' *Op.cit.*
[578]*Supra*.

permanence and continuity in employment.[579] The foregoing shows that casual and temporary workers in Ghana enjoy adequate protection more than their counterparts in Nigeria.

6.2 Legal Status of Economically Dependent Workers in Some Asian Countries

It will be an incomplete research if this jurisdictional insight is limited to Africa. There is need to extend it to Asia which by all standard has a different legal origin and history with Nigeria. This research will look at the position of the law in India and Indonesia as a case study for the legal status of economically dependent workers in Asian Countries.

India

In India, economically dependent workers are also referred to as non-standard workers just like the case in Ghana and South Africa.

Labour law in India today consists of a large number of statutes, each covering a discrete area of Labour relation such as minimum wages, payment of wages, conditions of work, occupational health and safety, social security benefits, workers compensation, dispute settlement and so on.[580] The Constitution of India also contains a number of provisions protecting labour rights. The common law tradition in India is to the effect that the courts have played and continue to play a major role in determining the scope and application of labour laws (including with respect to non-standard forms of employment. This is particularly relevant given that recent developments in labour regulations have occurred through the interpretation of particular laws by the Supreme Court which, it is argued, has led to a more permissive climate towards labour flexibility strategies.[581]

In India, the main forms of non-standard employment include temporary employment, casual employment, *badli*or substitute employment, apprenticeships, and probationary employment. Indian law also recognizes fixed-term employment and agency work. The terms casual labour, temporary labour and daily wage labour appear to be used interchangeably with the term *badli*used to denote a

[579] O A, Orifowomo, 'Legal Perspectives on the Casualisation of Workers under Nigeria Labour Laws'*East African Journal of Peace and Human Rights*, Vol. 14 (2007) p. 105.
[580] I, Landau, P, Mahy and R, Mitchell, The Regulation of Non-Standard Forms of Employment in India (Indonesia. Labour Office Geneva, 2015) p. 16.
[581] *Ibid.*

temporary replacement for an absent permanent employee. There are little explicit exclusion from statutory rights and protections of workers based on the type of contract and there is a significant body of case law confirming that casual employees are not precluded from eligibility to specific statutory entitlements simply because their employment is temporary in nature.[582] While casual workers were originally specifically excluded from coverage[583] under Indian principal workers' compensation statutes, this exclusion was removed in 2009.[584]

Many statutes however contain eligibility requirements based on minimum periods of service which in practice render temporary employees ineligible. For example, workers must have been in continuous service for not less than one year to access the protection against termination.[585] These include protection against arbitrary dismissal, notice of termination or payment in lieu thereof and rights to severance pay based on years of service. A worker will be considered to have met the 'continuous service' requirement if he or she has actually worked for at least 240 days in the preceding 12 months.[586]

Most importantly, with respect to this service threshold, while some court judgments appear to have placed the burden of proof on the employer, recent decisions of the Indian Supreme Court have held that the burden of proving 240 days service lies on the worker, despite the obvious practical difficulties this may pose.[587] In *Balijeet Singh v State Farms of India Ltd*[588]the court held that, in most cases, a casual worker, upon successfully making out a claim under section 25 (f) of the Indian Industrial Dispute Act of 1947, will be entitled to compensation only and not reinstatement.

Also, a casual employee generally falls within the scope of the Employees' State Insurance Act 1948, the entitlement of such worker for the various benefits under the Act maybe significantly

[582]*GYaddiReddi v. Brooke Bond India Ltd* [1994] LLR 328 with respect to the Industrial Dispute Act 1947; *HP State Forest Corporation Ltd &Anr v. Mohan Singh &Anr* [2014] Lab IC 155 with respect to the payment for Bonus Act 1965; *SiddheswarHubli v. ESI* [1998] Lab IC 212 with respect to the Employees' State Insurance Act 1923.
[583] Employees' Compensation Act (India) 1924.
[584] Workmen's Compensation Act (Amended) No 45 (India) 2009.
[585]Industrial Dispute Act (India) 1947 s. 25 (F).
[586]*Ibid*, s. 25(B)
[587] *Range Forest Office v. St Hadimani*[2002] 3SCC 25; *Rajasthan State Ganganagars Mills Ltd v. State of Rajasthan and Anr*[2004] 8SCC 161 Where a Part-time Sweeper's claim failed on the basis that she was unable to provide 240 days service.
[588] [2009[120 FLR 127.

less than those accorded to permanent workers. For the purposes of qualifying for sickness or maternity benefits, for example, a worker will only be entitled to the benefit where he or she has made a certain number of contributions as an employee during the preceding contribution period. A worker who has not been in regular employment and therefore has not paid contributions regularly during this period will have his or her benefits reduced accordingly.[589]

In India, there are several/different legal avenues through which status temporary workers may be regularized, that is, awarded permanent status by operation of law. First, it appears that, until recently, the courts were willing to order the regularisation of casual workers engaged for long period of time by the state on the basis that this would promote the constitutional goals of equal pay for equal work, non-discrimination and security of employment as containedin Directive Principles of State Policy in the Constitution of India. In the case of *Secretary,State of Karnataka & Ors v Uma Devi & Ors*[590],the Supreme Court of India significantly narrowed, if not removed, the prospects for casual workers employed by the state to seek permanency. Overruling its earlier judgments, the constitutional bench held that casual workers employed by the state on a continuous basis for a number of years had no right to permanency because they were not hired in accordance with proper selection procedures. According to the Court awarding them permanency would amount to legalizing their recruitment by the back door and violation of the constitution. The Court emphasized that, the interest of those in temporary employment needed to be weighed against those consequently deprived of the opportunity for public employment, and also emphasized the financial implications for the state in the event that such claims for permanency were successful.

Furthermore, the practice of employing workmen as *badlis,* casuals or temporaries and to retain them as such for years, with the object of depriving them of the status and privilege of permanent workmen is recognised as an unfair labour practice under the Industrial Dispute Act

[589]I, Andau, P, Mahy and R, Mitchell, *op cit*, p. 18.
[590][2006] 4SCC1.

