Protecting the Right of Non-Standard Workers to Equal Pay for Equal Work in Nigeria

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Abstract
This paper examined the rights of non-standard workers to equal pay for equal work in the oil and gas industry in Nigeria. In particular it looked at a group of non-standard workers known as contract workers and analyses why they are discriminated against by employers. Workers in this form of work arrangement do not get equal pay for equal work of equal value as permanent employees. In Nigeria non-standard work arrangements have been growing steadily in the past 10 years but there is no legislation to regulate it. In the absence of regulation, most employers exploit these workers by not paying them what they pay to the permanent employees even though they perform same tasks and usually have the same skills as their permanent counterparts. The examination of the Nigerian labour law brought to fore the lack of provisions to regulate non-standard work arrangements and protect non-standard workers from exploitation. The paper concluded by advocating that the Nigerian legislature should amend the Labour Act so as to create a legal framework for the provision of equality in the workplace as has been done in other jurisdictions such as Ghana, South Africa, China, United States, Australia and the European Union.

Keywords: Non-standard Workers, Contract Workers, Oil and Gas Industry, Equality, Casualisation.

1 Introduction

The problems associated with non-standard work arrangements (NSWAs) in Nigeria have become a topical issue because they are fast replacing the standard traditional employment system, especially in the private and informal sectors of the economy.[1] The increase in the growth and the spread of non-standard work arrangements also known as casualisation in Nigeria has become an issue of great concern to labour organisations, researchers, employees, and the government. Employment insecurity, low wages, intermittent employment, absence of standard employment benefits, and the denial of the right to form or belong to trade unions are characteristics of casualisation in Nigeria.[2] Employers are increasingly filling positions with contract workers, thus reducing the number of permanent positions in their organisations. Employers are said to have adopted this employment

strategy in order to cut cost, maximise profit, and remain competitive in the global market.[3] Globalisation has helped accelerate the breaking of trade barriers and has also increased employment mobility. As a result, firms are now operating in a more competitive global market, and in order to compete globally they have to manage employment cost and fluctuating product demand. [4] Nigeria as a developing country is not left out of these changes and has to compete in the new interconnected global economy.

It is against this background that this paper examines the rights of non-standard workers to equal pay for equal work in Nigeria. In particular it looks at a group of non-standard workers known as contract workers and analyses why they are discriminated against by employers. Workers in this form of work arrangements do not get equal pay for equal work of equal value as permanent employees.

A comparative legal analysis approach is adopted in this paper, which examines the basic issue of equal pay for equal work in the European Union, United States, Australia, South Africa, China, Ghana and Nigeria. The comparative approach was adopted with the aim of determining whether Nigerian labour law provides a legal framework for the regulation of non-standard work arrangements and the protection of workers in these work arrangements as has been done in other jurisdictions. The reason for choosing these jurisdictions is because they all have similar levels of non-standard work arrangements especially Australia.[5] Moreover, the first three jurisdictions (Australia, United Kingdom and the United States) have the same common law heritage, therefore similar legal systems. Ghana is a neighbouring country to Nigeria and it has a similar socio-economic and political background as well as a common law country as both countries were colonised by Britain until independence in the 1960s. China has penetrated the Nigerian economy through investments and thereby there is a close economic tie between it and Nigeria, hence the use of China as well. For example, trade between China rose from 2 billion USD in 2000 to 18 billion in 2009.[6]

One of the objectives of comparative law is the 'unification of law and the capacity to 'compare and transmit' knowledge'.[7] The search for similarities and variance is the goal of comparative analysis.[8] To proffer solutions to the basic questions asked in this paper, knowledge of existing norms in the various chosen jurisdictions is crucial, as is understanding the differences between them, which will in turn produce the knowledge and possible solutions to the problems associated with non-standard work arrangements in Nigeria. The use of comparative legal analysis is justified as a tool and a guide[9] for providing ideas to

