Incidence of Non-Standard Work Arrangements and Workers' Rights in Nigerian Oil and Gas Industry

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Abstract

The nature of employment relationship is fast changing from the traditional full-time/permanent employment to non-standard employment relationship characterized by the use of contract/casual workers. Therefore, this study investigates the incidence of increasing adoption of non-standard work arrangement in the oil and gas industry in Nigeria and its effect on the rights of workers. Its main objective is to determine how non-standard work arrangements have affected workers' rights in the workplace. To achieve this, the study adopted an empirical approach by relying heavily on existing secondary data. The result of the investigation showed that a large percentage of workers in the oil and gas industry in Nigeria are under non-standard employment relationship. In addition, the result shows a gross abuse of the workers right to freedom of association and collective bargaining as employer often stand in opposition to any move of the workers to join trade union. Thus, as a result of lack of a recognized framework for collective bargaining, the workers are denied their right to statutory benefits and decent work as enshrined in the labour regulations and ILO Conventions.

Keywords: Non-standard work, Workers' right, Decent work, Statutory benefits, Collective bargaining, Oil and gas

1. Introduction

The traditional industrial relations system based on the concept of full-time employees working within an enterprise is increasingly being challenged by the use of nonstandard work arrangements (NSWA) by employers (Fapohunda, 2012). Non-standard work arrangements are those work arrangements that involve the use of contract, casual, temporary or part-time workers instead of permanent workers. These categories of workers are fast dominating various sectors and industries in Nigeria. The choice of this employment strategy is informed by the global competition confronting organizations thereby putting pressure on them to explore various options in order to survive. Thus, many employers in Nigeria adopt this employment strategy "as a means of cutting cost and stopping workers from joining unions (Orifowomo, 2007). In addition, many organizations are known to have as much as 50% of their workforce as either casual or contract staff (Danesi, 2011).

Specifically, the situation in the oil and gas industry in Nigeria is more pronounced as greater percentage of work and work arrangements are either on contract, casual or part-time basis. "Thus, companies in the industry have in the past 15 years or so adopted the practice of outsourcing to labour and service contractors those jobs which they consider to be ancillary to their core operations (namely the drilling of oil and gas)" (Danesi, 2012). Oftentimes,

contract workers are used in the industry to meet short-term or part-time staffing needs, as well as accomplish various tasks that the companies in the industry decide are better outsourced. The trend has continued to increase to the extent that virtually all jobs are carried out by contract labours.

However, the foregoing scenario has led to adversarial relationship between the unions (NUPENG and PENGASSAN) in the oil and gas industry and the management of the oil companies operating in this sector. As casualization has increasingly become the main point of contention between oil companies and Nigerian oil workers, it has generated violent crackdowns (Solidarity Center, 2011). The workers and unions in the industry are confronted with the challenge of who has the responsibility of recognizing the workers' union and bargaining with them. Is it the owner/operator of the workplace or the many small third-party contractors? Thus, the situation is fast eroding the rights of the Nigerian oil and gas workers who often times works under precarious conditions with uncertain wages, long hours, and no job security.

Given the foregoing situation, this work investigates the incidence of the increasing adoption of non-standard work arrangements and its implications for workers' rights as contained in Nigeria labour statuses and International Labour Conventions.

2. The Problem Statement

The adoption of non-standard work arrangements is on the rise in Nigeria's oil industry. A report by NUPENG and PENGASSAN calculate that for every full-time worker there are four casual/contract workers (International Federation of Chemical, Energy, Mine and General Workers' Unions, 2008). Casual/contract work which is supposed to be a form of temporary employment has acquired the status of permanent employment in many oil companies in Nigeria with many working up to ten to fifteen years as contract staff without any benefits associated with permanent employment status. In addition, workers under nonstandard work arrangements who want to join union face severe resistance and intimation by the employer companies. They are subject to low pay, barred from their right to join a union, and denied medical and other benefits (Fapohunda, 2012). For example, when 122 contract workers at Polmaz, a labour contractor to Chevron, sought to join NUPENG in 2006, both Polmaz and Chevron rebuffed their effort (Solidarity Center, 2011). Trade Unions in the Oil and Gas industry are still grappling with the challenge of organizing and providing fair representation and protection of the rights of workers under non-standard work arrangements. All these are mind boggling issues that affect the rights of contract/casual workers in Nigerian Oil and Gas industry.