1947.[591] Where such a claim is made out[592]a labour court or tribunal may award relief to the workers in the form of regularisation.[593] The type of practices that have been held by the court to constituted unfair labour practices in this context include engaging workers on a rotation basis as *badlis* for a number of years or repeatedly appointing and terminating workers so as to avoid liability under the Industrial Dispute Act.[594] The Supreme Court has held that the powers of the industrial and labour courts to make appropriate orders requiring employers to offer permanency to workers who have been victims of such unfair labour practices has not been curtailed by the case of *Uma Devi*.[595]

Unlike Nigeria, there are laws in some states that confer permanent status on workers who have been engaged by an employer for a certain period of time. Like Tamil Nadu's Industrial Establishments (Conferment of Permanent Status) Act.[596] Although the scope of the Act is limited to industrial establishments and workers that met certain criteria, temporary and contract workers in industrial establishments are automatically entitled to permanency where they have worked continuously for a minimum of 480 days in a 24 month period.[597] The Act provides that certain interruptions in service (such as various forms of leave or strike action) will not constitute a break for purposes of calculating continuous service.[598]

The Rules issued under the Act require employers to whom the Act applies to maintain a register listing the names of their workers, their status and dates on which they completed or will complete their 480 days service. This register must be updated twice a year, displayed prominently in the establishment and be sent to the labour inspectorate. Fines maybe imposed for non-compliance with the Act. The Nigerian Labour Act does not define what casualisation is and does not provide a

[591]Industrial Dispute Act (India) *Op.cit*, s. 25(T) and Item 10 of the Schedules to the Act. The statute also provides for a penalty for committing an unfair labour practice with imprisonment for up to six months or a fine of up to 1000 Rupees or both. Similar provisions are found in statutes at the state level for instance the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971.
[592] The onus of proving the unfair labour practice lies on the worker; *Gangadhar Pillai v Siemens Ltd* [2007] 1 SCC 533.
[593]*Maharashtra State Road Transport and Another v.CasteribeRajyaParivahanKarmchariSanghatana*[2014]7 SCC 190. The court specified the scope of this power and the circumstances in which it may be exercised.
[594] Industrial Dispute Act, (India) *Op.cit*, s. 25(B).
[595]*Maharastra State Road Transport &Anr v.CasteribeRajyaParivahanKarmchariSanghatana* [2009]8 SCC 556.
[596] 1981.
[597]*Ibid*, s. 2.
[598]*Ibid*, s. 3.

legal framework for the regulation of the terms and conditions for this arrangement.[599] There are no laws conferring permanent status on economically dependent workers in Nigeria when they work beyond certain number of months as is the case in India.This is a motivating factor for the increasing use of casualisation by employers.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 personally to execute any work or labour'.

As observed earlier while considering the position in Ghana, this definition is rather narrow as it does not recognize workers in non-standard work arrangements.[600] This may not be unconnected to the fact that the Labour Act was enacted in an era when non-standard work was unknown to the Nigerian labour relations. However, over the years, several calls on the legislature for the amendment of the Act have fallen on deaf. In Nigeria, the period of time within which a worker needs to spend in the employment to qualify him as a permanent worker is not certain. It depends on the circumstances of each case. Thus, there is need still for a legislative intervention. This uncertainty is absent in some jurisdictions. In some jurisdictions, there are guides for determination of casualisation of work.

Indonesia

In Indonesia, the labour law system provides for permanent and fixed-term employment the latter includes the concept of casual day labour or *buruhharianlepes* as well as apprenticeships and internship.[601] It also includes labour supply outsourcing (i.e. arrangements whereby a business hires out a worker to perform work at the premises of, and under the supervision of, another business) and business supply outsourcing (i.e. arrangements whereby an enterprise subcontracts part of its work to

[599]D T, Eyongndi, 'An Analysis of Labour under Nigerian Law' *Op.cit*, P.108.
[600]*Ibid* see also C S, Ibekwe *Op.cit*, p. 83, see also P S, Christopher, O B, Ifeanyichukwu & D T O, Kizito 'Casualisation of Labour Laws: A Critical Appraisal', *International Journal of Innovative Research in Social Sciences & Strategic Management Techniques*, *Op.cit*, P.43
[601] Labour Law (Indonesia) 2004 Art 56.

another enterprise). The Indonesia labour law does not specifically recognizeor regulate part-time work, and the law is unclear as to what conditions should apply to this category of workers or benefits accruing to them.

Under Indonesian law, fixed term employment also includes casual day labour. Specific regulations concerning this form of work were introduced in 1985[602]and reviewed slightly through Decision No 100 in 2004.[603] Casual day labour contracts must be in writing, and employers must register a list of workers on casual day labour contracts with the relevant government agency within 7 days of the commencement of employment. A person may only be employed as a casual day labourer for a period fewer than 4days per month. If a person is employed as a casual day labourer for 21 or more days per month for three consecutive months, he will be deemed to be a permanent employee.[604]

In Indonesia, casual day labourers are implicitly excluded from those benefits that accrue over time such as paid annual leave and the annual religious holiday bonus because they will not have met eligibility requirements (i.e. 12 months of continuous service and three months conditions service respectively).[605] While casual day labourer are entitled to workplace injury and death insurance, it has not been mandatory for employers to enroll them in the other aspects of Indonesian workers' social security program.[606]It is only if they work for more than three or more continuous months that it becomes mandatory for employers to enroll them in health insurance and retirement benefits programs and they would be deemed to be permanently employed.

This position in Indonesia is different from what is obtainable in Nigeria. 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 for this arrangement. There is no legal basis for conferring permanent employment status on an economically dependent worker in Nigeria as is the case in

[602]Minister for Labour Regulation No PER. 06/MEN/1985.
[603]Ministry for Labour Decision Kep-100/Men/vi/2004.
[604]*Ibid.*
[605] Labour Law (Indonesia), *Op.cit*, Article 79(c)
[606] Minister of Labour Regulation PER. 03/MEN/1994; Minister of Labour Regulation No. 150/MEN/1999; Minister of Labour Decision No PER. 196/MEN/1999.