policy makers and the legislature for reforming Nigerian labour law in order to provide a regulatory regime for the protection of non-standard workers from exploitation by employers as is the case currently. This methodology in a globalised inter-dependent world is valuable, and will enrich the Nigerian labour law system by helping in the process of ensuring that the system conforms to international labour standards. In Nigeria non-standard work arrangements have been growing steadily in the past 10 years although there is no legislation to regulate it. Many businesses experience variations in the workload, and maintain full work practice by retaining a core workforce of permanent employees, and having access to a peripheral workforce of general labour through contract workers. Many organisations resort to recruiting agencies to supply them with contract workers in order to save costs on screening, training, wages, terminal benefits etc. In the absence of regulation, most employers exploit these workers by not paying them what they pay to the permanent employees even though they perform same tasks and usually have the same skills as their permanent counterparts. This has been an on-going trend resulting in conflict between contract workers, unions and employers in the industry.

This paper further examines the Nigerian Constitution which provides that there should be right to equal pay for equal work of equal value without discrimination "on account of sex, or any other ground whatsoever" under section 17(3)(e). An examination of the Nigerian Labour Act also brings to fore the fact that non-standard work arrangements are not regulated by it. The paper concludes by advocating the enforcement of the Constitution and recommends that the legislature should amend the Labour Act so as to create a legal framework for the provision of equality in the workplace as have been done in other jurisdictions such as Ghana, South Africa, China and the European Union.

2 Non-Standard Work

There have been various definitions of non-standard work used by scholars, but they all converge on a core phenomenon. Non-standard work is employment which deviates from the traditional standard employment arrangement or relationship, where employment is usually full-time and expected to continue until the normal retirement age, or until either party gives notice of termination. Non-standard work is usually characterized by low or poor pay, lack of benefits enjoyed by standard workers, including pension benefits, denial of the right to organise, and protection offered by labour legislation in Nigeria.[10]

The common characteristic of non-standard jobs is that they differ in terms of hours worked, job security, the payment system, and even location of work from 'traditional' full-time permanent employment, which has been the dominant feature of industrial relations in Nigeria and other countries worldwide for much of the twentieth century.[11] Traditional work arrangements were the basis of the framework within which labour law, collective bargaining and social security systems developed.[12] Belman *et al.* in their research on the nature of non-standard work arrangements concluded that workers in these work arrangements have significantly less access to employee benefit coverage, as well as greater job insecurity.[13] They also receive lower wages than workers in standard employment in the same industry and occupation.[14] For these reasons they are regarded as vulnerable workers.

The trend in employment relationships has been the adoption of non-standard work arrangements in the United States, Europe and other developed countries for over two decades now.[15] However, in Nigeria, the trend crept into the economy in the mid-1990s. It is now widely accepted that Nigerian employers are increasingly moving away from the standard traditional employment relationship, and making more use of casual employment, as well as other forms of non-standard work arrangements, including contracting out and outsourcing.[16]

One of the factors responsible for the rise in non-standard work arrangements has been increasing competition and uncertainty in product markets, which in turn has added to the need for companies to achieve greater flexibility in their operations.[17] This has led many companies to embark on strategies enabling them to concentrate on their 'core activities' by creating, according to Carley, a 'skilled permanent workforce and a 'peripheral' workforce of insecure and readily disposable workers.'[18] Nigeria had its own share of economic recession and financial meltdown in the mid to late 1980s, which led to widespread unemployment in the urban areas.[19] Those who were in employment were no longer sure of their tenure because of reduced job security and fewer prospects of promotion in the same company or firm. The economy could no longer generate enough jobs to provide full-time employment for all workers. Moreover, those workers in the public service, who in the past enjoyed job security and the benefits associated with it, were being laid off. However, as the private sector did not have the capacity to absorb all these workers, there was an increase in unemployment,[20] and, as a result, non-standard work arrangements became the dominant form of employment in the Nigerian private sector,[21] including the oil

and gas industry. Casualisation in the oil and gas industry has been attributed to 'poverty, joblessness and devastated natural resources of the Niger Delta.'[22]

The competitive pressures brought about by globalisation, and its consequent economic instability, have necessitated the need for social protection for workers to shield them from the adverse effect of insecurity brought about by the adoption of non-standard work arrangements by employers. However, some proponents of globalisation disagree with this assertion. Flanagan stated that the opening up of economies and borders through globalisation and liberalised trade improves working conditions, not degrade them as skeptics say. Despite Flanagan's argument, non-standard work arrangement has had an adverse effect on workers' rights in Nigeria, especially in the area of pay and benefits, as well as the right to organise.

