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Collective Bargaining Trends in Nigeria – Living up to the International Labour Organisation (ILO) Standards?

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ABSTRACT

Collective bargaining is one of the most observed and least regulated phenomena in labour and industrial relations. Labour laws touching on industrial relations and collective bargaining in Nigeria are devoid of codification and found scattered across our statute books. A call for a focus on collective bargaining is no doubt apposite and topical reflecting the worldwide thrust towards fundamental freedoms and trade unionisation. The ubiquity of collective bargaining practices has made international organisations, like the ILO to become "negotiation infatuated" by giving standard prescriptions and insisting that "voluntarism" is the key framework for the viability of collective bargaining. Nonetheless, after five decades of Nigeria's membership with the ILO and ratification of its human rights instrument, how much have its industrial relations and collective labour policies improved? Nigerian workers continue to wallow in the shadow of their organisational rights, and indeed the spatial culture of interventionism and compulsion in Nigeria's regulatory landscape. This study negates the perspectives that prioritize administrative intrusion at the expense of commitment to voluntarism. The study engages in a comparative critique of Nigeria's collective bargaining framework vis-a-vis the benchmark labour standards of the ILO. Additionally, the study considered collective bargaining in a comparative approach with the United Kingdom and South Africa jurisdictions focusing on the extent of legislative recognition of the duty to bargain and the enforcement of the collective agreement as a finished product of the bargaining process. Part of the findings was that whereas there is neither a statutory obligation to bargain nor are collective agreements readily

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enforceable in Nigeria, in other jurisdictions the right bargain is accorded statutory flavour, and collective agreements in so far as the parties to it intend that the agreement should bind them, it is enforceable. Beyond this, the study under the themes of "legal frameworks" and "governing principles" of the right to organise, reveals the inherent challenges of collective bargaining in Nigeria. This study in panoramically reflecting on the standard prescriptions of the ILO and key collective bargaining indicators of other jurisdictions, suggests policy reform as a panacea to bridge the lacuna and pace up the lag behind international labour standards.

Keywords: collective bargaining; collective agreement; Nigeria; International Labour Organisations (ILO); United Kingdom; South Africa

I. INTRODUCTION

Collective bargaining is a process of negotiation and conclusion of collective agreements on terms and conditions of employment between employers and employees.[1] It is an important mechanism for attaining a cordial relationship between workers and their employers because it provides an effective forum for the settlement of employment issues.[2] In broad terms, Davey has defined collective bargaining as a constitutional relationship between an employer entity (government or private) and labour organisation (union or association) representing exclusively, a defined group or employees of said employer (appropriate bargaining unit) concerned with the negotiation, administration, interpretation and enforcement of written agreement covering joint understanding about wages or salaries, rate of pay, hours of work and other conditions of employment.[3]

In terms of the International Labour Organisations Law (ILO Law),[4] collective bargaining is explained as extending to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other hand, for determining working conditions and terms of employment, and regulating relations between employers and workers, and regulating relations between employers or their organisations and a workers' organisation or workers' organisations.[5] Collective bargaining thus involves a situation where representatives of organised employees

1 OVC Okene, 'The Challenges of Collective Bargaining in Nigeria: Trade Unionism at the Cross-Roads' (2010) 4 Labour Law Review 61.
2 ibid.
3 Harold W Davey, *Contemporary Collective Bargaining* (3rd edn, Prentice Hall Inc 1972) 64.
4 The expression "ILO Law" is used here as a generic term for its Convention.
5 Collective Bargaining Convention (No 154) 1981, art 2.

meet with the employer or its representatives in an atmosphere of mutual cooperation and respect, to deliberate and reach agreement on issues affecting both parties.[6]

The International Labour Organisation (ILO), as the pre-eminent body on international labour standards, has by its Conventions and Recommendations provided the legal framework to guide Member States to enact domestic laws and provide mechanisms to facilitate the practice of collective bargaining.[7] Nigeria is a member of the ILO[8] and she has ratified both the ILO Freedom of Association and Protection of the Right to Organise Convention (No 87) 1948, and the Right to Organise and Collective Bargaining Convention (No 98) 1949.[9]