Indonesia. This is a motivating factor for the increasing use of casualisation by employers in Nigeria.[607]

The definition of a worker as '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 personally to execute any work or labour leaves much to be desired as it is short of what obtains in countries such as India and Indonesia.This definition is narrow as it does not recognize workers in non-standard work arrangements.[608] This may not be unconnected to the fact that the Labour Act was enacted in an era when non-standard work was unknown to the Nigerian labour relations. However, over the years, several calls on the legislature for the amendment of the Act have fallen on deaf ears. In Nigeria, the period of time within which a worker needs to spend in the employment to qualify him as a permanent worker is not legal certain. It depends on the circumstances of each case. Thus, there is need still for a legislative intervention. This uncertainly is absent in some jurisdictions. In some jurisdictions, there are guides for determination of casualisation of work.

In summary, the rights of casual day labourers and fixed-term employees in Indonesia include the fact that both have right freedom of Association and collective bargaining, right tofreedom from discrimination and equal opportunity to employment, right to occupational health and safety, right to compensation, and right to minimum wage.[609]Also, the general prohibition on child labour and forced labour also extend to casual day labourers and fixed term employees. In terms of social security, fixed term employees are entitled to accident and death benefits scheme only. Health and retirement schemes for fixed-term employees are subject to minimum service threshold. While casual day laborers are entitled to accident insurance & death benefits schemes only. Both fixed

[607]D T, Eyongndi, 'An Analysis of Labour under Nigerian Law' *Gravitas Review of Business & Property Law Op.cit, P.108.*
[608]Labour Act, Cap L1 LFN, 2004.
[609] Ibid.

termemployees and casual day labourers do not have explicit right to equal treatments[610], just like the standard employees.

6.3 Legal Status of Economically Dependent Workers in Some European Countries.

Most European Countries are developed countries in terms of their economic activities and laws. There labour laws and mirror for other developing countries such as Nigeria. The Laws and practices of most European Countries are in tandem with international best practices. This is the reason for the necessity of looking at the laws of and practice of most European Countries as it applies to the status of economically dependent workers. The researchers will use the laws and practices in Italy Sweden and Germany as a case study in appraising the status of economically dependent workers in some European Countries.

ITALY

The Italian constitution contains some declarative principles as a democratic Republic founded on labour.[611] The Constitution recognizes the right to work of every citizen,[612] right to fair pay, maximum working hours, the weekly and annual paid vacation.[613] The Constitution also provides for the protection of women and minors who are employees[614]. It also makes provisions for social insurance for old age, illness, invalidity, industrial diseases and accident [615] and the right of workers to strike.[616]

Under the old regime in Italy,[617] an employer may hire employees on a Fixed Term employment contract for domestic, technical, organic, sectoral and productive reasons only, but currently, no reason is required any longer.[618] The Fixed-Term employment contracts can last up to 36months, including any extension. The extension of employment contract under fixed term is possible for employment relationships not exceeding 36 month period. If the number of extensions

[610]I, Landau, P, Mahy and R, Mitchell, *Op.cit,*p.35.
[611]Constitution of Italy, section 1.
[612] *Ibid*, section 4.
[613]*Ibid*, sections 5,6 and 11.
[614]*Ibid*, sections 7 and 9.
[615]*Ibid*, section 39.
[616]Constitution of Italy, *Op.cit,*Section 15.
[617] Jobs Act (Italy) 2001.
[618] Jobs Act (Ital) 2015.

exceed five times, the contract is deemed to be an undetermined time contract from the date on which the sixth extension commenced.[619]

Renewal of a fixed term employment contract between the same parties is allowed, but a time frame between the old contract and the new one has to be observed; in particular 10 days for employment contract up to six months and 20 days, for employment contracts of over six months. In case of violation, the new contract shall be considered an undetermined time contract[620]. This position is in sharp contrast between the positions of the law in Nigerian labour jurisprudence. This is because; in Nigeria there is no room for the court or any organisation to deem a fixed-term contract of employment to become a contract of employment for an undetermined period. This is because under the Nigerian law there is no law for implied confirmation of an unconfirmed employee and the court has no power to go beyond the contract of the parties where there is one to find the intention of the parties. This experience from the status of fixed term contract of employment in Italy is worthy of emulation to enhance the status of economically dependent workers Nigeria.

In Italy, part-time employment contract according to the new legislation must be stipulated in writing.[621] An express indication of the duration of the contract whether annual, monthly,weekly and daily working schedules must be included in those contracts.[622]The law provided that, part time workers may not receive treatment inferior to that of full-time workers with respect to their pay and benefits and must be compensated in proportion to their work schedules.[623] This is also different from what obtains in Nigeria as full time workers are treated differently from part-time workers in terms of their salaries labour benefits and protections. A worker's refusal to change his employment relationship from full-time to part-time, or vice versa, does not constitute a ground for

[619] C, Wynn Evans and J, MCGrandle, *Employment and Labour Law* (4th edn, London: Global Legal Group Ltd. 2015) P.128.
[620] *Ibid*, P. 129.
[621] Jobs Act (Italy) *Op.cit*, Act. 5 (1).
[622] *Ibid*, Art. 5 (2).
[623] *Ibid*, Act. 5 (2).

dismissal.[624]Full time workers suffering from certain serious medical conditions have the right to request to change to a part-time schedule.[625] The same right exists when such medical conditions affect employees' spouses or certain relatives.[626] Some employees also have the right to request a reduction of their schedules from full-to part-time in connection with parental leave.[627] Unless expressly stated in an applicable legal provision, all the norms on part-time employment apply to employees in the public sector. [628]

Furthermore, the Italian labour Law also provides for other forms of flexible employment relationship which includes supplemental labour, extraordinary labour and the elastic clause' in employment contract. Supplemental labour is that required by an employer outside of the normal work hours of an employee with a maximum of 25% additional hours; however the employee may reject to work for the requested supplemental hours. [629]Extraordinary labour which is that rendered outside normal workhours, is allowed in part-time jobs.[630]The "elastic Labour clause" is a provision in part-time contracts, subject to collective bargaining agreements permitting variation in the location or duration of employment.[631]