3 Some Forms of Non-Standard Work Arrangements

There are different forms of non-standard work arrangements and they are temporary work, part-time work, casual work, contract work, fixed-term work, agency work. They are discussed below. However, in this paper we are concerned more with contract work on a fixed-term basis. These workers are usually supplied by agencies known as labour contractors[23] in Nigeria.

3.1. Fixed-Term Contract

A fixed-term contract is one which expires on a certain predetermined date without the need for notice to be given by either the employee or employer concerned. The worker may be recruited directly by the employer on a temporary basis,[24] distinguishing this form of employment from a temporary work contract, where there is a third party involved.[25] Conversely, a third party can be involved in fixed-term employment, as is the case in the Nigerian oil and gas industry where the workforce supplied by labour contractors is usually for a fixed-term of between 6 months and three years.[26] Examples of fixed-term employment are seasonal, contract and casual work.[27]

In many parts of the developed world, employment legislation has been, and is being, reformed in order to protect non-standard workers, while at the same time ensuring flexibility in hiring for employers, due to pressures from both unions and employees. In the UK, for instance, employees on fixed-term contracts are entitled to the same rights and treatment as permanent employees,[28] such as the right to paid holidays, *pro rata* to the length of their contract.[29] The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulation guarantees

equal treatment of fixed-term employees and permanent employees, and prevents employers from abusing successive fixed-term contract[30] in order to escape obligations inherent in keeping workers on permanent positions.

In Nigeria, on the other hand, fixed-term employment has become the dominant form of employment in many organisations. Although getting adequate and accurate data is near impossible in Nigeria, a 2010 estimate puts the figure at close to 60% of the total workforce in the private sector is comprised of contract workers employed on fixed-term contract[31] ranging between 6 months and 3 years.[32]

It is clear that sometimes employers genuinely need workers for a short duration.[33] However, sometimes fixed-term contracts are abused by employers where the worker is employed on successive fixed-term contracts in order to avoid the obligations imposed by labour law were the position to be made permanent.[34]

3.2. Agency Labour

Agency labour is sometimes referred to as 'labour hire agency' because it involves hiring out or recruiting workers for user firms or clients. The relationship between the agency and the user company is a commercial one in which the agency is paid a fee covering the cost of providing the worker and some profit margin. Thus, the worker is supplied to the client (the user enterprise) at a fee. The agency is responsible for the worker's pay, and for checking his skills and qualifications, obtaining all relevant clearances, and vetting him.[35]

The agency employee works for the user company, usually in its premises, and receives direction on how he performs his work from the user company. However, the employment relationship in this particular work arrangement has been the subject of much debate. Many scholars have viewed it as a triangular or multilateral[36] relationship among the three parties involved, *i.e*. the user company, the agency and the agency worker. The agency is deemed to be the employer of the worker, even though control and direction is maintained by the user company.[37] In Australia, it has been suggested that the agency worker is a joint employee of the user company and the agency.[38]