Profound as the above may seem, in derogation of these core labour standards, Nigerian workers continue to lack these basic rights. The standard principles that underlay the practice of collective bargaining have been applied differently. In Nigeria, neither the Constitution[10] nor the Labour Act[11] is characterised with the recognition of a statutory duty to bargain.[12] The legal draftsmen have opted for a paradigm which allows the social partners through the exercise of power, to resolve their own arrangements. The power play is given legal impetus by the provisions on condition of employment[13] vis-à-vis the protected right to freedom of association[14] and the recognition of trade unions.[15] Likewise, it has been expressed that no Nigerian legislation clearly defined the term "collective bargaining".[16] The Trade Disputes Act[17] and the National Industrial Court Act[18] merely defined collective agreement. It needs be added as the correct position, that although not elaborate, the Nigerian Labour Act defines collective bargaining as "the process of arriving at or attempting to arrive at, a collective

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6 Robinson Olulu and Sylvester Udeorah, 'The Principle of Collective Bargaining in Nigeria and the International Labour Organisation (ILO) Standards' (2018) 3 International Journal of Research and Innovation in Social Science 63.

7 Okene, 'The Challenges of Collective Bargaining in Nigeria' (n 1) 62.

8 'Country Profile' (*International Labour Organisations Normlex,* 20 October 2021) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11003:0::NO:::#M> accessed 20 October 2021.

9 Both conventions were ratified on 17 October 1960. See 'Ratifications for Nigeria' (*International Labour Organisations Normlex,* 20 October 2021) <https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103259> accessed October 2021.

10 Constitution of the Federal Republic of Nigeria 1999.

11 Cap L1 LFN 2004.

12 In South Africa, which is close to Nigeria in more ways than one, section 23(5) of its National Constitution (No. 108 of 1996) confers the right to collective bargaining. It provides expressly that 'Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36 (1)'.

13 Labour Act, s 9 (6).

14 Constitution of the Federal Republic of Nigeria 1999, s 40.

15 Section 25 of the Trade Unions Act, Cap T14, LFN 2004. See *Mix and Bake Flour Mill Industries Ltd v National Union of Food, Beverage and Tobacco Employees* [1978-2006] DJNIC 277.

16 Richard Idubor, *Employment and Trade Disputes Law in Nigeria* (Sylva Publishers Ltd 1999) 40.

17 CapT8 LFN, 2004.

18 National Industrial Court Act 2006.

agreement".[19] Against this background, the objective of this paper is to set out the ILO's principles of collective bargaining as they emerge from the various legislative frameworks adopted by the Organisation and the comments made by its supervisory bodies — notably the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA) vis-a-vis its empirical application in Nigeria, and its implications for Nigerian workers.

Consequently, Part I defines the "collective bargaining" concept and introduces the central theme of the paper. Part II sets out the legal frameworks for collective bargaining in the context of ILO standards. This part via a comparative analysis examines the issues relating to parties to collective bargaining; the recognition of workers' organisations; employees and subject matters covered by collective bargaining; and the choice of bargaining level. Part III examines the governing principles of ILO standards in terms of the principles of free and voluntary negotiation, good faith and the enforcement of collective bargaining agreements. Part IV analyses collective bargaining in a comparative approach with other jurisdictions. Part V provides conclusion to the study and recommends amongst others, the need for a legal reform in Nigeria in a bid to pace up the lag behind international standards.

II. The Right to Collective Bargaining And The ILO Standard Legal Frameworks

The ILO is the supreme authority on international labour standards. The ILO provides the major human rights instrument that guarantees and advances organisational rights[20] and has carried out an enormous amount of standard-setting work during the 80 years of its existence as it has sought to promote social justice, and one of its chief tasks has been to advance collective bargaining throughout the world.[21] This task was already laid down in the Declaration of Philadelphia, 1944, part of the ILO Constitution, which stated "the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve...the effective recognition of the right of collective bargaining".[22]

Three major international instruments have been adopted by members of the ILO with the aim of promoting collective bargaining amongst member states. These are the following:

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19 Labour Act, s 91.

20 Okene, 'The Challenges of Collective Bargaining in Nigeria' (n 1) 64.

21 Nicholas Valticos, 'The ILO: A Retrospective and Future View' (1996) 135 International Labour Review 473.

22 ILO Constitution of the International Labour Organisation and Standing Orders of the International Labour Conference 1998.

