



Temporary Employees In Nigeria: An Appraisal Of Challenges Of Exercising Their Rights As Employees

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ABSTRACT

Casualization or temporary employment which could be loosely referred to as an employment shifts from a preponderance of full time and permanent positions to higher levels of casual positions or the strategic substitution of fulltime workers with contract and/or agency labour. Temporary employment is often a short-term casual work with uncertain wages, long hours, and no job security. The growth or rise in temporary employment or casualization has changed the nature of employment from a labour relationship to a commercial relationship, with the worker taking all the risks. The paper examined the challenges of temporary employees in exercising their rights in Nigeria. The paper adopted the doctrinal research methodology. It found that there is no proper education and training in the workplace on the rights of temporary employees. It also found that workers are bereft of knowledge on the effective and efficient exercise of their rights. The dissertation concluded that there cannot be any industrial harmony if temporary cannot exercise their rights in the workplace. It therefore recommended that the executive and other relevant agencies should enforce the Labour Act to ensure that temporary employees exercise their rights. It also recommended that management of workplaces should organize regular training, workshops, seminars on health and safety for staff, publish materials on safety and many other steps to inculcate safety consciousness in the minds of workers. The dissertation further recommended that management of workplaces should take it a point to train staff in the effective and efficient exercise of their rights. The management should also put in place a regular monitoring team who will go around to check whether the employees really do put on their protective materials given to them before doing their duties and also observe in strict terms safety measures put in place in order to avoid any mishaps and accidents. The government should also institute monitoring teams that will go around periodically to check whether employers go by the regulations as provided in the Labour Act.

Keywords: Temporary employment, Labour Act, fulltime workers

INTRODUCTION

Legal Appraisal of Temporary Employment in Nigeria

Casual work has always existed for particular jobs therefore it is not a new development. However, it is the form that it has taken in the last two decades that is different and problematic. In the past, such labour was required for seasonal work or work that arises periodically and continues for a relatively short period. This work arrangement was predominant in the construction industry and it was mainly for the unskilled in Nigeria. It can be argued that in Nigeria differs from standard or permanent traditional form of employment only in the sense that it does not confer on the employee benefits such as pension, gratuity benefits, medical care, job security, and the right to freedom of association. There is no direct statutory provision covering or defining CWAs in Nigeria. This form of work arrangements is referred to as casual work under the general term, casualization.

In Nigeria, casual employees are in major industries; where firms have employees to the tune of two thousand, about one thousand five hundred may be casual employees. In the local industry in the

informal sector virtually all the employees are casual staff¹. The casual employees have either professional or administrative skills. In the oil and gas industry, for example, many casual employees are graduates or skilled technicians, experienced drivers with long years of service, clerical and auxiliary staff with administrative skills and so on. They spend long years on a particular job and remain in employment for five, ten or more years. Yet they are referred to and treated as temporary employees. In manufacturing companies owned by Asians, casual workers are locked up like prisoners in their factories so that no external person can gain access to them.²

Some oil and gas companies, especially those owned by indigenous entrepreneurs; in spite of the fact that their casual staffs are qualified to be made permanent staff, are made to remain casual employees on a slave wage. Manufacturing companies owned by Nigerians are no exemptions either. They adopt the philosophy of hire and fire and exhibit crude management style unimaginable in personnel administration. All these are with a view to maximizing super normal profits at the barest minimum labour cost³. Attempts are made genuinely to unionize these contract workers in order to give them a new lease of life apart from making them to have a sense of belonging. At a time efforts to de-casualize them are resisted by employers.

However, in recent times, some casual staff members have been unionized and conditions of service negotiated for them. Some characteristics of casualization according to the National Union of Petroleum and National Gas Workers (NUPENG), as quoted by Okougbo,⁴ include: abysmal low wages; absence of medical care and allowances; no job security or promotion at work; no gratuity and other severance benefits; no leave allowance; jeopardized freedom of association; no death benefit or accident insurance at work; and no negotiation or collective bargaining agreement.

4.2 Working Conditions and Rights of Casual/Temporary Employees

Working conditions are at the core of paid work and employment relationships. Generally speaking, working conditions cover a broad range of topics and issues, from working time (hours of work, rest periods, and work schedules) to remuneration, as well as the physical conditions and mental demands that exist in the workplace.⁵ It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

Employees' rights are moral-legal principles aimed at ensuring decent work conditions for all individuals engaged in formal and informal work. The ILO has defined decent work as work that involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.⁶

Workers' rights are codified in domestic and international treaties protecting civil and political rights, such as the right to form and join trade unions. Other workers' rights, including the right to work, strike or

¹ E Okougbo, *Strategic Issue on the Dynamic of Industrial Relations: Theory and Practice* (Lagos: Wepoapo Enterprises 2004) 56.

² U Okafor, 'Sociological Investigation of the Use of Casual Workers in Selected Asian Firms in Lagos, Nigeria' [2010] (8) *Ibadan Journal of the Social Sciences*, 49-64.

³ Okafor (n 2).

⁴ *Ibid.*

⁵ International Labour Organization (ILO) 1996.

⁶ Okafor (n 2).

have fair and just working conditions, are mentioned in treaties dealing with economic and social rights.⁷ Some of the rights of temporary employees are hereunder stated as follows:

4.2.1 Wages

Wages is the total emolument paid every month to a worker for performing services on the basis of a forty hour per week howsoever the emolument may be designed.⁸ The concept of wages underscores a pledge of payment of remuneration by an employer for labour or services according to the contract on an hourly, daily or piece of work basis and often including bonuses, commissions and the amounts paid by the employer.⁹ It further entails the remuneration or earnings (however designated or calculated) capable of being expressed in terms of money and fixed by mutual agreement or by law which are payable by virtue of a contract by an employer to an employee for work done or for services rendered or to be rendered.¹⁰ Wages and other payments entitled to the employee are paid in the legal tender, i.e., Naira or by prior consent in a form of cheque or postal order.¹¹