Many user companies use agency workers to meet short-term needs, but some use them for longer periods. In Nigeria, organisations in the private sector use agency labour in order to cut costs and circumvent labour laws that protect permanent employees.[39] Many employers have argued that they make use of agency labour in

order to concentrate on their core competencies and allow agencies who are specialized in certain services to provide them with workers. For example the core competencies of an oil company is oil exploration and marketing. Therefore they can outsource their security to a security firm specialized in providing security services. Labour agencies, known as labour and service contractors,[40] are used to recruit workers in Nigeria for a user company. Although the employment is usually for a fixed period, it is actually renewable, short-term successive and continuous employment.[41] Thus, many organisations, including companies in the oil and gas industry, have found this form of labour very convenient, and have made it a predominant form of employment.[42] For instance, Shell's annual reports between 1998 and 2001 showed that it directly employed 4,000 permanent workers, while 10,000 workers were employed as non-standard workers.[43] In 2002, the figure rose to 5,000 permanent workers, while the number of casual workers rose to over 12,000.[44] In 2003, the gap between the two categories of workers further widened, with 20,000 casual workers outnumbering 5,000 permanent employees.[45]

In a study carried out by Mordi and Mmieh,[46] they stated that from their interviews of the Shell human resource managers, they estimated that Shell had 4,000 permanent employees, and over 50,000 casual workers recruited through labour and service contractors. These figures suggest that the use of agency workers is a deliberate managerial strategy by Shell to cut costs and escape from the responsibility imposed by labour legislation to protect permanent employees since agency workers are not protected by specific provisions in Nigerian labour law.

3.3. Contract Work

The keen competition in the ever-growing industrialized market economy has led employers to devise various means of remaining competitive, one of which includes the use of contract labour. Providers of goods and services seek cheaper capital and labour in order to keep costs low. Since established labour rules and standards may not be readily compromised, employers continually seek innovative ways to get the job done more cheaply. Contract work through outsourcing has met this need, particularly as advances in technology have also re-defined the way work is done. The use of contract labour forms a large component of the labour force in the oil and gas industry in Nigeria and employers use agencies known as labour/service contractors through outsourcing to employ contract workers. According to some employers in the oil and gas industry, outsourcing is not necessarily adopted to cut costs, but instead to help

them concentrate on their core areas, namely oil exploration and marketing, and to contract out ancillary services (such as, say, catering and security) to labour and service contractors who specialize in such services.[47] This, however, has not always been the case as many activities regarded as core in the industry, for instance oil and gas exploration, is also outsourced to labour and service contractors.[48]

The above are all the various forms of non-standard work arrangements. These forms of work arrangements have led to inequality in the work environment between standard employees (permanent employees) and non-standard employees. The form of inequality that is analysed in this paper is the inequality in pay between these two categories of employees as is shown below.

4 Equality and Non-Discrimination

Equality as explained by Aristotle has been stated to mean 'things that are alike should be treated alike.[49] This principle is enunciated in the equal pay for equal work maxim without discrimination based on sex, race, religion etc.[50] However, in Nigeria there is discrimination in terms of pay between permanent employees and contract employees even though the Constitution prohibits this.[51] However, this provision in the Constitution is non-justiciable, hence the impunity shown by employers. The discrimination is not based on sex but on employment status. There is a provision however in the Constitution that is justiciable and that is the right to freedom from discrimination under section 42. Therefore a non-standard worker who has been discriminated against on the issue of pay etc. can use this section as a basis to file a course of action in court against his or her employer. Below we shall be looking at equality in terms of pay between permanent employees and non-standard employees in different jurisdictions including Nigeria.

4.1. Equality in Nigeria

(a) Equality and the Constitution of the Federal Republic of Nigeria

Under the Nigerian Constitution, the principle of equal pay for equal work without discrimination 'on account of sex, or any other ground whatsoever' is guaranteed by section 17(3)(e).[52] The Constitution seeks to ensure that citizens secure work under good working conditions[53] with regard to the protection of health and safety,[54] and equality in pay without discrimination,[55] and protection against exploitation.[56] The reality in practice, however, is that although there is equal pay for equal work for permanent employees, there is no such thing for those employees engaged in non-standard work, such as contract and casual

workers. Thus, there is discrimination with respect to pay in Nigeria with regard to job status, in that a contract worker may earn less than a permanent employee even if they possess the same skills, work same hours, and do the same work of equal value, even though there is no law that backs this practice. It is a practice which has been backed up by industry standards and practice, which has become a custom.