(a) Freedom of Association and Protection of the Right to Organise Convention (No 87)[23] (b) The Right to Organise and Collective Bargaining Convention (No 98)[24] and (c) Collective Bargaining Convention (No 154).[25]

In 1948 the ILO adopted Convention No 87 on Freedom of Association and Protection of the Right to Organise. This Convention established the right of all workers to form and join organisations of their own choosing, and set out guarantees for workers' organisations to function independently of government control.[26] These organisations shall also have the right to establish and join federations and confederations and affiliate with international organisations of workers.[27] There are also guarantees ensuring the right of workers' organisations to function freely.[28] Furthermore, Member States are under an obligation to take all necessary and appropriate measures to ensure that workers may exercise freely the right to organise; and the law of the land shall not be such to impair nor shall it be applied to impair the guarantees provided in the Convention.[29] The Convention further clarifies that national legislation shall determine the extent to which this Convention shall apply to the armed forces and the police.[30] Convention No 87 has been described as "the most comprehensive international instrument in this area of human rights and has become a pivotal reference point within the broad area of trade union law and practice".[31]

Furthermore, ILO Convention No 98 (1949) on the Right to Organise and Collective Bargaining goes on to protect, workers against acts of anti-union discrimination in respect of their employment.[32] The workers' organisations are also protected against interference by other organisations and by employers in their establishment, function and administration.[33] Additionally, the Convention provides for the obligation to establish machinery appropriate to national conditions, where necessary to ensure respect for the right to organise and encourage the full development and utilisation of the machinery for collective bargaining.[34] Similar to

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23 Freedom of Association and Protection of the Right to Organise Convention (adopted 9 July 1948, entered into force 4 July 1950) C087.
24 The Right to Organise and Collective Bargaining Convention (adopted 1 July 1949, entered into force 18 July 1951) C098.
25 Collective Bargaining Convention (adopted 3 June 1981, entered into force 11 August 1983) C154.
26 Convention No 87 (n 23), art 3.
27 ibid art 5.
28 ibid art 2.
29 ibid arts 8 and 11.
30 ibid art 9.
31 Von G Potosbsky, 'Freedom of Association: The Impact of convention 87 and ILO Action' (1998) 137 International Labour Review 1.
32 Convention No 98 (n 24), art 1.
33 ibid art 2.
34 ibid arts 3 and 4.

Convention No 87, the application of Convention No 98 to the armed forces and the police depends on national legislation.[35] Convention No 98 also does not deal with the position of public servants engaged in the administration of the State.[36] These two Conventions were followed in 1981 by the Collective Bargaining Convention No. 154 which also promotes free and voluntary collective bargaining.[37]

More recently, in June 1998, the ILO took another step forward by adopting the Declaration on Fundamental Principles and Rights at Work and its Follow-up.[38] This states that

> All Members, even if they have not ratified the [fundamental] Conventions, have an obligation, arising from the very fact of membership in the Organisation, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those [fundamental] conventions.[39]

The fundamental rights referred to in the Declaration include freedom of association and the effective recognition of the right to collective bargaining.[40]

As the world-acknowledged specialist agency on labour matters, the ILO has since its inception been at the forefront of the crusade to protect workers.[41] The ILO realised that workers would remain powerless so long as they stood as individuals in the face of heavily organised capital.[42] In this wise, Fox has opined that "The weakness of the individual worker makes the individual agreement for the sale of his labour power 'asymmetric', an exchange which cannot be gauged by reference to the so-called contract of employment".[43] This perhaps explains why the ILO is mostly concerned with the facilitation of individual workers to group

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35 ibid art 5.

36 ibid art 6.

37 In addition to these Conventions, there are numerous Conventions and Recommendations which promotes collective bargaining between workers and their employers. These include Workers' Representative Convention (adopted 23 June 1971, entered into force 30 June 1971) C135 and Labour Relations (Public Service) Conventions (adopted 27 June 1978, entered into force 25 February 1981) C 151. Others include: Collective Agreement Recommendation (adopted 29 June 1951) R091; Voluntary Conciliation and Arbitration Recommendation (adopted 29 June 1951) R092; Collective Bargaining Recommendation (adopted 19 June 1981) R163.