The wage payment period must not exceed one month. The wage payment period varies between a day to one month, depending on the period specified in the employment contract. In accordance with the Labour Act, employer must provide every worker (not later than 3 months after the commencement of employment) a written statement which should specify, among other things, the rate of wages, the method of wage calculation, the manner and periodicity of wage payment. Wages shall become due and payable at the end of each period for which the contract is expressed to subsist (daily, weekly or at such other period as may be agreed upon) provided that where the period is more than one month, the wages become due and payable at intervals not exceeding one month.¹²

Wages are undoubtedly ranks above all other employment rights and conditions of work. Being a cost for employers as well as the main source of income for workers, wages may be a potential source of conflict and have thus become the major focus of collective bargaining all over the world.¹³ At the same time, wages can represent a major source of discrimination and deprivation if no decent floor is guaranteed to the workers.¹⁴ On the economic side, wages represent an important part of labour costs and are an essential variable for enterprises' competitiveness which needs to be analyzed, also with regard to their interaction with other key economic variables, such as employment, productivity and investment. All the above factors have led States, together with employers' and workers' representatives, to reconsider their wages policies and undertake crucial reforms in this field.

4.2.2 Working time

The subject of working time has been central to the work of the ILO since its inception, when it adopted the first of many international labour standards, the Hours of Work (Industry) Convention, 1919 (No.1). Some of the major challenges in this area remain those which have been important since the dawn of the industrial age: excessive hours of work and the need to protect workers' health and safety by limiting working hours and providing adequate periods for rest and recuperation, including weekly rest and paid annual leave - which are enshrined in international labour standards.

However, a variety of factors in recent years have led to new trends and developments in both working time and work organization. Globalization and the resulting intensification of competition; dramatic advances in information and communications technologies; and new patterns of consumer demands for good and services have driven enterprises to adopt new methods of flexible - and sometimes global -

⁷ *Ibid.*

⁸ National Minimum Wage Act, 2019, s 9.

⁹ A A Mir and N A Kamal, *Employment Law in Malaysia* (Selanger Darul Ehsan, International Law Book Series, 2005), 123.

¹⁰ NMWA, s 91.

¹¹ *Ibid*, s 1 (1) (a) (b) and (3).

¹² NMWA, s 15.

¹³ *Ibid.*

¹⁴ Equal Remuneration Convention (No. 100) 1951, art 1 (a-b) and 2.

organization of work, including temporal flexibility and spatial flexibility, as well as the offshoring of both manufacturing and services.¹⁵

In addition, there have been profound demographic changes, such as the increasing entry of women into the paid labour market; the shift from single male breadwinner households to dual-earner ones; and a growing concern regarding work-life balance - all of which have shaped workers' needs and working time preferences, which vary by gender as well as over the life cycle.

More recently, the global economic and financial crisis has had a profound impact on working time. At the height of the crisis, work sharing - a reduction of working time to spread a reduced volume of work over the same (or similar) number of workers to avoid layoffs - was widely used as a job preservation measure. Following the crisis, the working time challenges have shifted: from focusing mainly on preserving jobs to an increasing focus on job quality issues - many of which are closely linked to working time, such as an expansion in jobs with short and often highly variable hours.

4.2.3 Safety and Health at Work

Every day, 6,300 people die as a result of occupational accidents or work-related diseases-more than 2.3 million deaths per year. 317 million accidents occur on the job annually; many of these resulting in extended absences from work. The human cost of this daily adversity is vast and the economic burden of poor occupational safety and health practices is estimated at 4 per cent of global Gross Domestic Product each year.

4.2.4 Job Security

Job security is about the protection of workers against fluctuations in earned income as a result of job loss. Job loss may occur during economic downturns, as part of restructuring, or be related to other various reasons for dismissals. One of the forms of protection that is afforded to workers against, or upon, dismissal, is provided by employment protection legislation (EPL). The growth over the past several decades of non-standard work- temporary contracts, temporary agency and dispatched work, dependent self-employment, marginal part-time work - in many parts of the world, have heightened workers' concerns over job security.

4.2.5 Freedom of association

The right of workers and employers to form and join organizations of their own choosing is an integral part of a free and open society. In many cases, these organizations have played a significant role in their countries' democratic transformation. From advising governments on labour legislation to providing education and training for trade unions and employer groups, the ILO is regularly engaged in promoting freedom of association.

The ILO's Committee on Freedom of Association was set up in 1951 to examine violations of workers' and employers' organizing rights. The committee is tripartite and handles complaints in ILO Member States whether or not they have ratified freedom of association conventions. Through the Committee on Freedom of Association and other supervisory mechanisms, the ILO has frequently defended rights of trade unions and employers' organizations.

4.2.6 Equality and discrimination

Hundreds of millions of people suffer from discrimination in the world of work. This not only violates a most basic human right, but has wider social and economic consequences. Discrimination stifles opportunities, wasting the human talent needed for economic progress, and accentuates social tensions and inequalities.

Combating discrimination is an essential part of promoting decent work, and success on this front is felt well beyond the workplace. Issues linked to discrimination are present throughout the ILO's sphere of work. By bolstering freedom of association, for example, the ILO seeks to prevent discrimination against trade union members and officials.

4.2.7 Collective bargaining

Collective bargaining is a fundamental right. It is rooted in the ILO Constitution and reaffirmed as such in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Collective bargaining is a

¹⁵ *Ibid.*

key means through which employers and their organizations and trade unions can establish fair wages and working conditions. It also provides the basis for sound labour relations.

Typical issues on the bargaining agenda include wages, working time, training, occupational health and safety and equal treatment. The objective of these negotiations is to arrive at a collective agreement that regulates terms and conditions of employment. Collective agreements may also address the rights and responsibilities of the parties thus ensuring harmonious and productive industries and workplaces. Enhancing the inclusiveness of collective bargaining and collective agreements is a key means for reducing inequality and extending labour protection.