In conclusion, it is submitted that the policy and practice of discrimination in pay between permanent and contract employees in Nigeria is unconstitutional since the Constitution guarantees equal pay for equal work in Section 17(1)[57] and (3)(e).[58] However the problem here is that this provision of the Constitution is under the non-justiciable section. Therefore the concerned workers cannot go to court to enforce their rights to equal pay for equal work of equal value.

It therefore appears that workers engaged in non-standard work are being discriminated against solely on the basis of their employment status, and the government has to intervene through legislation to ensure that this unfair labour practice stops. In order to address this problem, chapter 2 of the Constitution have to be made justiciable through an amendment such that concerned workers can go to court to enforce their right to equal pay for equal work. An analysis of the South African Constitution and the Ghanaian Constitution have brought to fore that the provisions of equality in these two Constitutions can be enforced in the court of law.

(b) The Nigerian Labour Act and Equality

The Nigerian Labour Act 1974 in section 91(1) provides a general definition of a worker[59] and does not have a specific provision that defines non-standard workers. Therefore there is no legal framework for the regulation of non-standard work and the protection of non-standard workers. Hence their exploitation by employers. This could be due to the fact that the Act has not been reviewed since 1974 when it was enacted. However it can be argued that the definition of worker provided by the Act[60] can be extended to non-standard workers because they can be regarded as workers.

Scholars like Orifowomo[61] argued that the definition in Section 91(1) of the Labour Act,[62] although not coterminous with 'employee', is comprehensive enough to accommodate every type of work relationship with an employer. The basis of Orifowomo's argument is that, since the contract of employment is a generic term descriptive of all the possible work arrangements under which the

employer could engage the services of a worker, this consequently implies that it includes both standard and non-standard employees. He concludes that 'any or all of such engagements for work would have been founded on contract.'[63]

However, although Orifowomo's argument that the contract of employment covers all forms of work arrangement is plausible, it would have been expedient for Nigerian legislators to have considered giving more specific legal definitions of the different forms of work arrangements in order to categorise the various employment statuses in Nigeria. For instance, Nigerian law does not define casual, contract, and temporary employees as is done in some other jurisdictions, like Ghana.[64] As a result, employers have seized on this lacuna, making their own policies as they deem fit, which explains the disparity in practice from one company to another and from one industry to the other.

The reality though is that there is no specific reference or definition pertaining to non-standard workers in the Act. Thus no legal framework exists for the protection and regulation of this category of workers, unlike other jurisdictions discussed in this paper. The consequence of this is that these workers are denied the protective rights accorded to employees with a permanent status, such as the right to equal pay for equal work.

4.2. Equality in the United Kingdom

The EU adopted an important directive concerning fixed-term work, based on negotiated agreements signed by the social partners, in order to stop discrimination against non-standard workers.[65] This EU Directive, which ensures that non-standard workers are not discriminated against and are treated equally with full time permanent employees, is the Fixed-Term Work Directive 1999,[66] which provides minimum requirements relating to fixed-term work. In the UK, prior to the adoption of the Fixed-Term Employees Regulations (FTER) 2002,[67] there was no law protecting fixed-term workers from discrimination.[68] The FTER, which came into effect in October 2002, provides that a fixed-term employee must not be treated less favourably than a permanent employee,[69] unless the treatment can be justified objectively.[70]

This Directive[71] was set up for the purpose of improving the quality of fixed-term work by ensuring the application of the principle of non-discrimination, and to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.[72] However, the protection against abuse of fixed-term work set out in *Clause* 5 of the Directive applies only to

persons who have successive contracts.[73] The Directive also defined the term 'fixed-term worker', covered in the Directive in *Clauses* 2 and 3, to mean 'a person having an employment contract or relationship as defined in law, collective agreements or practice in each Member State;[74] and entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.'[75] The autonomy of EU Member States is brought to bear here as the definition of a fixed-term worker is left to members.