38 H Kellerson, 'The ILO Declaration of 1998 on Fundamental Principles and Rights: A Challenge for the Future' (1998) 137 Internationalisation Labour Review 223.

39 International Labour Organisations, *Declaration on Fundamental Principles and Rights at Work and its Follow-up* (1st edn, Geneva 1998).

40 Bernard Gernigon and others, 'ILO Principles Concerning Collective Bargaining' (2000) 39 International Labour Law Review 34.

41 Okene, 'The Challenges of Collective Bargaining in Nigeria' (n 1) 68.

42 ibid.

43 Alan Fox, *Beyond Contract: Work, Power and Trust Relations* (Faber and Faber 1974) 191.

together and found a force strong enough to bargain on equal terms with the employer and where necessary undertake industrial action to realise their demands.[44] Fully cognizant of the ILO's action affirming collective bargaining as a fundamental human right, the World Trade Organisation (WTO) in 1996 issued the following Ministerial declaration on core labour rights: "We renew our commitment to the observance of internationally recognised core labour rights. The ILO is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them".[45] Without doubt, the ILO plays a crucial role in guaranteeing workers' rights and establishing a social framework that can ensure social justice throughout the world.[46]

A. PARTIES TO COLLECTIVE BARGAINING AND WORKERS' ORGANISATION RECOGNITION

As a matter of labour practice, what makes the bargaining "collective" is the presence of a trade union(s) that represents the interests of employees as a collective entity.[47] The other party to collective bargaining is usually an employer. It could be a number of employers or an employer's organisation. At times, the government or a Government/State agency/institution could be the employer party as is the case in public service.[48] By the ILO standards, collective bargaining involves a bipartite relationship (between two parties). It does not extend to cover tripartite relations where the government is also a party. This is because the ILO Convention on collective bargaining strives to create a balance between government intervention to encourage collective bargaining (by establishing an enabling framework) and the freedom of the parties to conduct autonomous negotiations.[49]

Specifically, the parties to collective bargaining are; one or more employers; or one or more employers' organisations on the one hand; and one or more workers' organisations on the

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44 As Morris noted, 'In the field of freedom of association the ILO has shown itself well able to appreciate the complexities of collective bargaining as demonstrated, in particular, by the principles it has developed in relation to industrial action'. See Gillian S Morris, 'Freedom of Association and the Interest of the State' in Keith D Ewing and others (eds), *Human Rights and Labour Law: Essays for Paul O'Higgins* (Mansell 1994) 51.

45 Roy J Adams, *The Human right to Bargain Collectively: A Review of Documents supporting the International Consensus* (McMaster University1998).

46 Isabelle Boivin and Alberto Odero, 'The committee of Experts on the Application of Conventions and Recommendations: Progress Achieved in National Labour Legislation' (2006) 145 International Labour Review 207.

47 M-S Vettori, 'Alternative Means to Regulate the Employment Relationship in the Changing World of Work' (DPhil thesis, University of Pretoria 2005).

48 Beverly M Musili, 'Challenges in Implementing and Enforcing Collective Bargaining Agreement' (2018) The Kenya Institute for Public Policy Research and Analysis Discussion Paper 208/2018, 9 <http://repository.kippra.or.ke/handle/123456789/2190> accessed 25 October 2021.

49 Olulu and Udeorah (n 5) 64.

other hand. Proceeding from a similar legislative approach, the Nigerian labour law reiterates this traditional bifurcated relationship in terms of its definition of collective agreement under the Trade Disputes Act and the National Industrial Court Act. For clarity, section 48 of the Trade Disputes Act defines "collective agreement" as

> any agreement in writing for the settlement of disputes and relating to the terms of employment and physical conditions of work concluded between an employer, a group of employers or organisations representing workers, or the duly appointed representative of any body of workers, on the one hand; and one or more of trade unions or organisations representing workers, or the duly appointed representatives of any body of workers, on the other hand.

In a similar vein, section 54 of the National Industrial Court Act defines "collective agreement" as:

> Any agreement in writing regarding working conditions and terms of employment concluded between
> a) an organisation of employers or an organisation representing employers (or an association of such organisation), of the one part, and
> b) an organisation of employees or an organisation representing employees (or an association of such organisation), of the other part.