3. Objectives

The general objective of this work is to determine how non-standard work arrangements have affected workers' rights in the workplace. Specifically it seeks to:

- i. Ascertain whether non-standard work arrangements affect the right of workers to join union in the oil and gas industry.
- **ii.** Assess the effect of non-standard work arrangements on the workers' right to statutory benefits in the oil and gas industry
- **iii.** Examine whether non-standard work arrangements comply with decent work requirement in the oil and gas industry.

4. Research Questions

The following questions are posed:

- i. How does non-standard work arrangement affect trade union membership?
- ii. Are workers under non-standard work arrangement denied statutory benefits?
- iii. Does non-standard work arrangement comply with decent work arrangement?

5. Literature Review

5.1. The Nature of Non-standard Work Arrangements

Non-standard work arrangement is widely used to describe work arrangement which do not fall within the traditional understanding or definition of employment (Danesi, 2011). They are those work arrangements associated with employment relationships in which workers are directly employed but with various types of fixed-term or short-term contracts, or part-time and home-work contracts; or those in which workers are not employed directly by the user company, but by a subcontractor or a temp work agency (ILO, 2012). In other words, all those work arrangements that involve the use of contract, casual, temporary or part-time workers instead of permanent workers fall under non-standard work. The employment contract is usually fixed or predetermined and short-term. Thus, the term "non-standard work" is used to distinguish such work from the standard or regular model of full-time, permanent and direct employment with a single employer (Ebisui, 2012). However, there is no single and universally accepted terminology describing such existing and emerging forms of work, and depending on the country, region and political or socio-economic background or labour market, a variety of terms have been used. Thus, "non-standard" work is variously referred to as "atypical", "non-regular", "contingent" or "precarious" work (Ebuisi, 2012). However, the conditions of employment under this various terms are virtually the same with little variations in practices in the developed economics and developing economics.

The nature of non-standard work as obtains in Nigeria can best be described as precarious. Precarious work is usually defined by uncertainty as to the duration of employment, multiple possible employers or a disguised or ambiguous employment relationship, a lack of access to social protection and benefits usually associated with employment, low pay, and substantial legal and practical obstacles to joining a trade union and bargaining collectively (Serrano, 2014). Thus, a combination of a number of elements stemming from the nature of the contract as well as the characteristics of the non-standard work arrangements, together with the preferences (willingness) of those who engage in non-standard work, determine precariousness (Fudge and Owen, 2006). As compared with standard workers, non-standard workers tend to be associated with conditions such as lower job security or employment protection; lower wages, income and non-wage welfare benefits, limited training opportunities; lower occupational safety and health protection; fluctuations in hours of work and/or volume of work; lower social security and social protection coverage; limited mobility toward better-quality jobs of positions; low or no trade union representation or collective bargaining coverage; and low or no labour law coverage or its application (ILO, 2011).

In Nigerian context, non-standard work also includes casual work which is fasting dominating employment landscape. Casualization 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 (Fapohunda, 2012). In addition, workers in this form of work arrangement can be dismissed at any time without notice and are not entitled to redundancy pay. It is an unprotected form of employment because it does not enjoy the

statutory protection available to permanent employees (ibid.). According to Okougbo (2004) "the losses suffered by casual employees include: abysmal low wages, absence of medical care allowance, freedom of association which is often jeopardized, no death benefits or accident insurance at work, no negotiation or collective bargaining agreement." For Okougbo (2004), "contract labour is a form of involuntary servitude for a period of time," the type of employment that existed in the United State of America till the end of the 19th century with draconian laws to enforce its existence before its abolition.