4.3 Challenges Facing Temporary Employees' in Exercising their Rights

The precarious situation in the labour market, compounded by the downturn in the economy, is not helping matters, as it makes workers very vulnerable. What comes across from available evidence is that there is still a long road to travel in the struggle for the enforcement of employees' rights as well as ensuring compliance with labour standards, national or international.¹⁶ The situation is traceably compounded by poverty, unemployment, corruption, the judiciary, weak regulatory institutions and lack of political will on the part of government to protect its citizens' employees; and weak trade unions. The following challenges besetting employees from exercising their rights shall be discussed hereunder as follows:

4.3.1 Poverty

Poverty is the state of not having enough material possession or income for a person's basic needs. Poverty may include social, economic and political elements. Relative poverty occurs when a person cannot meet a minimum level of living standards, compared to others in the same time and place.¹⁷

Based on GCIP data, poverty headcount peaked at 79.6% in the year 2000 and recorded its lowest level in 1997 with a headcount ration of 44.7%. On average, between 1960 to 2015, poverty headcount in Nigeria was 61.8% of the population. This considerable high level of poverty in Nigeria calls for policy attention in addressing the menace due to the negative spillover effects it is having on the Nigerian society. In recent times based on the poverty line of \$1.90 per day, 46.5% of Nigerians are extremely poor, with the World Poverty Clock naming Nigeria, 'the poverty capital of the world'. According to the World Poverty Clock(2019), extreme poverty in Nigeria is increasing by almost six persons per minute.¹⁸ The average Nigerian is a poor man. Nigeria is a nation of riches and poverty splendid, wealth in the hands of few and extreme/abject poverty at the doorsteps of many. The divergence between Nigeria's economic indicators, macroeconomic variables and the reality is a source of concern. The reality is that people die because they cannot afford three square meals a day as well as access basic public healthcare. As strange as this may sound, this goes on side-by-side with ostentatious display of wealth by the privileged few.¹⁹ Consequently, one of the major consequences of poverty especially as it relates to the instant subject of discourse is that it deprives people, specifically temporary employees from exercising their rights where same is savagely infringed upon by employers. Temporary employment which is usually characterized by abysmal low wages, absence of medical care/leave or transportation allowances, absence of gratuity and other severance benefits, absence of death benefits or accident, health and life insurance schemes and absence of pension plans etc are no doubt a work arrangement that is meant to impoverish and indeed impoverishes its employees. The denial of the above rights which are incidental to any employee in the course of his employment, is a clear breach of the rights of the temporary employees which ought to be vigorously contested in law courts, but for the dearth of the wherewithal to execute same. It takes a temporary employee who rakes in fair and living wages to live above the poverty line first and then to garner funds for the enforcement of any of his infringed rights. Thus, where the remuneration of a temporary employee is below the National Minimum Wage, such an employee is

¹⁶ A Adenuga and F Adewunmi, 'The State of Workers Rights in Nigeria: An Examination of the Banking, Oil and Gas and Telecommunication' <<https://library.fes.de/pdf-files/bueros/nigeria><< PDF> accessed 23 July, 2021.

¹⁷ *Ibid.*

¹⁸ Adenuga and Adewunmi (n 16).

¹⁹ *Ibid*

considered underemployed and lives below the poverty line and putting into consideration the pervading and widespread poverty consequently, such an employee by virtue of his financial status is naturally challenged and disadvantaged to pursue the enforcement or exercise of his rights. Suffice to say that poverty ranks above all others in the hierarchy of all the challenges besetting the exercise or enforcement of a temporary employee's rights.

It is common knowledge that people and temporary employees alike helplessly watch their rights freely infringed upon by powerful people or employers without having to protect and enforce them as a result of not having the financial wherewithal to do so. Whereas the powerful employers have the wherewithal to comfortably afford the huge financial implication of lawsuit and also to retain the services of Senior Advocates of Nigeria (SANs) in defence or prosecution of their matters against poor employees, same cannot be said of an already financially-disadvantaged employee who cannot afford the least of a lawyer.

Therefore, it is the view of this dissertation that an employee who is hitherto plagued by an abysmally poor and discriminatory remuneration in a sustained recessive economy with towering inflation, unprecedented unemployment and attendant poverty is already gravely disadvantaged to meet his basic needs let alone having sufficient funds to exercise his rights where infringed upon by exploitative employers.

4.3.2 Unemployment

The concept of unemployment, in the absence of precise definition has been opined as the difference between the amount of labour employed at current wage levels and working conditions and the amount of labour not hired at these levels.²⁰ There are several types of unemployment that occur in an economy, such as seasonal, frictional, structural and cyclical unemployment.²¹

Thus, it is worthy of note that the concept of unemployment is not a new phenomenon in Nigeria. A critical examination of the link between unemployment and several macroeconomic variables in Nigeria showed that 'the shift in the composition of unemployment in Nigeria since the year 2000 is very instructive as it has brought to the fore the inadequacies of the received theory towards explaining the unemployment phenomenon in the country.'²² In recent years, Nigeria's unemployment rates had taken a new dimension. Over the years, the percentage of the Nigerian unemployed labour force has been relatively high when compared with the levels in the 1970s and 1980s respectively.²³

In 2004 and 2005, Nigeria's unemployment rates stood at 11.5% and 11.2% respectively. Between 2006 and 2007, Nigeria's average unemployment rate was 7.5%. The situation worsened again in 2008 when the nations' unemployment rate rose to 14.5%.²⁴ According to the Central Bank of Nigeria,²⁵ the national unemployment rate was 21.1% compared with 19.7% in 2009. When the unemployed statistics was disaggregated, it revealed that almost half of 15 and 24 years adults that were unemployed live in the urban areas and the rise were largely attributed to the increased number of school graduates with no matching job opportunities. In addition, there was a freeze on employment in many public and private sector institutions as well as the slow disbursement of the capital budget by the Federal Government.²⁶

Furthermore, it was even argued in some quarters that the activities of militants forced many foreign companies to halt operations in Nigeria and that the global economic meltdown which occurred in late 2008 and early 2009 coupled with decline in oil prices in the international market worsened Nigeria's unemployment debacle.²⁷ Statistics reveals that between the years of 2011 to 2019 the unemployment **rate in** Nigeria has astronomically increased from 3.7% to 6.1%.²⁸ It is imperative to state that the factors that have necessitated the high percentage of unemployment rate in Nigeria are bad economic

²⁰ E. J. Briggs, 'Unemployment Statistics and What they mean' [1993] *Monthly Labour Review, US Department of Labour, Washington DC*, 224

²¹ D A Mayer, *The Everything Economics Book* (Massachusetts: Allan Media, 2010) 19.