It follows therefore that collective bargaining should be done between employers' organisations and workers' organisation.[50] In the absence of workers' organisation, negotiations may be done with the workers' representatives. Nevertheless, where this is done "appropriate measures should be taken to ensure that the existence of these representatives is not used to undermine the position of the workers' organisations concerned".[51] The CFA maintained in one case that, 'direct negotiation between the organisation and its employees, by-passing representative organisations where these exist, might in certain cases be detrimental to the principle that negotiation between employers and organisations of workers should be

[50] The expression 'organisation' is used here as a generic term for federation of employers' organisations, individual employers' organisations, federation of trade unions and individual trade unions.

[51] This standard is set out in Paragraph 2 of Recommendation No 91 and is confirmed in Article 5 of Convention No 135. See also Convention No 154, art 3(2).

encouraged and promoted.[52] It was also emphasised by the committee that "direct settlements signed between an employer and a group of non-unionised workers, even when a union exists in the undertaking does not promote collective bargaining as set out in Article 4 of Convention (No. 98)".[53]

At this juncture, an issue which needs to be examined is whether the right of the parties to negotiate is automatic upon the formation of workers' organisation or is subject to a certain level of representativeness. Strictly speaking, the requirement to be a registered organisation is the only condition laid down under the law. This undoubtedly seems to be a truism in the light of section 2 of the Trade Unions Act which prohibits unregistered trade union from functioning. Mere registration is not sufficient to entitle an organisation or a trade union to negotiate collective agreement within the meaning of the Act. The exercise of this privilege appears to be dependent on their recognition by the respective employer(s). It is trite that trade union recognition is germane to the very existence of workers' organisations. Freedom of association would be hollow and of no relevance to workers if employers were entitled to refuse to recognize their organisation for purposes of collective bargaining.[54] Thus union recognition is a sine qua non to collective bargaining.[55] Indeed the CFA has ruled that recognition by an employer of the main unions represented in his undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining.[56] Where there is no union organisation in an industry, the position of the CFA is that the representatives of the unorganised workers duly elected and authorised by the workers will conduct bargaining on their behalf.[57] Under Nigerian labour law, as in the labour laws of other jurisdictions, the most important step in the collective bargaining procedure is for the employer or the employees' association to recognize the trade union as a bargaining agent for the employees within the bargaining unit, in relation to terms and conditions of employment.[58] This is a matter of statutory obligation for employers, provided that a trade union has more than one of its members in the employment of an employer.[59]

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52 International Labour Organisations, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of ILO* (4th edn, Geneva 1996) para 785.

53 ibid para 790.

54 Joseph E Abugu, 'Democratic Trends in Industrial Relations: Progress and Drawbacks' (2012) 18 The Nigerian Journal of Contemporary Law 131.

55 ibid.

56 International Labour Organisations, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of ILO* (5th edn, Geneva 2006) para 953.

57 ibid, paras 785 and 786.

58 OVC Okene, 'The Internationalisation of Nigeria Labour Law: Recent Development in Freedom of Association' (2008) 7 University of Botswana Law Journal 93.

59 Trade Unions Act, s 24. See *Mix and Bake Flour Mill Industries Ltd. v National Union of Food, Beverage and Tobacco Employees (NUFBTE)* [1978-2006] DJNIC 277.

Far reaching as the above may seem, such recognition per se does not confer an automatic right to bargain with individual unions. For the purpose of collective bargaining, all registered trade unions shall constitute an electoral college to elect members who will represent them in negotiations with the employer in collective bargaining.[60] In this wise, it may be argued that this obligation to negotiate collective agreements is reserved for the most representative organisations.[61] This requirement for an "electoral college" raises a number of drawbacks. The Trade Unions Act does not prescribe the modalities for constituting an electoral college. Perhaps it was thought that as democratic institutions, the unions should be able to work this out amongst themselves.[62] Such lapses do provide avenue for unfair employer interventions in the constitution of electoral colleges for collective bargaining. Put more specifically, this lacuna will have the tendency to encourage favouritism as employers will try to influence the criteria for the assessment of representatives, who would be disposed to management during negotiations.[63] The poser here becomes how exactly should the issue of representation be determined? In this respect, it should be recalled, depending on the individual system of collective bargaining, that trade union organisations which participate in collective bargaining may represent only their own members or all the workers in the negotiating unit concerned.[64] In this latter case, where a trade union (or, as appropriate, trade unions) represents the majority of the workers, or a high percentage established by law which does not imply such a majority, in many countries it enjoys the right to be the exclusive bargaining agent on behalf of all the workers in the bargaining unit.[65]