5.2. Reasons behind Non-standard Work Arrangements in the Oil and Gas Industry

Various reasons have been given by the employers for the adoption of Non-standard work arrangements in the oil and gas industry. Employers advance these reasons in order to justify their decisions of adopting thin kind of employment relationship. According to Danesi (2012), operators prefer this kind of work arrangement for the following reasons:

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

Beyond the above reasons, other researchers have equally pointed out some of the causes of the rise of non-standard work arrangements. According to Bodibe (2006) neo-liberal market restructuring globally is the force behind the sharp increase in casualisation. He further notes that Neo-liberalism seeks to deregulate markets including the labour market to increase labour 'flexibility'. Cheadle (2006) suggests that there are three kinds of flexibility: employment flexibility (the freedom to determine employment levels quickly and cheaply), wage flexibility (the freedom to alter wage level without restraint), functional flexibility (the freedom to alter work processes, terms and conditions of employment). In short employers want the freedom to pay low wages; change the number of workers and how and when work is conducted. Specifically, Baglioni (1990) opined that flexibility has become employers' new frontier in the management of labour. He further stressed that many employers and enterprises seeking ways to reduce labour costs have used globalization as a justification for the use of non-standard work arrangements (ibid.). Thus, many organizations resort to

employment or recruitment agencies to supply them with temporary casual workers in order to save costs on screening, training, terminal benefits etc.

5.3. Empirical Evidence of the incidence of Non-standard Work in the Oil and Gas Industry

Available empirical evidence has shown increasing rate of the adoption of non-standard work arrangement in the oil and gas industry in Nigeria. This phenomenon which started in the 1990s has maintained a rising trend over the years and now has assumed the normative employment relationships in that sector. Specifically, in 2001 there were an estimated 14,559 (38.7%) casual or contract workers as against 23,065 (61.3%) junior workers on permanent job positions in the oil industry (Okafor, 2007). Most of the casual workers have various qualifications that would warrant permanent jobs – certificates, diplomas and degrees in such areas as engineering, computer science, telecommunication and accounting. Some of the permanent jobs where casual workers were being utilized in the industry include clerical jobs, plant operations, maintenance services, transportation, flow station operations, flow stations guards, deck-hands, forklift operators, typists and fire services men (ibid). Table 1 below captured the situation in 2003.

Table 1: Casual/contract workers in petroleum sector

| Company | Number of | Number of | Percentage of | Total |
|-----------------------------|------------|-----------------|-----------------|-------|
| | workers on | Casual/contract | Workers on | |
| | permanent | Workers | Casual/Contract | |
| | job | | | |
| Nigerian Agip Oil Co. | 211 | 1500 | 87.7 | 1711 |
| Elf Petroleum | 199 | 550 | 73,4 | 749 |
| Elf Oil | 42 | 132 | 75.9 | 174 |
| Shell Petroleum Development | 520 | 8000 | 93.9 | 8520 |
| Mobil Producing | 492 | 2200 | 81.7 | 2692 |
| Mobil Oil | Nil | 492 | 100.0 | 492 |
| Nidogas | 15 | 150 | 90.9 | 165 |
| National Gas | 51 | 178 | 77.7 | 229 |
| Smithnigeria | 25 | 80 | 76.2 | 105 |
| Schlumberger Group | 250 | 1000 | 80.0 | 1250 |
| African Petroleum Plc | 300 | 376 | 55.6 | 676 |
| NNPC | 9000 | 3000 | 25.0 | 12000 |
| Total Nigeria Ltd. | 136 | 534 | 79.7 | 670 |
| Lighthouse Petroleum | 58 | 105 | 64.4 | 163 |
| Comex Nig. Ltd. | 52 | 150 | 74.3 | 202 |
| Remm Oil Service | 120 | 350 | 74.5 | 470 |
| Devtag Drilling Co. Ltd. | 96 | 300 | 75.8 | 396 |
| Tidex Nig. Ltd. | 65 | 120 | 64.9 | 185 |
| Consolidation Oil | 300 | 600 | 66.7 | 900 |
| Chevron | 450 | 3000 | 87.0 | 3450 |
| Trans Pecan Sedco Forex | 50 | 150 | 75.0 | 200 |