²² B. Oni, 'Employment Generation: Theoretical and Empirical Issues' (Selected Papers for the 2006 Annual Conference, Nigerian Economic Society, Ibadan 2006) 11-30.

²³ A. N. Gbosi, *Government Policy Makers and the Nigerian Economy* (Port Harcourt: Thompson and Thompson Nigeria Ltd, 2012) 46-47.

²⁴ Oni (n 22).

²⁵ *Ibid.*

²⁶ Gbosi (n 23), 84

²⁷ *Ibid.*

policies, global economic crisis; rapid population growth; bad educational planning; poor performance of small scale enterprises and imperfect flow of labour market information.²⁹

In essence, unemployment poses negative consequences to every society such as a reduction in a nation's Gross Domestic Product; disruption of the normal flow of life; increase in divorce rate; child abandonment; and other social unrest such as: insurgency; militancy; armed robbery; banditry, kidnapping and drug abuses.³⁰

Flowing from the above statistical exposition of unemployment rate in Nigeria, it is therefore the view of this dissertation that the alarming rate of unemployment and fear of being unemployed after being relieved from one's job as a result of seeking a better working condition from an employer, underscores one of the challenges of most temporary employees from exercising their rights. Consequently, most ill-treated temporary employees would rather endure the ill-treatment from their employers and retain their employment than exercise their rights to ensure good working conditions.

4.3.3 Lack of political Will and Weak Regulatory Institutions to enforce Labour Legislations

Having examined the provisions and legal framework for employment relations, the next question to examine is the capacity of regulatory institutions to enforce the provisions of the labour legislation. A related issue is whether the state has the will to protect the weaker partner in the employment relationship. Apart from legislation, the formalised employment relationship is regulated and mediated by a number of structures and institutions which are located within the framework of the labour administration system.³¹

Article 1 of the ILO Convention 150 defines labour administration as "public administration activities in the field of national labour policy (incorporating labour, employment and vocational training) while the system of labour administration covers all public administration bodies responsible for and, or, engaged in labour administration whether they are ministerial departments or public agencies, including parastatal and regional or local agencies or any form of decentralized administration and any institutional framework for the coordination of activities of such bodies and for consultation with and participation by employers' and workers' organisations. This is the institutional framework for ensuring compliance with laws and standards as well as protecting workers' rights. It is the essential duty of labour administration to enforce labour legislation and to offer solutions to the various and complex problems that arise in the world of work.³² Some of the components of the labour administration system that are of interest include the Federal Ministry of Labour and Productivity, particularly the Departments of Trade Union Services and Industrial Relations Department, including the Industrial Arbitration Panel and Inspectorate, the National Industrial Court and the National Labour Advisory Council. In spite of the political allegiance of government to the ruling class whose members constitute the bulk of the employers of labour, it is still expected to protect the interests of all irrespective of class affiliation or social standing. As such within the employment relationship, government, through relevant agencies are expected to ensure that parties involved get a fair deal.³³ In Nigeria, the Inspectorate Department is the focal department of the Federal Ministry of Labour and Productivity charged with "the responsibility to ensure compliance with all national and international labour legislations connected with terms and conditions of employment", among others.³⁴ The Department carries out its functions, through "enforcement of relevant labour laws, particularly Labour Act,³⁵ Factories Act,³⁶ and the Employees' Compensation Act.³⁷

²⁸ *Ibid.*

²⁹ A N Gbosi, *Contemporary Macroeconomic Problems and Stabilization Policies* (2nd edn, Benin City: Spirit and Truth Publishers 2015), 83-86;

³⁰ *Ibid.*

³¹ Gbosi (n 23).

³² *Ibid.*

³⁴ *Ibid.*

³⁵ Gbosi (n 23).

³⁶ *Ibid.*

³⁷ Cap 126, Laws of the Federation of Nigeria

There is no doubt that the Ministry of labour lacks the capacity to carry out its mandate. There is shortage of personnel to carry out inspection services nation-wide. This development has, in turn, reduced the capacity of the system to deliver even when there is the will. The Ministry is short staffed, even in very critical areas. For example, as at 2005 the Factory Inspectorate was made up of only 47 staff.³⁸

By the Ministry's own calculation, a minimum of 250 inspectors are required for effective inspection. In fact, it is claimed by trade union officials (and confirmed by official records of the Federal Ministry of Labour) that there is only one factory inspector for the whole of the North-East. The situation has not improved appreciably since 2005. There are less than 1,000 labour officers in the same Ministry. Needless to say facilities such as vehicles to facilitate inspection visits to the work establishment are hard to come by. Again, by the Ministry's admission as at 2005, there was not a single vehicle for inspection yet 63 vehicles are needed.³⁹

The reality is that government does not have the will to really protect workers from the excesses of employers. It would appear that at best government is paying lip-service to ensuring the protection of workers and this explains why it finds it difficult to deal with infringement of statutory provisions. Instead, violations are treated with kid's gloves. Even in spite of the ridiculous penalties (such as N1, 000(US\$7) for non-recognition of a duly registered trade union by an employer), provided for in the laws, imposing them has become difficult for government.⁴⁰ Interestingly, the wholesale review of the laws which was initiated by the Obasanjo administration in 2004 with the technical and financial support of the ILO is yet to be completed.⁴¹

Of course, this disposition should not be surprising if the government is more interested in protecting the interests of the propertied class. This bias has been clearly manifested in the emerging global economic order in which the interests of international finance capital determine the fate or treatment meted out to workers. Governments in developing/dependent countries such as Nigeria easily capitulate to the arm-twisting tactics of foreign investors who virtually insists on lowering labour standards (euphemistically referred to as labour market flexibility) as one of the pre-conditions for investing locally.⁴²

On the lack of will on the part of governments of developing countries to protect their citizen-workers, Blackett⁴³ has this to say:

While in the post WWII period into the 1980s, policies linked to embedded liberalism ensured that industrialized countries could provide social welfare systems including labour regulatory mechanisms that offered protection to the worker-citizen, the case has not been the same for developing countries. Rather, for developing countries, the "privilege of cushioning the adverse domestic effects of market exposure" was never theirs."