Commenting on the issue of representativeness which the Act fails to prescribe, Abugu[66] and Okene[67] have opined that a better prescription would have been a "majoritarian" or "sufficiently representative" approach whereby the trade union with a majority of workers in the workplace or one which is sufficiently representative of the workers will be recognized to bargain on behalf of the workers. A criteria can be laid out for determining when a union is 'sufficiently representative' of workers, taking into account such factors as the size of the union, experience and contributions amongst other.[68] The principle of representativity ensures that employers do not find themselves in a position where they' are expected to include in

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60 Trade Unions Act, s 24(1).
61 Abugu (n 54) 146.
62 ibid.
63 Okene, 'The Internationalisation of Nigeria Labour Law' (n 58) 103.
64 Gernigon and others (n 40) 34.
65 ibid 38.
66 Abugu (n 54) 146.
67 Okene, 'The Internationalisation of Nigeria Labour Law' (n 58) 104.
68 Abugu (n 54) 146.

negotiations every single trade union which has members, no matter how insignificant the membership.[69] Only those trade unions which could, to a large extent, influence relationship between employer and the body of employees within an agreed bargaining unit are to be allowed at the negotiation table.[70] All benefits accruing from the negotiations with management are enjoyed by all workers in the unit.[71] This is an accepted international law practice and is endorsed by the ILO Freedom of Association Committee. The Committee has in fact opined that the determination of such representation should be based on "objective and pre-established criteria" to avoid opportunity for partiality or abuse.[72] A legislative overhaul is therefore needed in Nigeria to provide an "objective and pre-established criteria" for determining representativity, and until such reform is made, suffice it to say that the issue of workers' organisations recognition is a huge challenge to collective bargaining practice in Nigeria and does not meet with the requirements of international practice.

B. EMPLOYEES COVERED BY COLLECTIVE BARGAINING

Generally, the Right to Organise and Collective Bargaining Convention (No 98) provides that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.[73] It provides that "the extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations",[74] and also states that "this Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way".[75] Under this Convention, only the armed forces, the police and the above category of public servants may therefore be excluded from the right to collective bargaining. With regard to this type of public servants, the Committee of Experts has stated the following:

> The Committee could not allow the exclusion from the terms of the Convention of large categories of workers employed by the State merely on the grounds that they are formally placed on the same footing as public officials engaged in the

69 Okene, 'The Challenges of Collective Bargaining in Nigeria' (n 1) 82.
70 ibid 83.
71 ibid.
72 ibid para 962.
73 Convention No 98 (n 24) art 1.
74 ibid art 5.
75 ibid art 6.

> administration of the State. The distinction must therefore be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, in some countries, civil servants employed in government ministries and other comparable bodies, as well as ancillary staff) who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention.[76]

Proceeding from a similar legislative outlook, in Nigeria, the Trade Unions Act 1973 excluded from membership of trade unions staff recognized as "projection of management"[77] and certain class of public officers. And for the purpose of determining projection of management, section 3(4) of the Act provides that a person whose status, authority, powers, duties and accountability, as reflected in the conditions of service, are such as normally inhere in a person exercising executive authority, may be recognised as projection of management. Thus, staffs such as permanent secretaries, heads and secretaries of commissions, boards, companies and corporations — and, indeed, all staff in public and private establishment whose duties include policy and decision making, cannot be members of trade unions.[78] Within this category also fall all full professors who by their status have the right to become automatic members of Senate which alone takes decision on award of academic degrees and student discipline.[79]

Going forward, section 11(2) of the Trade Unions Act 1973 provides that "it shall not be lawful" for persons in the police, prison, and armed forces as well as those in the customs preventive services "to combine, organise themselves, or to be members of any trade union". So also are employees in the Nigerian Security Printing and Minting Company, staff of the Central Bank and the Nigerian External Telecommunications Limited, and those in any other services of the federal or state government "authorized to bear arms".[80] Additionally, the minister of labour is also empowered to specify "other establishments from time to time" whose

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[76] International Labour Organisation, *General Survey Report on the Freedom of Association and Protection of the Right to Organise Convention 1948 (No 87) and the Right to Organise and Collective Bargaining Convention 1949 (No 98)* (Series B no 4, Geneva 1994) para 200. The Committee on Freedom of Association has made similar statements in the same vein. See ILO, Digest of Decisions and Principles of Freedom of Association Committee 1996 (n 52) paras 793-795 and 798.