Under UK law, an employee who is employed under successive fixed-term contracts for a period of four years or more will automatically become a permanent employee if their contract is then renewed, unless 'the employment of the employee under a fixed-term contract was not justified on objective grounds.[76] In *R v Secretary of State, ex p Seymour Smith and Perez*[77] it was held that even though a case of adverse impact was made against the actions of the government, the government was able to justify the qualifying period on the grounds that it fell within 'the broad margin of discretion afforded to governments when adopting measures of this type.'

The scope of the FTER is very wide in the sense that it covers employees in both the private sector and public sector, and workers[78] on fixed-term employment are regarded as employees for legal purposes as contained in the Employment Rights Act 1996.[79] In addition, the preamble of the annexed Framework Agreement states that fixed-term workers placed with a temporary work agency at the disposition of the user enterprise are excluded from the provisions of the Directive.[80]Another category of non-standard workers discriminated against in the past in the UK and other EU Member States were temporary agency workers. However, this problem was addressed by Directive 2008/104/EC.[81] The UK Agency Workers Regulation 2010,[82] Regulation 5,[83] which implements Directive 2008 /104/EC, provides that there must be equal rights concerning basic working and employment conditions for agency workers after 12 weeks in continuous employment.[84] The fact that the Agency Workers Regulation 2010 provides that equal treatment between temporary agency workers and permanent employees should take effect after 12 weeks in continuous employment when the Directive 2008/104/EC provides for the first day at work,[85] shows clearly that Member States are autonomous, and given the discretion to implement EU Directives as suits their own socio-economic and political arrangement.[86]

This is a welcome development, and it is submitted that Nigerian policymakers and legislators should take a cue from the EU, and use Directive 2008/104/EC as a guide when drafting a bill to provide legal protection for those persons engaged in non-standard work arrangements. Although the *Guidelines*[87] on contract labour issued by the Nigerian government provide that a fixed-term contract should have duration of 3 years which can only be renewed once, this has not been strictly adhered to by employers in the oil and gas industry. Therefore, legislation such as Directive 2008 /104/EC is required in order to compel employers to stop the current exploitation of contract workers in Nigeria.

4.3. Equality in the United States

In order to eliminate discrimination in the workplace a number of US Federal Statutes prohibit discrimination in employment. Thus, the Equal Pay Act of 1963 provides that employers must pay men and women equal wages for equal work.[88] Furthermore, discrimination in employment on the basis of race, ethnicity, national origin, colour, religion, and sex is prohibited by Title VII of the Civil Rights Act of 1964.[89] Despite the Civil Rights Act, many non-standard workers in the United States are engaged in jobs with low wages and little or no security and fringe benefits. These benefits include *inter alia* coverage for health, pension benefits, and training.[90] This makes the total cost of employing a non-standard worker cheaper than full-time workers to the employer's advantage. Title VII of the Civil Rights Act of 1964 defines an employee as 'an individual employed by an employer'.[91] Non-standard workers who are employed through agencies by user companies can take the advantage of the protection offered by Title VII through the Equal Employment Opportunities Commission.[92] This means they can claim the same protections from discrimination in employment as direct employees by proving to be direct employees of the agency who supplied them to the user company. The discrimination against agency workers by the user company, therefore, could amount to interfering with the relationship between the worker and the agency.[93] The quickest route to do this is the indirect employment route. In other words, the worker will have to prove that the user company exercises enough control over his or her work.[94] This claim will enable the court to hold the user company responsible as the employer for the Title VII protection.[95]

It should be noted that the wording 'any individual' in Title VII[96] instead of 'any employee' is what non-standard workers use as a standing to sue an employer for discrimination, irrespective of whether or not the individual is employed directly by the discriminating user company.[97]

Although the Nigerian Labour Act[98] does not make provisions to establish the equal pay for equal work principle, the Constitution provides that there must be equal pay for equal work without discrimination 'on account of sex, or any other ground whatsoever.[99] However, this provision is non-justiciable, that is it cannot be used in the law courts in Nigeria. Consequently this is an issue that has to be resolved through a legislation to regulate non-standard work and protect the workers in this form of employment.