Source: NUPENG 2003

According to Danesi (2012), "in the past the companies in the industry employed contract workers directly, however they no longer employ this category of employees directly. Instead, it is outsourced to labour and service contractors." A report by Danesi (2012) showed

that up until the early 1990s employees in the oil and gas industry comprised approximately 70% permanent employees and 30% temporary employees. However, these figures have now changed in that there has been a huge increase in the number of temporary employees, so that these significantly exceed the number of permanent employees. Thus, in 2010, for example, 40% of those employed in the industry were permanent employees and 60% temporary employees (ibid). In 2008, ExxonMobil had 1,650 contract workers hired through labour/services contractors and 1,927 permanent workers making a total of 3,577 workers (ibid.). Therefore, the percentage of contract workers in the organization in 2008 was 46.13% and the percentage of permanent employees was 53.87% (ibid.). However, the figures in 2010 showed that the number of contract workers working for ExxonMobil was 3,835 and the number of permanent workers was 2,118. In other words, permanent employees made up 36% of the entire workforce and contract workers 64%. These are interesting figures because they show that more than 60% of ExxonMobil's workers are on short-term contracts. These figures confirm that the incidence of casualization is very high in the industry (Ibid). In the same period Chevron had 2,400 contract employees and 2,000 permanent employees making a total workforce of 4,400 employees. Again, 54.55% of the total workforce is contract employees while 45.45% are permanent employees (ibid.). This statistics means that more than half of Chevron's employees have a temporary status. See table below:

Table 2: Type of Employment Contract in the Oil and Gas Industry in Nigeria in 2010

| | <u> </u> | | <u> </u> | | |
|-----------------|------------------|-----------|----------------|------------|--------|
| Name of Company | No. of | Percentag | No. of | Percentage | Total |
| | Permanent | e (%) | Contract/Casua | (%) | |
| | <i>Employees</i> | | l Employees | | |
| Shell (SPDC) | 3,625 | 17.58 | 17,000 | 82.42 | 20,625 |
| Chevron | 2,000 | 45.45 | 2,400 | 54.55 | 4,400 |
| ExxonMobil | 2,118 | 36.0 | 3,835 | 64.0 | 5,953 |
| Total | 7,743 | | 23,235 | | 30,978 |

Source: Danesi (2012).

5.4. Non-standard Work Arrangement, Decent Work and Workers' Right

One of the major rights of workers which is recognized in the national labour law and even ILO convention is the freedom of association or the right to form their organization. Freedom of association is critical to the exercise of rights at work, in accordance with the second objective of decent work. In the case of workers, their exercise of this freedom entails forming (or joining) organizations that represent their interests. In the case of workers in an employment relationship, this will generally be a trade union, although it is important to bear in mind that this freedom extends to other forms of organization (Theron, 2014). Freedom of association is an integral part of decent work which is the work that gives individual dignity in the workplace, community and society. It entails work that attracts fair compensation, safe environment, right to freedom of association that meets all the need of life and comfortable retirement plan.

Concerning the right to join or form a union, contract employees since the mid 1990s were denied the right to join or form unions which is a violation of section 40 of the constitution (Danesi, 2012). The non-standard work arrangement often deny workers the freedom of association, enabling employers to ignore workplace standards, erecting barriers to union membership and denying access to the protections won by worker organizations (Solidarity Center, 2010). For example, Solidarity Center (2011) reported that the effort of 122 contract workers at Polmaz, a labour contractor to Chevron to join NUPENG in 2006 was rebuffed by

both the management of Polmaz and Chevron. This example confirms the view of Danesi (2012) that for more than a decade contract workers in Oil and Gas industry did not have a platform to negotiate and improve their terms and conditions of employment hence their exploitation. Although the trade unions (NUPENG and PENGASSAN) in the industry have made frantic effort to organize the casual/contract workers (though with abysmal success, as many have not been organized), however, many employers and their labour contractors did not accord them recognition as stipulated by section 24 of the Trade Union Act.