The law makes provisions on qualification for apprenticeship with respect to professional degrees and certificates of higher technical specialisation, for purposes of combining academic learning and practical experience, for apprentices.[632] Professional apprenticeship contracts are allowed in both public and private sectors for workers who are at least 17 years of age, and with some exception, for a maximum of three years.[633] Contract of apprenticeship for advanced training

[624]*Ibid*, Art. 8 (1).
[625]*Ibid*, Art 78(3).
[626]*Ibid*, Art. 8 (4).
[627]*Ibid*, Art. 8 (7).
[628]*Ibid* Art. 12.
[629]*Ibid*, Art. 6 (1&2).
[630]*Ibid*, Art. 6 (3).
[631]*Ibid*, Art. 6 (4).
[632]*Ibid*, Art. 43 (1).
[633]*Ibid*, Art. 45 (1).

and research, maybe made to allow workers to pursue college and other advanced degrees.[634] In such cases, employers must enter into an agreement with the educational institution involved, stating/defining the terms of the apprenticeship (e.g. work schedule, leave and payment, among other factors) and the educational and other obligations of the employee.[635] The new legislation includes safeguard to ensure a certain degree of employment stability under the new flexible forms of employment relationships. For example, unless otherwise provided in the collective bargaining agreement, workers hired on a fixed-term basis may not exceed 20% of the total workforce under a flexible employment duration regime.[636] In Nigeria today, there is no Law like the article 23 (1) of the Jobs, Act of Italy which tries to limit the number of workers in fixed term Employment. Employers are at liberty to engage workers as much as the can pay on any form of employment relationship whether regular or irregular.

SWEDEN

There is no official definition of the term Non-standard forms of employment (NSFE). However, one might say that NSFE cover work that falls outside the scope of a standard employment relationship, which itself is understood as being work that is full-time, indefinite employment in a subordinate employment relationship.[637] In Sweden, a pre- agreed fixed term employment contract will be permissible where an employee has worked under such a fixed term contract for, more than two years in aggregate during the period of five years. That employee will then automatically be deemed to be working on an indefinite basis.[638]Also where a temporary substitute employee has completed an aggregated employment period of two years during the last five years, such employee will be

[634] *Ibid*, Art. 45 (1).
[635]*Ibid*, Art. 45 (2).
[636]*Ibid*,Art. 23 (1).
[637] ILO; Non-Standard Forms of Employment, Report for Discussion of Meeting of Experts on Non-Standard Forms of Employment (Geneva, 16-19th February, 2015) available at http://www.Ilo.Org/WCMS P5/groups/public/...ed protect....protrav/travail/documents meetings document/wcms-336934.pdf.accessed 08/04/2018.
[638] Employment Protection (Amendment) Act (Sweden), 2008.

deemed to be working on an indefinite basis thereafter.[639] This is also in contract distinction with what is obtainable in Nigeria

6.4. Legal Status of Economically Dependent Workers in the United Kingdom

In United Kingdom, it is notoriously difficult to define the status of the casual workers, However, generally speaking, the term casual worker usually apply to temporary work: which occurs only once and for a short period of time which occurs more often on an irregular or unpredictable basis or where there is no obligation on the authority to offer work, and no obligation on the individual to accept it. However, the Employment Rights Act (ERA) [640]defines an employee as an individual, who has entered into or works under (or where the employment has ceased, worked under) a contract of employment. A contract of employment is defined as a contract of service or apprenticeship whether express or implied and (if it is express) whether oral or in writing[641]. Although, the intention of the parties and any written agreement is persuasive, it is not absolutely determinative of employment status. An employment tribunal will look beyond any such intent agreement or given to it by the parties and consider what actually happens in practice[642] to determine the existence or otherwise of a contract of employment. In practice, many casual workers will not meet most of the tests employment but a failure to meet a particular test may not be fatal to an overall finding that there is a contract of employment. The question to be asked is whether there is a reasonable degree of mutuality of obligation between the parties; the organisation must provide a reasonable amount of suitable work to the individual, who must perform all such work provided.[643]In the case of *Neithermore (St. Neots) Ltd v Traverna and Corodiner.*[644]It was held that a contract of employment could only exist if there is minimum obligations on both sides are present. This is also the case in

[639]*Ibid.*
[640] Employment Rights Act (UK) 1996, Section 230
[641] Local Government Association, A Guide to the Law on Casual Workers, Employers E-Guide No.9 Published by Employment Relation Unit on February, 2017 P.3 Available on http://ww.Location. Gov.uk/sites/default/files/documents/employers e-guide no.9-F5b. pdf, accessed 06/04/2018.
[642]*Ibid*, P.4.
[643]*Ibid.*
[644](1984) IRLR.

Clark v Oxford shire Health Authority,[645] the Court of appeal held that the lack of mutuality was fatal and that there was no contract of employment. Casual work arrangement usually comes in form of single assignment contract. Short term, or fixed term contract in which the casual worker is offered work on part-time off basis. It will probably be a short or fixed term contract, where the worker joins the authority's workforce. Casual workers are entitled to receive pay and benefits only for the actual work done, these workers may be able to claim terms and conditions as permanent employee will qualify for the protections and rights available under the regulations.[646] A casual worker is a worker and will qualify for the protections and rights under the regulation[647]apply to workers as well as employees.

All workers in UK, including casual workers are entitled to protection under the UK discrimination law which prohibits discrimination on grounds of age, disability, gender, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. As workers, they also have rights under the Working Time Regulations[648] and the National Minimum Wage Regulation[649] and these rights must be reflected in their contract. There is no Labour Law in Nigeria that expressly protected casual workers except the Employees Compensation Act which has made some innovations by including Casual Workers in its definition of an employee thereby empowering a casual worker to benefit from the compensation for injury and any other workplace disability.On a prorate basis, casual workers are entitled to statutory annual leave under the working time regulations 1998, and in some cases may be entitled any additional contractual annual leave provided by the authority. Trade union recognition also applies to workers as well as employees including casuals[650].

[645](1998) IRLR (CA).
[646]Fixed Term Employees (Prevention of Less Favourable Treatment.) Regulation, 202
[647]Part-Time Workers (Prevention of Less Favourable Treatment) Regulation, 2002.
[648]Working Time Regulation, 1998.
[649]National Minimum Wage Regulation, 2015.
[650]Trade Union and Labour (Consolidation) Act (U.K.) 1992.