In fact, a closer look at the economic literature reveals a tendency to regard labour standards and legislation as constituting part of the "rigidities" and "distortions" that impede the smooth functioning of the labour market.⁴⁴ As such, existing body of labour legislation guaranteeing some rights and protection for workers are considered obsolete. In Nigeria labour laws are mostly observed in the breach. A good case is the use of casual and contract labour which has been grossly abused especially by expatriate firms as well as the refusal of employers to allow their employees to freely join trade unions of their choice. A few examples suffice here.⁴⁵

The refusal of employers to honour agreements reached with the unions is equally treated with levity. On many occasions when employers refuse to honour agreements signed with workers and the unions, instead

³⁷ Gbosi (n 23).

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Gbosi (n 23).

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

of compelling them to honour the terms of agreement, the Ministry would rather persuade the unions to consider a re-negotiation of the agreements.⁴⁶

In essence, the problem temporary employees are faced herewith is the lack of capacity of the regulatory institutions which is further aggravated by the lack of political will on the part of government to protect its employee-citizen. As the so-called custodian of public good, it is imperative for government to protect all components of workers' rights. The government must take affirmative action to ensure that these rights can be exercised. Apart from showing a good example as an employer, government should also ensure that private employers are not allowed to infringe and violate workers' rights with impunity. After all, within the context of liberal democracy, government owes its citizens the duty of care and this can be done through labour legislation and enforcement of same.⁴⁷

The agency of government charged with the responsibility of ensuring that employment relations unfold within the legal framework and without jeopardizing the production of goods and services in Nigeria is the Federal Ministry of Labour and Productivity. Within the organisational set-up of the Ministry, a system for complaints about rights violations, adjudications, remedies and punishments is put in place. There is equally a mechanism for monitoring compliance, through the inspectorate services. As such, compliance and non-compliance are partly a function of the effectiveness of the Ministry. It can be conclusively construed that the seeming helplessness of the Nigerian government to this situation is borne out of its desperate obsession and/or quest to attract and retain foreign direct investment (FDI) investors into the economy, which may have been the reason why the government would appear to have readily succumbed to the pressures from international investors, who latently, but usually insist on relaxing or lowering labour standards and employees' rights.⁴⁸

Consequently, it is the view of the dissertation that lack of political will and weak regulatory institutions in regulating, supervising and sanctioning erring employers may have further compounded the challenges besetting temporary employees or employees in general from exercising their rights, which makes the employees become even more vulnerable to their employers.

4.3.4 Weak and Disunited Trade Unions

Trade union is any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of employees.⁴⁹ The collective strength of workers has always been helpful in their struggles with finance capital. This is where the trade union advantage comes in. This is because in light of the weak position of the individual employee, it is only by combining with others in similar circumstance that s/he can hope to mitigate the adversities of the employment relationship. Similarly, the collective platform offered by the trade unions presents a good avenue for employees to press for, and demand for other rights. This is largely because the trade unions are officially recognised as the representatives of their members.⁵⁰

However, one pertinent question is if the agencies of the Nigerian state are not doing enough in enforcing and sanctioning defaulters of labour legislations, what have the trade unions been able to do to secure the rights of their members, since the unions interact with the labour administration bodies? The simple truth is that the unions, they are weak, compromised and politicized.⁵¹

Concededly, a combination of factors, internal and external, including the conspiratorial indifference of a consuming public that is quick to condemn any collective action of workers because of possible inconveniences without being commensurately bothered about the plight of the employees may also contribute to the weakness of the TUC and NLC in their statutory responsibility to protect employees'

⁴⁶ Gbosi (n 23).

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ ILO, International definitions and prospects of Underemployment Statistics' [1999] *ILO Bureau of Statistics, Adriana Mata Greenwood*, 1

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

rights. A good case in point was the strike action of organised labour in June 2007 against some government policies. After less than one week of the strike action there was enough public outcry against the action with appeals to labour to consider the plight of the people.⁵² The internal causal factors for the apparent weak unions are said to be inadequate human and material resources, lack of inclusiveness in the organization and representation on union organs, corruption, political leaning and differences of individual union member's membership apathy and lack of commitment on the part of the union officials.⁵³

Of course it is noteworthy that the unions are operating in a very hostile environment dominated by powerful trans-national corporations, whose examples indigenous employers follow. This is reflected in their obstinate to recognise unions, victimization and dismissal of active employees and the use of threats, bribery and the infiltration of unions, which in the words of Ihonvbere⁵⁴ are "definitely aimed at controlling workers". However, it needs to be stressed that trade unions when united and insulated from external interference can bring any "powerful" employer to its knees and accede to the employees' demand(s).

However, the major problems said to be plaguing trade unions from exercising their duty include but not limited to the following: uneven growth, leadership issues, inter-union rivalry, financial weakness, weak collective bargaining process and chameleonic attitudes of trade union leaders.⁵⁵ In addition, wrong mentality of trade union or lack of internal union democracy are problems of labour unions in Nigeria.⁵⁶

As it is in Nigeria today, the Nigerian Labour Congress, which is the umbrella body of all labour unions has at different times paraded two different National Executive Officers with both groups claiming to represent the interest of the Nigerian Employees. In some instances, the different executive groups will mark different union national programmes or activities at different venues. For instance, in 2016, while one faction is celebrating workers day at Abuja, another faction was doing the same function at Lagos. In fact, the same disunity is being witnessed in most of the thirty-six States of the Federation. Illustratively, in 2015, when some faction of Rivers State Chapter of Nigeria Labour Congress declared a strike action for non-payment of about three months salaries of state civil service employees, another faction immediately called on the state civil servants to disregard the misleading information, that they are already on discussion with the State government to settle the issues. Worse still, these different factions have failed to see common grounds to come together to fight for the common interest and issues affecting the union members.⁵⁷ The major reason for such disunity among trade union in Nigeria is that union leaders do not give room for internal party democracy. There is also no room for union members to participate, decide or vote on policy issues or to elect their union official. These result to unwillingness of the majority to attend branch meetings or take part in policy debates and elections. When this is the prevailing circumstance, aggrieved members will oppose the union leadership and seek to remove them by use of provision of the union bye-laws or passing a vote of no confidence on them. This will however, generate disunity as loyalist of the embattled officers will rally round to defend them. Trade unions cannot flourish when a small number of powerful officers manipulate union activities and programmes for their own ends in order to retain their own power and authority.⁵⁸

⁵² *Ibid.*

⁵³ Gbosi (n 23).