Reporting on the issue of degradation of work in relation to non-standard workers in the Nigerian Oil and Gas industry, Solidarity Center (2011) noted that most casual workers are not part of any union structure. They earn lower wages than regular workers, receive fewer benefits, and can be fired at will. Citing ILO report, Solidarity Center (2011) stated that oil companies in Nigeria "tend to fire contract workers just before the expiration of their three, six or twelve month contracts, when they are about to become permanent workers..." In addition, casual workers make as little as 15-50 percent of the union wage and receive, if any, non-wage benefits (Solidarity Center, 2011).

In a study conducted in 2007 on 8,000 contract workers hired by 45 ExxonMobil contractors throughout Nigeria found physicians, nurses, pharmacists, and engineers working for years as "temporary contract staff" at the state-run Nigerian National Petroleum Corporation. Many earned wages so low that they could barely support themselves or their families. NUPENG made effort to bring one of the Niger Delta-based service contractor to improve the working condition for some 250 offshore workers who had been kept "in a perpetual status of casual workers," some for more than 20 years. According to NUPENG, the workers would stay at sea for three months, followed by a period of unpaid leave, and then would be rehired, over and over. In October 2008, NUPENG picketed Shell Nigeria headquarters to protest the sudden firing of 21 contract workers with 15-25 years of service after they attempted to form a union (Interview Conducted by Solidarity Center on anonymous NUPENG member in Warri in 2008).

6. Methodology

This work is an empirical examination of the incidence of non-standard work arrangements and the rights of workers in the oil and gas industry in Nigeria. The research design involves a case study of some selected companies in the oil and gas industry by making use of secondary data and content analysis of existing studies and data. The data used in this work were generated from secondary sources.

7. Discussion

Data from the secondary source showed that greater percentage of workers in the oil and gas industry is working under non-standard work arrangement. As the study by Danesi (2010) revealed that in 2010 Shell (SPDC) had 82.42 % of their workers as contract/casual, Chevron had 54.55% of the total staff as contract/casual workers; while ExxonMobil had 60.4% of workers working as contract/casuals. This statistics from these major operators in the Nigerian oil and gas industry showed that there is high rate of adoption of non-standard work arrangement.

Besides having majority of the workers under non-standard work arrangement, available empirical evidence shows a violation of the rights of the workers under this work arrangement to join unions in the industry such NUPENG and PENGASSAN. Although

workers freedom to associate and the right to organize is seen as a fundamental right that should not be restricted in any way and by no administrative authority or state, however, evidence shows that with the emergence of non-standard work arrangements, this right especially in the developing countries is being trampled on by many employers (Danesi, 2011). Solidarity Center (2011) confirmed this view in its report on oil companies operating in the Niger Delta by stating "that most casual workers are not part of any union structure, earn lower wages than the regular worker, receive fewer benefits, and can be fired at will." Employers in this industry have found this practice more profitable since it helps them to cut cost. Therefore, the jobs of the regular staff are even threatened, as the employers prefer disengaging them and reabsorbing them as contract/casual workers. According to the findings of Solidarity Center (2011), unions (NUPENG and PENGASSAN) in the oil and gas sector are taking aggressive steps to organize casual workers since many casual workers in the industry work alongside union colleagues. "Unfortunately, the process often gets bogged down in legal details, as oil employers shift bargaining responsibility from one subcontractor to another; delay negotiations, try to pit unions against one another, or even resort to physical attacks."