The Pension Scheme Regulation[651] provides that a person is contractually enrolled into the pension scheme if he is under the age of 75 and had a contract of employment of three months or more and he is enrolled into the Scheme on the first day of his employment. However, where a person has a contract of employment of less than three months including casual workers, he is not contractually enrolled into the Scheme but can elect to join and if he makes an election to join,he will become an active member on the first day of the pay period following the election. There is also no Legal frame work for a casual worker to elect to join or be enrolled by his employer into the compulsory contributory pension scheme as it is called in Nigeria.

More so, agency worker in UK, right from the day they start work have workers employment rights. They also have the same rights as a permanent worker to use any share facilities and services provided by the employer e.g food and drinks, machines, a workplace crèche, mother and baby room, car parking and transport services, like a local pickupservice or transport facilities between sites.[652]Twelve weeks from the day of first jobs, qualifies an agency worker for the same right as someone employed directly. This is known as equal treatment and these rights includes equal pay or the same pay as a permanent worker doing the same job, automatic pension enrolment and paid annual leave[653] are also available to casual workers. This foregoing analysis is shows that casual workers are no less important to permanent workers. This is unlike Nigeria, where casual workers are denied employment rights, protections and benefits unless they are proved to be permanent workers. In *Olabode& 64ors v Globacom Nigeria Ltd,* the NICN stated that:

> There is no legislation in place in Nigeria recognizing, regulating or protecting casual workers. The evidence before the court indicates that the claimants had worked continuously for the respondent as employer and the respondent made varying statutory deductions including

[651] Local Government Pension Scheme Regulation (U.k.) 2013.
[652] UK, Gov. 'Your Rights as an Agency Worker' available at https://www.gov.uk/agency-workers-your rights as Temporary Agency-Worker pdf, Accessed 06/04/2018.
[653] *Ibid.*

> PAYE, NSITF, etc. when all these are added to the fact that the labour Act is silent on the issue of casual workers, the claimants, in our opinion, qualify as permanent employees, not as casual workers and so should be accorded all the workplace rights envisaged by the labour Act and we so hold.

6.5 Legal Status of Economically Dependent Workers in Australia

South Australia

A casual employee in South Australia usually works in an irregular basis and may or may not be offered work which he or she has the option to refuse. Many workers are called casuals worker when in fact they are part-time or full-time employees. If an employee has regular work and there is a reasonable expectation that the work will continue, then he or she may not be truly called casual worker.[654]

In South Australia, casual employees are not entitled to holiday pay, sick pay or payment for public holidays not worked. Casual workers are entitled to workers compensation. They are protected by anti-discrimination laws. They may be entitled to long service leave if their employment has been constant, the have the right to make an unfair dismissal claim if they have been employed on a regular and systematic basis for the minimum period and have a reasonable expectation of ongoing work; and they should receive superannuation payments (9.5% on top of pay) if they earn $450 (Dollars) or more per month. However an agreement or award may entitle casual workers to superannuation payments even if they earn below this limit.[655]

This position is in sharp contrast between the positions of the law in Nigerian labour jurisprudence. This is because; in Nigeria there is no room for the court or any Organisation to deem a fixed-term contract of employment to become a contract of employment for an undetermined

[654] Legal Services Commission of South Australia Casual Employees, available at https://www.law handbook. Sa. gov. all/ch18592505.php.accessed on 06/04/2018.
[655] *Ibid.*

period. This is because under the Nigerian law there is no law for implied confirmation of an unconfirmed employee and the Court has no power to go beyond the contract of the parties where there is one to find the intention of the parties. This experience from the status of fixed term contract of employment in Italy is worthy of emulation to enhance the status of economically dependent workers Nigeria.

6.6 Legal Status of Economically Dependent Workers in the United State of America

In United States of America (USA) part time employees are typically paid on an hourly basis and must comply with company rules, policies and obligations such as safety rules, and company business practices. Part-time employees generally have limited or no company benefits such as health benefits, vacation and sick time, paid holidays and unemployment compensation, among others, unless required by state labour laws and or/ company policies.[656]

Under federal laws, part-time employees are treated the same as full-time employees under the Fair Labour Standard Act (FLSA)[657] regulating minimum wage, overtime pay, record keeping and child labour. In addition, part time employees are covered under the law regulating safety and health policies concerning work-related injuries, illnesses and occupational fatalities. Also, a part-time employee who works 1,000hours or more during a calendar year may be eligible for retirement benefits.[658] Temporary employees may be hired to perform work in a range of industries such as clerical, labour, education, information technology and healthcare. Some temporary job may lead to permanent employment where appropriate in which case the employment agency may charge a fee if the worker is hired permanently. More often however, companies hire temporary employees for a specific business purpose while avoiding the cost of hiring regular employees.[659]

A Temporary employee may work full or part-time and may work for more than one agency at a time. Although they are not typically eligible for company benefits, some temporary agencies

[656] T, Reuters, Part-time, Temporary and Seasonal Employers' available at http://www.employment.find law.com/hiring-process/part-time, html accessed 06/04/2018.
[657]Fair Labour Standard Act (USA).
[658]Employee Retirement Income Security Act (USA).
[659] T, Reuters, Part-time, Temporary and Seasonal Employees' *Op.cit.*

offerhealth care and other benefits to their temporary employees. In an economic downturn, temporary employees are often the first to go, making it less of an ideal job for job security.[660]

In some states, companies which hire temporary employees may be subject to federal discrimination and harassment challenges and other claims. In addition, there are circumstances under which temporary employees may claim rights under the Family Medical Leave Act[661]which provides the right to take leave while taking care of a child, sick spouse or elderly parent depending on whether the company exercised some control over the selection, hiring and working conditions of the employee thereby creating an employee /employer relationship?[662]

It is clear that International Labour Organisation (ILO) has been concerned about vulnerable workers in non-standard employments. The ILO extends coverage to non-standard workers through specific conventions for the general acceptance, promotion and extension of protection of these workers. Some of these core conventions[663]of the ILO extend protection to non-standard workers, and this wide coverage of workers is in line with the ILO's mandate to protect all workers.[664] Internationally, the trend is to extend coverage to include non-standard workers but the number of countries that have ratified some of these conventions remains low and this affects the effectiveness of these conventions in protecting the position of non-standard workers. We can therefore,urge the ILO to campaign for ratification of conventions relating to the protection of non-standard workers. Conventions that have been ratified can be effective only if the provisions are reflected in the national legislations and policies of the ratifying countries.[665]

[660] I*bid.*
[661]USA, 1993.
[662]*Ibid.*
[663] Maternity Protection Convention 183 of 2000 which applies to all employed women.
[664]ILO Constitution.
[665] The ILO Employment Relations Recommendations 2006 recommends the promulgation of national policy to provide guidance.