⁵⁴ J Ihonvbere, 'Labour, Transnational Corporations and the State in Nigeria's Oil Industry' (Unpublished Ph.D Thesis submitted to the Department of Political Science, University of Toronto, Canada 1984) 78.

⁵⁵ S Rajesh and P Manoj, 'Politicization of Trade Unions and Challenges to Industrial Relation in India: A Study with a Focus on Northern Karala' [2015] (1) (12) *International Journal of Business Administration and Research Review*, 45-57.

⁵⁶ J O Okojie, *Organizational Behaviour and Management* (Benin City: Osasu Publishers, University of Benin (2011), 53-57; S. G. Gangurde, 'The Indian Trade Union Movement: New Challenges' [2014] (4) (6) *Indian Streams Research Journal*, 1-9.

⁵⁷ O. Onyebuchi and O. Lucky, 'The Role of Labour Union in Nigeria Industry Harmony and Development' [2019] (8) (1) *International Journal of Sustainable Development and World Policy*, 12-13.

It is therefore the view of this dissertation that although trade unions are veritable vehicles for the enforcement of temporary employees' rights, however, their inertia, weakness, division, disunity and politicization constitute and/or compound temporary employees' challenges in exercising their rights

4.3.5 Corruption

Corruption is an anti-social attitude awarding improper privileges contrary to legal and moral norms, and impairs the authorities' capacity to secure the welfare of all citizens. Corruption is a constant phenomenon in Nigeria.⁵⁹ The level of increase in corrupt practices in Nigeria was one of the major factors responsible for the collapse of the first republic.⁶⁰ Corruption is an issue of concern to well-meaning Nigerians. In fact, it is about the most practiced vice.⁶¹ Nigeria as a nation has been rated as one of the most corrupt countries in the world.⁶² In 2012, Nigeria was estimated to have lost over \$400 billion to corruption since the independence. In 2018, the country ranked 144th in the 180 countries listed in Transparency International's Corruption Index (with Somalia, at 180th, being the most corrupt, and Denmark the least).⁶³

There are different categories or types of corruption. The United Nations Office on Drugs and Crimes identified two types of corruption – Grand and Petty Corruption.⁶⁴ Grand corruption is the one that pervades the highest levels of a national government leading to broad erosion of confidence in good governance, rule of law and economic stability. Petty corruption involves the exchange of very small amounts of money, the granting of minor favour by those seeking preferential treatment or the employment of friends and relatives in minor positions.⁶⁵ Corruption can also be active or passive. Active corruption refers to the giving of bribe while passive corruption entails receiving of bribe.⁶⁶ We also have public corruption and private corruption. The Economic and Financial Crimes Commission arrested many public officers for abuse of office and corruption.⁶⁷ Employees in the organized private sector of the economy have to “co-operate” or “play ball” or “settle” with persons at the helm of affairs in some organizations in order to get any business from them.⁶⁸

Without prejudice to the above types of corruption, the following categories of corruption have been recognised in Nigeria. They are, judicial corruption, economic corruption, corruption in the Executive and Legislative arms of Government, moral corruption and corruption by non-profit associations or non-governmental organisations (NGO).⁶⁹

Similarly, corruption is evident and even endemic in the educational and religious sectors of the polity.⁷⁰ On the corruption in the Judiciary, it is a common fact that the judiciary is equally enmeshed in corrupt practices. It is worrisome to note that the Nigerian judiciary has not lived up to expectation as far as fighting corruption is concerned. The Nigerian courts have been accused of corruption. Oputa JSC (as he

⁵⁸T Adefolaju, ‘Trade Union in Nigeria and the Challenge of Internal Democracy’[2013] (4) (6) *Mediterranean Journal of Social Sciences*, 97-104.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² I O Babatunde, “Stamping Corruption Out of Our System: The Impact of National and International Legislations on Corruption Control in Nigeria” [2014] (7) *Journal of Law, Policy and Globalization*, 101

⁶³ Babatunde (n 62).

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

then was) openly agreed that the issue of corruption is a virus which has affected not only the judiciary but all aspects of the Nigerian society.⁷¹

The Supreme Court in *A.G Ondo State v A.G Federation*⁷² held that:

It is quite plain that the issue of corruption in Nigerian society has gone beyond our borders; it is no more a local affair. It is a national malaise which must be tackled by the Government of the Federal Republic. The disastrous consequence of the evil practice of corruption has taken this nation into the list of the most corrupt nations on earth.

The nature of the task of judicial administration requires that all judicial officers on appointment should subscribe to the Oath of Allegiance and the Judicial Oath. The Code is made up of rules on impropriety, social relationships, adjudicative duties, impartiality, abuse of *ex-parte* orders, fiduciary duty, business and financial activities, acceptance of gifts *etc.* The Code has, to some extent, improved the system of judicial administration in Nigeria.