4.4. Equality in Australia

The Fair Work Act (FWA)[100] 2009 has not done much to improve the precarious nature of casual work in Australia as it does not define 'a casual worker'. However, the National Employment Standards in Part 2-2 of the Act provides, in Section 86, that where a casual worker is employed by a national system employer, he is not entitled to annual leave or paid personal/carer's leave under Section 95 of the Act. Casual workers are also denied the benefit of notice of termination or redundancy pay.[101] The positive aspect of the FWA is that a casual worker who has been employed for at least 12 months on a regular and systematic basis is eligible to request flexible work arrangements.[102] This category of casual worker is also eligible to take unpaid carer's leave, compassionate leave or community service leave, or reasonably seek a day off on a public holiday.[103] The FWA 2009 in Section 294 also sets out an increase by the Australian Industrial Relations Commission (AIRC) in the casual loading set by the Workplace Relations Act 1996 from 20% to 25%, which took effect in July 2010.

4.5. Equality in South Africa

Discrimination in any form is expressly prohibited by the South African Constitution. Section 9 of the Constitution provides for equality before the law, hence offering the right to equal protection and benefit under the law.[104] The Constitution has, therefore, served as the basis for the enactment of statutes like the Employment Equity Act (EEA) 1998, which prohibits unfair discrimination in employment and creates equality in employment. The EEA prohibition of unfair discrimination, which applies to all employees,[105] provides that every employer must 'take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.'[106]

A casual worker, according to the old Basic Conditions of Employment Act (BCEA),[107] is defined as an employee who works for no more than 3 days a week. However, the current BCEA 1997 does not discriminate between different categories of workers, and extends protection to all workers, except those

employees who work for less than 24 hours a month.[108] This, in effect, means that protection is now extended to many casual workers who were previously excluded from the coverage.[109] In addition, the BCEA 1997 applies to all employees and employers.[110] The BCEA 1997 also has a system of enforcement in place, administered by the Inspectorate of the Department of Labour.[111] The Employment Equity Act 1998 also prohibits discrimination in the workplace, and requires employers to ensure the employment of an adequate numbers of blacks, women, and disabled persons.[112] Despite the protections offered by the BCEA 1997, the EEA, and the full protection offered by the Labour Relations Act 1995(LRA),[113] the phenomenon of 'permanent casuals' still persists as they work as casuals for many years without being extended the protection of labour laws.[114]

The interpretation of the LRA in conjunction with the South African Constitution 1996[115] is understood to mean that the protection, promotion, and fulfillment of the labour rights in the Constitution are extended to everyone including non-standard workers,[116] especially those not covered by the LRA's definition of employee.[117] Since the South African Constitution uses the word 'everyone' in Sections 9 and 23(1), it is clear that it refers to all work statuses, including casual and contract work.[118] For example, in the Mondi kraft case,[119] the court held that the right to fair labour practices as enshrined in the Constitution protects bothe the employee and the employer. According to Fourie, these Constitutional rights are guaranteed in wide terms as every person has the right to fair labour practices.[120]
The LRA Bill 2010 amends Section 213(b) of the LRA 1995, defining an 'employee' as 'any person employed by or working for an employer, who receives or is entitled to receive any remuneration, reward or benefit and works under the direction or supervision of an employer.' In order to curb the exploitation of workers, including non-standard workers, the Amendment Bill provides that 'an employee must have recourse against the employer and its client company where there is unfair labour practice.' In addition to preventing employers from employing workers on successive fixed-term contract in order to avoid the obligations imposed by the labour law, the Bill states that 'an employee must be employed permanently, unless the employer can establish a *justification* for employment on a fixed-term.'[121] These various amendments *inter alia* go a long way in ensuring that non-standard workers are protected from exploitation.

4.6. Equality in Ghana

The Constitution of 1992 sets out the basis for the framework of work and labour relations for Ghanaian workers. For instance, the right to equal pay for equal work is set out in Section 24(1) under the section on fundamental rights and freedoms.