CHAPTER SEVEN

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

7.1 SUMMARY OF FINDINGS

The concept of economically dependent workers refers to workers who do not correspond to the traditional definition of an employee. This is basically because they do not have an employment contact but are economically dependent on a single employer for all or most of their sources of income. However, there are work relationships in Nigeria whose nature corresponds to the nature of economically dependent workers. These work relationships are referred to as non-standard form of employment in some jurisdictions. Notwithstanding the name with which this category of workers who do not correspond to the traditional definition of employee and who do not have an employment contract but dependent on a single employer for most of if not all their sources of income are described, there are workers who fall under that category globally. These are casual workers, outsourced workers, contract staffs, *badlies*,temporary workers and so on.In the course of this research, the researchers after a painstaking appraisal of the topic from chapters one to six were able to make some findings.The findings are based on the local and international literatures which the researchers laid hands on in the course of this research which were found to be relevant to the topic. It was after careful perusal and painstaking appraisal of the topic with the aid of the literature on this topic that the researchers came up with the following findings which are highlighted below and set out *seriatim*.

7.1.1 Thatthe concept of economically dependent workers though not recognized in Nigeria with that name is a concept that is practised in Nigeria with specific kindred names like casualisation, outsourcing and contract staffing. It is further found that Nigeria is not the only jurisdiction where the tenets of the concept operate without the use of the name economically

dependent workers as some jurisdictions refer to it as non-standard form of employment relationship.

7.1.2 The researchers also found that the status of regular and /or standard form employees whose nature corresponds to the traditional definition of employee is quite different from those of the economically dependent workers. This is because the regular or standard form employees are given statutory recognition and protection and where such employment is not governed by statute, the contract of employment will afford the said employee the necessary employment benefits and protections.

7.1.3 The researchers also found that despite the difference in the name used in describing economically defendant workers in different jurisdictions, workers who fall under that category can easily be identified by some indices such as:

a. They do not have a formally accepted definition;
b. They do not have a formal statutory framework;
c. They do not have a contract of employment with their employer;
d. They depends on a single employer for most, if not all their sources of income;
e. They do not employ other employees;
f. They most often perform the kind of work that is performed usually by regular and permanent employees;
g. They usually fall within the unskilled or semi-labour category though recently skilled labour workers find themselves in this category,
h. They are not entitled to employment benefits and protections; and
i. Their salaries are usually inadequate.

It is found in this research that, these indices are all present in work relationships such as casualisation, outsourcing and contract staffing in Nigeria as well as other jurisdictions where the concept of economically dependent workers operates.

7.1.4 The work also found that the origin and history of economically dependent work is globally traced to globalisation and economic crisis at different times in different countries. Globalisation led to competition in the private sector and left a burden on employers of labour which made employers to device ways of cutting cost as a survival strategy. This made employers to start embracing unfair labour practices such as casualisation, outsourcing and contract staffing. This led to the emergence of the concept of economically dependent work.

7.1.5 This work found that, there is no clearly defined legal framework for recognition and protection of economically dependent workers which operates in Nigeria in the form of casualisation, outsourcing and contract staffing. This is because, most labour statutes do not include casual, outsourced and contract workers in their definition of employee or worker and where the classes of workers that form the concept of economically dependent workers are included, there is little or no legal protection afforded to them. Also, where any atom of legal protection is afforded to economically dependent workers, it is only in relations to that particular statute. This is evident from the Employee's Compensation Act, 2010 which includes casual workers in its definition of employee thereby empowering the National Industrial Court of Nigeria to hold that a casual Worker is entitled to compensation under the Employees Compensation Act.

7.1.6 This research work found also that the use of economically dependent workers in the form of casualisation, outsourcing and contract staffing has led to so many legal, social and economic consequences on the part of the employees, employers and the Nigerian economy at large. On the part of the employees the work found that casualisation, outsourcing and contract staffing have led to damaging effects on the rights of workers in Nigeria. There is job insecurity inadequate remuneration, denial of right to freedom of association, eliminating of collective bargaining, denial of employment benefits and so on. Whereas on the part of the employer, the use of economically dependent workers has led to low quality of work, low productivity, lack of commitment and instability in employment relationship. On the economy at large, the use of economically dependent

workers has led to brain drain and capital flight, social vices, loss of revenue to the government as a result of non-payment of taxes by casual workers, increase in unemployment and economic instability.

7.1.7 The researchers found that the use of economically dependent workers which operates in Nigeria in the form of casualisation, outsourcing and contract staffing is antithetical to standards which are found in its conventions, Recommendations, Treatise and Protocols. In all the Conventions and Recommendations of International Labour Organisation which provisions are meant to apply to all economic activities and to all employed persons. This means that the position of International Labour Organisation is to ensure that there is no difference in conferment of employment protections, right and benefits on permanent and economically dependent workers.

7.1.8 The researchers also found International Labour Organisation requires each ratifying member country to reflect the purpose of International Labour Organisation standards which is to give the same right to workers who are in a very poor bargaining position *visa-a-viz* their employer as it is applicable to other permanent workers. The work also discovered that International Labour Organisation aims at protecting highly vulnerably workers against unfair labour practices such a insecurity of employment, denial of social security benefits, denial of fair hearing, lack of human capital development and so on.