However, in spite of the above, it is reported that citizens and companies face a high risk of corruption when interacting with Nigeria's judiciary; it is characterized by a high degree of corruption and political interference.⁷³ Both citizens and corporate organizations give bribes to obtain favorable judgments.⁷⁴ Nigeria's constitution establishes an independent judiciary, but other branches of government frequently interfere with it.⁷⁵ Nearly half of Nigerians perceive the judicial system to be corrupt.⁷⁶ The judiciary is plagued by understaffing, underfunding, inefficiency, and corruption.⁷⁷ Judges are susceptible to bribery and courts cannot be relied on for independent judgments.⁷⁸ A judge is not to accept any gifts, favour or loan if the donor is a person whose interests have come or are likely to come before him.⁷⁹ Although the case for Judges and court officials poor remuneration and court documents are not being digitized, has been argued to encourage corruption.⁸⁰ Thus, the corruption in the judiciary manifest in the following manner: indiscriminate issuance of *ex parte* order; *ex parte* communication, acceptance of gifts from litigants; deliberate failure of a judge to dispose of case expeditiously *etc.* it is argued that companies in Nigeria seek court injunctions from judges seen as favorable to their cause, to protect themselves against businesses or legal proceedings unfavorable to them.⁸¹

On the corruption of the Nigerian Police, it is reported that citizens and businesses face a high risk of corruption in their interaction with the police. Almost all Nigerians believe the police is corrupt, making it the most corrupt institution in Nigeria.⁸² The police in Nigeria are a strong impediment to business, which are considered very unreliable in enforcing the law.⁸³

In Public Service, it is believed that the Nigeria's public service suffers from widespread corruption. Government regulations are burdensome for businesses, and bribes and irregular payments are often exchanged.⁸⁴ A system of patronage exists in public institutions⁸⁵

⁷¹ C Oputa, "Judiciary and Corruption." National Concord, Thursday, July 19, 9-10

⁷² [2002] 10 NSCQR 1034

⁷³ Oputa (n 71).

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ Oputa (n 71).

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

Diversion of public funds is so common, that an audit in December 2016 found and removed 50,000 ‘ghost workers’ from the government’s payroll, leading to savings quoted as USD 636 million.⁸⁶ Similarly, it is reported that companies interacting with the Nigerian tax administration face high risks of corruption. One in four companies expect to be asked for a bribe, gift or facilitation payment when interacting with tax officials.⁸⁷ Over half of Nigerians consider the tax authorities to be corrupt.⁸⁸ Tax collection processes are non-transparent and tax evasion among businesses is widespread due to collusion between businesses, individuals, and tax officials.⁸⁹

Similarly, corruption is not uncommon in the Nigeria’s public procurement sector, with up to one-third of companies expecting to give gifts or payments to secure a government contract.⁹⁰ Companies report that irregular payments are very common in public procurement procedures. The diversion of public funds to well-connected firms and individuals as well as favoritism in decisions of government officials is widespread.⁹¹

Although, there has been some improvement in the process of awarding contracts in the natural resources sector, but irregularities including the award of contracts to firms with histories of fraud and bribery and the award of contracts outside the regular bidding process persist.⁹²

Business arrangements and family loyalties dominate governmental appointments paving the way for politicians, officials and their business associates who together make up the ruling elite to ensure that they all become wealthy through behind the scenes agreements and the awarding of profitable contracts to favoured supporters.⁹³ Nigeria has undertaken various efforts to reform public procurement policies, the most notable of which is the Public Procurement Act, which regulates public procurement and aims to minimize the abuse of rules, processes and standards in the award and execution of public-sector contracts.

The Criminal Code⁹⁴ criminalizes corruption and the abuse of office, and the Corrupt Practices and Other Related Offences Act criminalizes active and passive bribery, as well as attempted corruption, fraud, extortion and money laundering. Penalties apply both to individuals and companies and include fines and/or up to seven years’ imprisonment. The Advance Fee Fraud and other Fraud Related Offences Act combats the persistently large body of fraudulent activities in Nigeria with up to 15 years in prison. The Money Laundering (Prohibition) Act regulates making and accepting cash payments.

From the foregoing, unarguably, Nigeria has a well-developed anti-corruption legal framework, but despite the strong legal framework, ironically, enforcement of anti-corruption legislations in Nigeria remains weak and helpless. The foregoing underscores the challenges of a temporary employee to exercise his labour rights that are infringed upon by an exploitative employer(s), owing to pervasive corruption in every fabric and facets of all the institutions in Nigeria.

4.3.6 Judiciary

The judiciary is the third arm of government and the last hope of the common man.⁹⁵ As the third arm of government,⁹⁶ the Judiciary is saddled with the organisation, powers and workings of the courts. It is the institutional framework for attaining justice.⁹⁷ Nigeria since independence has played a commendable role in the promotion of the rule of law by interpreting and applying the law in order to resolve conflicts between individuals, groups and the government or its agencies.⁹⁷

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ Babatunde (n 62).

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ Cap 77 Laws of the Federation of Nigeria, 2004

⁹⁵ Babatunde (n 62).

⁹⁶ Ss 4, 5 and 6

⁹⁷ Ss 6(6), (b).

The Judiciary is also saddled with the responsibility of enforcing the fundamental rights of Nigerians, including rights of both permanent and temporary employees' rights alike.

However, ironically, the institution that is saddled with the responsibility of protecting and enforcing the rights of citizens has been one of the problems bedevilling the nation. Contrary to the code of conduct for judicial officers, judicial officers either for pecuniary gain or for some other self-serving reasons, have compromised such that rights of citizens are no longer protected by the same judiciary.

For example, citizens or temporary employees' bid to exercise their rights by ventilating their anger in court is frustrated by judicial officers, where they (judicial officers) either upon an application by a party or suo motu grants unnecessary long adjournments, over a flimsy excuse or reason strikes out a Plaintiff's originating process(es). Although it is conceded that grant or refusal of an *ex parte* application is exercised at the discretion of the court and the superior courts of record have laid down guidelines for the exercise of such discretion⁹⁹ however, it is also a known fact that *ex parte* orders or judgments are given in favour of the highest bidder (usually the companies).

Similarly, sometimes, some members of the National Judicial Commission are either employers or shareholders in some of the erring companies, and so, most often than not, they influence court judgments and order in favour of the company than the poor employees. Most times the companies hire an SAN who either uses his legal expertise to outwit the employees' lawyers who may not be too experienced (while their counterparts the employees because of paucity of funds engage an average lawyer or a lawyer their money can afford) or they use their position as SAN to influence the Bench. Most times members of the Bench are friends, family members, or classmates with these SANs who most often than not sway judgment in their favour. Similarly, during compilation of record of appeal, some of the court registrars get compromised and remove or exclude certain vital documents (evidence) which may be detrimental to the case of the company from the record of appeal. Thus, a suit before a court that is not expeditiously determined is ominously going to defeat the cause of justice but jeopardise the interest of the poor Plaintiff, in this case the temporary employee. Usually, parties or their solicitors predecease the suit owing to the protracted delays and non-expeditiously determination of their matter.