In addition, empirical evidence shows gross abuse or denial of rights to statutory benefits of workers under non-standard work arrangements in the oil and gas industry, which negates the basic tenets of decent work as espoused in International Labour Organization (ILO) Convention which Nigeria has ratified. This assertion concurs with the findings of Okougbo (2004) which pointed out that some of the losses of the statutory benefits of the casual/contract works include: abysmal wage, absence of medical care or allowances, no job security of promotion at work, no gratuity and other severance benefits, no freedom of association, no death benefit or accident insurance at work, and no negotiation or collective bargaining agreement. Reinforcing this position, Okafor (2007) explained that since casual workers do not get benefits, employers do not contribute to their pension and gratuity funds. Hence in the event of an accident or death, workers and their dependants are left destitute because they cannot claim for the injury on duty or work place acquired diseases. Also, available data showed that many workers under non-standard work arrangement work under conditions that can be described as precarious, which exposes them to different forms of unfair labour practices. The precarious nature of their work denies the right to decent work. Even when they dare to complain about the precarious nature of their work, they are either fired or given some other sanctions.

8. Conclusion

In the oil and gas industry in Nigeria the motive for the use of non-standard work is that it cuts costs, increases profits and also provides a means of circumventing the obligations required by labour legislation (Danesi, 2012). Some employers have also justified the adoption of non-standard work arrangements on the basis that workers only want to earn a paycheck, and don't see the necessity of joining a union since they care neither about non-wage benefits nor about having a broader say in the decisions that affect their work (Solidarity Center, 2011). This view does not agree with the empirical evidence available as efforts of contract/casual workers to join the union in the industry have been met with severe opposition from the oil companies or their contractors/sub-contractors. Thus, there is a total violation of the rights of the contract/casual workers to freedom of association or freedom to join the union of their choice, denial of the right to statutory benefits and exposures to precarious conditions of work thereby negating the principles of decent work. Above all, government have not paid a serious attention to the plight of workers subjected to non-

standard work arrangements since legislation protecting the right of this endangered group have not been made. Instead of evolving such legislations, the fight for the regulation and protection of the rights of workers under non-standard work arrangement has been abandoned in the hands of the trade unions. This situation puts the unions in an adversarial relationship with the oil companies and contractors. Notwithstanding the abysmal success that the unions have made in organizing the workers under non-standard work arrangements, the oil and gas companies in Nigeria are yet to accord this group recognition.

9. Recommendations

Since it has found that workers working under non-standard work arrangement work side by side (whether direct drilling or support services) their colleagues under standard arrangement and also does not have different job description, it is therefore important that they are protected. Such protection should start with recognition of their rights as workers which is contained in the constitution and ILO conventions. To achieve this, government needs to review and amend existing labour laws and statuses to cover workers under non-standard work arrangement. Such rights include freedom of association which will allow them to join trade union of their choice. The government can begin to do this by enforcing the current laws and international standards and by ensuring that the legislature enacts laws which will protect workers engaged in contract/casual labour. Again, non-standard workers should be allowed to exercise their rights to organize and collective bargaining and they should be given priority whenever there is an opening for permanent employment (Fapohunda, 2012).

The unions should intensify their campaign against the adoption of non-standard work arrangements in the oil and gas. They should embark on aggressive organizing campaign of contract/casual workers and ensure that the oil companies recognize these unions. The unions (NUPENG and PENGASSAN) in the oil and gas industry should form a common front and remain resolute in their effort to restore the dignity of the Nigerian workers. This can be done by making sure that the section of the Nigerian Labour Act which states that "not later than three months after the beginning of a worker's period of employment" the employer is required to give the worker a written contract specifying, among other information: the nature of employment, the date when the contract expires, appropriate notice concerning termination of employment, is implemented. In addition, the government of Nigeria must wake up to its obligations of protecting the rights of the Nigerian workers by implementing ILO Conventions on decent work which she is a signatory and has also ratified. On their part, the oil and gas companies should begin to pay the non-standard workers equivalent of what they pay the standard workers since there is no difference in their job description. These include other benefits and allowances that will improve the standard of living of the non-standard worker.

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