7.1.9 The work found that the position of International Labour Organisation as set out in various international labour standards have been ratified and made part of the laws of some countries thereby affording economically dependent workers some legal protection and benefits which are available to permanent workers or making casuals move from the status of casual workers without rights and benefits to permanent workers with legal recognition, protections and benefits. This is evident in countries such as Ghana, India, Indonesia, South Africa and some other European countries where casualisation is meant not to last beyond certain period otherwise the worker will be deemed to become a regularized permanent worker. Also, in some countries that were reviewed in this research,

it was discovered that there are clear statutory definition of casual workers and outsourced workers and legal protection and benefits provided for those vulnerable workers called economically dependent workers. This shows that this work, found some steps in the right direction towards the elevation of the status of economically dependent workers in some jurisdictions**.**

7.1.10 The researchers also made a finding to the effect, that the international community and some countries both those with the same legal jurisdiction and those with different legal jurisdiction with Nigeria have made a move towards providing economically dependent workers with legal protections and rights at work place. However, Nigeria is seen as lagging behind in its labour law jurisprudence as it applies to the legal status of economically dependent workers. The world over frowns at any labour law or practice that is viewed as unfair and the Government of Nigeria is called upon to intervene by putting every executive, legislative and judicial machineries in place to curb the menace of the concept of economically dependent workers.

7.1.11 This research work after a careful review of all the available and relevant literature found that, the response of labour laws and jurisprudence to the emergence of globalisation is one of the causes of the emergence of economically dependent workers.

> Law is an instrument of social change. Contrary to general thoughts, globalisation is not the reason for the continued menace of the concept of economically dependent work. In other words, the response of the law to globalisation and not globalisation is what determines the current labour situation. This point is supported by the fact that globalisation is not unique to Nigeria. In fact, it originally started in Europe and over the years we have seen how these European countries have responded to it in relation to new labour issues including the emergence of economically dependent workers.This research revealed that, member states of the European Union have adopted policy and statutory measures geared towards the protection of the interest of economically dependent workers in a number of ways. Finally, all stakeholders must urgently stand against all forms of exploitation and degradation of

workers under any guise be it casualisation, contract staffing or outsourcing. The employees also must reject any form of inhuman treatment meted out to them in the course of performing their duties.

7.2 CONCLUSION

The keen competition in the ever growing industrialized market economy has led employers to devise means of remaining competitive. This means that cheaper yet qualitative attractive goods and services are the goal of every organisation. Every provider of goods and services therefore prefers to use cheaper capital and labour in order to keep his or her costs low. Since established labour rules and standards may not be readily compromised, employers continually seek innovative ways to get the job done at a cheaper rate. Casual work contract staffing and through outsourcing has met this need particularly as advances in technology have also redefined 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. While casual work and outsourcing can improve flexibility, 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.Apart from the outsourcing strategy, the employers have also engaged workers on contract basis in such a way that once the work is done, the workers automatically lose their job. This has been shown to have a lot of effects on the workers commitment and job security.

The silence of labour laws on this work relationships and the failure of government to respond to the agitations of these workers imply that the government does not appreciate the effect of

these worker arrangement not only on the workers but also the government. The unfair labour practices discussed in this work have been shown to not only affect the workers but also the economy. The way labour politics is played in Nigeria shows clearly that the employers of labour take advantage of our Labour laws in prejudicing the rights of Nigerian workers. A critical perusal of our Labour laws also shows clearly that only permanent workers are recognized and protected under the Nigerian Labour law Jurisprudence. This spells doom for other category of workers as they are unfairly denied labour benefits enjoyed by their counterpart permanent workers. Apart from the fact that the growth of these work relationships has some negative impact on the rights of these categories of workers; it has also caused some economic problems like loss of revenue, low productivity and unemployment. A variant of this concept of economically dependent work in Nigeria is casualisation of work. Casualisation in the Nigerian labour market is a subject of great concern. Casual employees are filling positions that are permanent in nature in line with employee vulnerability in Nigeria with the high level of unemployment and accompanying poverty. The world economic meltdown has bred a dangerous work environment where many desperate job seekers in the labour market are willing to take any job for survival purposes rather than for their dignity.

This work therefore concludes that the legal status of economically dependent workers in Nigeria leaves much to be desired. This is because many countries of the world such as the ones considered in this work have given one form of recognition and protection to classes of workers who fall within the concept of the economically dependent workers. Some of the countries such as Ghana have include economically dependent workers in their definition of a worker or employee while some have given some labour protections and benefits to categories of worker to included economically dependent workers. It is also the conclusion of this worker that the labour laws in Nigeria is yet to comply with a good number ofInternational Labour Organisation conventions reviewed in this work which shows clearly ILO that conventions are meant to apply to all employees and employers and to all economic activities. Many countries have complied with these conventions

by making their labour laws apply to all categories of workers without discrimination. Notwithstanding the position of International Labour Organisation on the legal status of economically dependent workers, Nigerian Labour Laws still leaves in the era which allows employers to exploit employees subjecting them to all kinds of labour or employment statuses that leave the employees without any legal protection or recognition.

7.3 RECOMMENDATIONS

The world has grown to the level where the dignity of every worker is taken with utmost importance and any form of inhuman or degrading treatment to a worker is frowned at in the global scene. This is in line with the standards of International Labour Organisations. Some countries who subscribe to membership of International Labour Organisation have taken some steps towards ensuring protection of rights and benefits of every worker be it standard or non-standard form of employee. Nigeria is a member of International Labour Organisation and therefore should not allow itself to be left out in the movement towards ensuring equal rights and protections to all employed persons or workers. Efforts must as a matter of necessity be made towards ensuring that every worker is protected at work place and rights due to every worker is made available to the worker. This will in doubt, curb the menace of the concept of economically dependent workers. Based on this, therefore, it is humbly submitted that the following recommendations if considered and implemented, would help to curb the menace of the conceptof economically dependent workers in Nigeria:

7.3.1 Review and Amendment of Labour Act of Nigeria

There is need for the Nigerian government to review and amend the Labour Act so as to include these categories of workers that form the economically dependent workers into the definition of a worker. This is because the Labour Act of Nigeria as it stands is no longer in tune with modern labour and employment realities. When this is done, it will bring the

Labour Act of Nigeria on the same pedestal with those of other countries such Ghana, Indonesia, India and also it will bring the Act in compliance with International Labour Organisation standards.