Secondly, where judgment is eventually given in the favour of the Plaintiff, they are sadly met with a rather rigorous processes in execution or enforcement of their judgment. For instance, the judgment will not be enforced except the time within which to appeal has elapsed. Where appeal is finally filed and entered, it takes a very long time after several unnecessary adjournments either at the instance of the Appellant (company) or the non-sitting of court or a long adjournment, sometime with several unnecessary. Where appeal has been determined, a party has the last lifeline to appeal to the Supreme Court. Most times employees predecease the final outcome of their case, thereby not being alive to eat the fruit of their labour/judgment.

4.4 Temporary Employment/Temporary Employees in other Jurisdictions and Lessons for Nigeria

4.4.1 Ghana

In Ghana by virtue of Section 175 of the Ghana Labour Act¹⁰⁰ a 'worker' is defined as 'a person employed under a contract of employment whether on a continuous, part-time or temporary or casual basis.' The implication of this all-encompassing definition is that both permanent and casual employees are placed on the same level of protection in the work place as both enjoy the same rights and protections.¹⁰¹ Furthermore, the Ghana Labour Act defines 'casual workers' as 'those engaged on a work

⁹⁸ J Obi-Okoye, *Development of Judicial Trial in Nigeria* (Ibadan: Africana F.E.P Publishers Limited, 1988) 13.

⁹⁹ *Kotoye v CBN* [1989] 1 NWLR (pt. 98) 419; B Afe, *Injunctions and Enforcement of Orders* (Ibadan: Afe Babalola 2003) 13.

¹⁰¹ 2003

¹⁰¹ B. Atilola, 'Protecting Rights of Casual Workers in Nigeria: Lessons from Ghana' [2012] (8) (2) *NJLIR*, 7.

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.¹⁰² By this definition, the Ghana Labour Act does not contemplate an individual working in Ghana to be employed for a continuous, unbroken period of more than six months under a casual arrangement. This contrasts with the Nigerian experience where an employer can employ a casual employee for a continuous period of ten to twenty years or more without making the relationship permanent.¹⁰³ Furthermore, section 75(1) of the Ghana Labour Act provides that a temporary employee who is employed by the same employer for a continuous period of six months or more shall be deemed to be a permanent worker. Furthermore, special legal protections are provided for casual employees under the Ghana Labour Act, such as right to: be given equal pay for work of equal value for each day worked in the organization;¹⁰⁴ have access to any necessary medical facility made available to workers generally by the employer;¹⁰⁵ be entitled to be paid for overtime work by the employer,¹⁰⁶ and be paid full minimum remuneration for each day on which the worker attends whether or not the weather prevents the worker from carrying on his or her normal work and whether it is possible or not to arrange alternative work for the worker on such day.¹⁰⁷ As regard remuneration, section 76 (1) of the Ghana Labour Act provides that the minimum remuneration of a temporary or casual employee shall be determined as follows: where a temporary or casual employee is required to work on week days only, the minimum monthly remuneration is the amount represented by the worker's daily wage multiplied by twenty-seven;¹⁰⁸ where a temporary or casual employee is required to work every day in the week, the minimum monthly remuneration is the amount represented by three hundred and sixty-five times his daily wage divided by twelve.¹⁰⁹

4.4.2 South Africa

Similarly, in South Africa, by virtue of section 200A of the Labour Relations Act, 2002 a person is deemed to be an employee if one of the following conditions is met, namely where: there is direct control or direction in the manner the person works; there is control or direction in the person's hour of work; the person forms part of the organization; an average of 40 hours per month has been worked for the last three months; the person is economically dependent on the provider of work; the person is provided with tools or equipment or the person only works for one person. Flowing from the wide definition of an employee, it is evident that the definition covers casual and temporary employees as a person who puts in 40 hours of work in a month for a continuous period of three months is presumed by law to be an employer for the purpose of enjoying the protections offered in the Basic Conditions of Employment Act (BCEA). More so, the BCEA also contains similar expanded definition of an employee.¹¹⁰ Thus, all employees in South Africa whether full time or casual employees are entitled to the benevolent provisions of the BCEA which includes inter alia, regulation of working time;¹¹¹ ordinary hours of work;¹¹² overtime;¹¹³ compressed working week;¹¹⁴ average hours of work;¹¹⁵ meal intervals;¹¹⁶ daily and weekly

¹⁰² GLA, s 78.

¹⁰³ P. O. Kalejaiye, 'The Rise of Casual Workers in Nigeria: Who Loses, Who Benefits?' [2014] (8) (1) *African Research Review*, 31

¹⁰⁴ GLA, s 74 (2)(a)

¹⁰⁵ *Ibid*, s 74 (2)(b).

¹⁰⁶ *Ibid*, s74 (2)(c)

¹⁰⁷ *Ibid*, s 74 (2)(d).

¹⁰⁸ *Ibid*, s 76 (1)(a).

¹⁰⁹ *Ibid*, s 74 (1)(b).

¹¹⁰ BCEA, s. 83 (A)

¹¹¹ *Ibid*, s 7.

¹¹² *Ibid*, s 9.

¹¹³ *Ibid*, s 10.

¹¹⁴ *Ibid*, s 11.

¹¹⁵ *Ibid*, s 12.

¹¹⁶ *Ibid*.,

rest period;¹¹⁷ night works;¹¹⁸ public holidays;¹¹⁹ annual leave and payment for leave;¹²⁰ sick leave;¹²¹ and remuneration.¹²²

Flowing from the foregoing, it is conclusive to say, not only the South African Labour Laws recognize casual or temporary employees, they also make copious provisions and protections for the rights of those employees.

¹¹⁷ *Ibid*, s 15.

¹¹⁸ *Ibid*, s 17

¹¹⁹ *Ibid*, s 18.

¹²⁰ *Ibid*, ss 20 and 21.

¹²¹ *Ibid*, s 22.

¹²² *Ibid*, ss 32-34.