This provision states that 'every person has the right to work under satisfactory, safe and healthy conditions, and shall receive *equal pay for equal work* without distinction of any kind.'[122] Since the Constitution uses the phrase 'every person', it is applicable to every person, irrespective of employment status.[123]

The Labour Act 2003, drawing from the Constitution, expressly provides that 'every worker' shall receive equal pay for equal work without distinction of any kind.[124] As noted above, the Act expressly defines a casual worker, and grants him most of the rights and privileges enjoyed by a permanent employee, such as medical care and equal pay for equal work.[125] This further emphasis on equal pay for equal work for the casual worker demonstrates how important the issue of equality for all workers is to Ghana legislators.

4.7. Equality in China

Contract workers are hired for user firms through 'labour dispatch firms', and are engaged under fixed-term contracts for duration of more than two years.[126] The labour dispatch firm remains the employer of the dispatched worker, and shall pay the worker the remuneration due to him on a monthly basis.[127] The user company is bound by law to ensure that the dispatched worker's remuneration and working conditions are subject to relevant standards of the location where the user company is situated.[128] The dispatched worker must be paid overtime, performance bonuses, and benefits relevant to the post, irrespective of employment status, and must earn the same pay as that received by workers of the accepting entity.[129] In order to prevent dubious persons from setting up labour dispatch firms, Article 57 provides that labour dispatch service providers shall be licensed and registered with a capital of no less than 500,000 Yuan.[130] Under such circumstances, the use of temporary employment by employers does not yield any advantage over and above a permanent or regular employment relationship.

However, in comparing the Nigerian Labour Act with the Chinese Labour Contract law it can be deduced that whilst China has created a legal framework to regulate contract labour, Nigeria is yet to do same. The effect of this is the discriminatory treatment between contract and permanent employees.

5 Conclusion

This paper considered the principle of equal pay for equal work in Nigeria between permanent employees and non-standard workers, with a comparative analysis with the European Union, United States, Australia, South Africa, China and Ghana. It is shown that all these jurisdictions have enacted laws to ensure that

non-standard workers earn equal pay for equal work with permanent or standard employees. However, this is not the case in Nigeria as non-standard workers are discriminated against by employers and are not given equal pay for equal work. Since there is no statutory protection for non-standard workers in Nigeria, employers have taken advantage and exploited them, maintaining non-standard work arrangements for their own best interests, but not necessarily for the best interests of their workers.

The main thrust of this paper is to make recommendations based on the analysis of the laws of developed and developing economies, hence the comparative methodology. This will help Nigerian policy makers and legislature create a legal framework, not only to regulate the terms and conditions of employment and safeguard the workplace rights of workers engaged in non-standard work, but also to protect such workers from exploitation, and provide them with decent working conditions.

The contract of employment is the basis of the employment relationship. It is a well-accepted fact that the employer has the upper hand in the employment relationship and the worker is the weaker party. That is why the government has to come to the aid of the employee through legislation in order to protect him/her from exploitation and unfair labour practices. This it can do through the provision of a legal framework for the regulation of non-standard work arrangements in Nigeria. There should be definitions of all work arrangements including their rights and obligations in the employment relationship.

The National Industrial Court (NIC) can also help in ensuring through its judgments that non-standard employees are protected from unfair labour practices of the employer. The NIC under section 7 (1) has exclusive jurisdiction in civil causes and matters. In recent times it has been involved in judicial activism using international best practices to arrive at its judgements. Such judgements include the duty of the employer to give reasons for termination of employment in line with international best practices as was shown in the case of *PENGASSAN v Schlumberger Anadril Nigeria Limited* (2008) 11 NLLR (Pt. 29) 164 and *Aloysius v Diamond Bank Plc.* (2015) 58 NNLR (Pt. 199).

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113 See further below.

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118 Section 9 of the South African Constitution 1996 provides that 'everyone is equal before the law and has the right to equal protection and benefit of the law.'

Section 23(1) of the Constitution also provides that everyone has the right to fair labour practices'.

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[122] Emphasis added.

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