7.3.2 Enactment of Specific Legislation ensuring Basic Rights and Protection at work place.

There is also need for the government of Nigeria to enact specific legislations that ensure basic rights and protections to all employed persons as it is the case in South Africa. This Act when enacted will have provisions to the effect that once a person engages another person as worker or employee for purpose of advancing his economic benefits over a certain period of time, for instance, for three months, the employee will be entitled to all the benefits available to every permanent worker in that organisation. This will no doubt dissuade employers from engaging workers as casuals over a long period of time.

7.3.3 Enactment of Permanent Status Legislation.

There is also need to enact a specific legislation that confers permanent employment status on workers who have been engaged by an employer for a certain period of time. This recommendation is made from the experience got from the status of non-standard employees in India as provided in the *Tamil Nadu* Industrial Establishment (Conferment of Permanent Status) Act of 1981. The Act when enacted should be made to apply to all economic activities and to all employed persons unlike the Indian Act that is limited to industrial establishments only

7.3.4 Clarifying the Scope of the Law

The first step in addressing the menace of the concept of economically dependent workersis to clarify, supplement and state as precisely as possible, the scope of our labour laws. The task would consist of remedying the technical deficiency in the legislations in order to address objectively ambiguous cases and to tackle the phenomenon of disguised employment

relationship. In relation to triangular relationships, for instance, the law should be clarified in such a way that employees can know who their employer is, what their rights are and who is responsible for them.

7.3.5 Adjusting the Limits of the Laws

Clarification alone, however, may not be enough to regulate cases which do not fall within the scope of the legislations. This is a call for certain adjustment to the limits of the legislation. These can be done in a number of ways. First, in the case of ambiguous relationship where some or all the features of employment relationships are absent, the law needs to be adjusted so as to enable a clearer identification of the employment relationship, where it exists. Secondly, the legislation can be extended to include categories of workers or sectors that are explicitly or implicitly excluded from the scope of the law. Thirdly, the scope of the law may be adequate, but it may be narrowly interpreted by the courts. The development of factors and indicators for determining the existence of an employment relationship can promote consistency and predictability in court decisions.

7.3.6 Balancing The Equity and Adaptability

Lack of labour protection laws raises questions of equity on the one hand, flexibility and adaptability on the other hand. A balance between the two must be sought through social dialogue aimed at building a broad consensus. Employers are constantly faced with the challenge of survival in a competitive environment and therefore seek viable solutions among the range of options offered by different forms of employment. In other words, in as much we crave for the protection of the rights of workers, government should reduce some of the burden placed on employers under the law.

7.3.7 Ensuring Compliance

The menace of the concept of economically dependent workers cannot however, be entirely attributed to lack of clarity and the problems relating to scope of the law. Another contributory factor, which is particularly serious in countries such as Nigeria, is failure to comply with the law, accompanied by poor enforcement. Problems of compliance and enforcement are particularly acute in the informal sector. Improving protection for workers including economically dependent workers requires that the mechanisms and institutions established to enforce compliance with labour laws function effectively. Otherwise, whatever improvement made vide legislative, and judicial intervention may not produce the required result.

7.3.8 Extending the Scope of Social Security Packages

The growth of informal employment resulted in the decrease of formal employment consequent upon their quality of life. Therefore, to overcome such consequences, it is necessary to build a strong base for at least a minimum level of social security with a view to climbing vertical occupation ladder resulting in strengthening their financial status. Instead of analyzing what sort of social security measures that are required to fulfill the multi-facet needs of the unorganized sector workers, the need of the moment is how social security programmes have to be effectively implemented for the informal workers who are the target group. In this connection, it is submitted that, the government can achieve this in either of two ways. One option is the integration of the economically dependent workers into existing social security protection schemes of dependent employees, while the second option involves the creation of an intermediate category of economically dependent workers with specific rules governing their social security protection.[666]

[666] *E. Werner, Op.cit, p.*99.

7.3.9 Sensitisation of Employers

It is understood that most employers deliberately refuse or avoid treating their workers as "employees" basically to circumvent unfavorable social security laws and harsh government policies amidst a highly competitive labour atmosphere. These employers are not seen challenging the government policies because they know that at the end, workers will be made to bear the burden. In the celebrated case of *Inspector General of Police v All Nigerian Peoples Party*[667], the Supreme Court held that all Nigerians including entities and employers have the fundamental right to demonstrate against polices of the government considered inimical to their interest. Therefore, instead of hiding under government polices to extort and victimize workers, the employer could organize a peaceful protest against any government policy that is inimical to their interest. However, this may be difficult especially in Nigeria where there is no practice of true democracy as the government may not pay a listening ear.

7.3.10 Sensitisation of Workers

It is said that an uninformed mind is a deformed mind. Illiteracy and ignorance is one of the major problems of workers in Nigeria. Workers should be sensitized on the need to have their agreement with their employer put into writing and specifying their terms and conditions of work. This problem reflected in the case of *Facco West Africa ltd v. Muyiwa*[668] where the case of the claimant was thrown out of the court because there was no evidence to support his claims. Similarly, workers should be sensitized of their rights to join or form a trade union , right to fair hearing , right not be discriminated against etc. They should also be educated about the Fundamental Right Enforcement Procedure available to them under the constitution.

[667](2008) 12 WRN 65.
[668].Suit No. NICN/LA/534/2014 delivered on 13/12/2017.

7.3.11 Judicial Activism

Since there is no working Index or legislative criteria for identifying the economically dependent workers in Nigeria, Judges are faced with the problem of either holding that they are employees or independent contractors. In this connection, it is humbly recommended that our judges should be more inclined to holding that non-standard employees are permanent employees when they are employed beyond certain period of time. This is the position in IndiaIndonesia and Ghana. This would require a vast feat of judicial activism but where it succeeds, it will go a long way to curbing the menace of the concept of economically dependent workers in Nigeria.

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