[77] Trade Unions Act, s 3(3).

[78] Akintunde Emiola, *Nigerian Labour Law* (Emiola Publishers Limited 2008) 413.

[79] *Akintemise Ors v Onwumechili* [1985] ANLR 85.

[80] Trade Unions Act, s 11(1)(h).

staff may not belong to trade unions.[81] The Act preserves the right of such employees to take part in the setting up of joint consultative committees in the establishment concerned.[82]

Notwithstanding the above, Collective Bargaining Convention (No. 154) made remarkable improvements by including the whole public service (with the exception of the armed forces and the police) in the collective bargaining process.[83] The only condition is that special modalities of application can be fixed by national laws or regulations or national practice.[84] Also, the Labour Relations (Public Service) Convention (No 151) requires states to promote machinery for negotiation or such other methods that will allow representatives of public employees to participate in the determination of the terms and conditions of employment in the public service.[85]

Although as a justification for the exclusion of the 'armed forces' from trade union membership, it may be admitted that the susceptibility of danger of some targeted political and social activities emanating from their formation thereof, may hamper the attainment of the objects sought to be shielded in section 45 of the 1999 Constitution Federal Republic of Nigeria,[86] As regards the exclusion of certain classes of private and public officers, one cannot readily see, save for the perceived conflict of interest, how mere membership of an association whose primary objects must have been considered to be lawful prior to its due registration as a trade union constitute a danger sufficient to warrant derogation from the fundamental right to freedom of association guaranteed under section 40 of the 1999 Constitution. This assertion appears to be a truism to the extent that the registrar of trade unions is by virtue of section 7 (1)(b) and (d) of the Trade Unions Act, vested with the power to cancel any registration where "the principal purposes for which the union is being carried on is a purpose other than that of regulating the terms and conditions of employment of workers". More so, any individual "engaged in acts calculated to disrupt the economy or [...] obstruct the smooth running of any essential service"[87] does so at the risk of a heavy financial penalty or a term of imprisonment or both".[88] These safeguards in terms of discretionary investiture and prescription of penalties

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81 ibid s 11(i).
82 ibid s 11(2).
83 Convention No 154 (n 25), art 1(2).
84 ibid art 1(3).
85 Convention No 151 (n 37), art 7.
86 Section 45 of the 1999 Constitution seeks to save 'any law that is reasonably justifiable in a democratic society (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom of other persons'.
87 See section 1 (1) (a) of the Trade Disputes (Essential Services) Act 1976.
88 ibid s 1 (5).

are sufficient enough to keep extremist unions or organisations in check.[89] Not only is it unfair to seek to deprive a class of the Nigerian citizenry their constitutional right of association – for membership is no more than just that – merely because they are in the service of the state or community.[90]

C. SUBJECT-MATTER OF COLLECTIVE BARGAINING: WHAT IS NEGOTIABLE?

The principle of free collective bargaining also implies that the parties have the right to negotiate collective agreements on all subjects of their choice.[91] In other words, the parties should be able to determine the subject matter and scope of negotiable issues.[92] Conventions No. 98, No. 151 and No. 154 and Recommendation No. 91 focus the content of collective bargaining on terms and conditions of work and employment and on the regulation of the relations between employers and workers and between organisations of employers and of workers.

The concept of working conditions used by the supervisory bodies is not limited to traditional working conditions (working time, overtime, rest periods, wages and so on.), but also covers "certain matters which are normally included in conditions of employment", such as promotions, transfers, dismissal without notice and so on.[93] This trend is in line with the modern tendency in industrialized countries to recognize "managerial" collective bargaining concerning procedures to resolve problems, such as staff reductions, changes in working hours and other matters which go beyond terms of employment in their strict sense.[94] The ILO Committee of Experts indicated that, "it would be contrary to the principles of Convention No. 98 to exclude from collective bargaining certain issues such as those relating to conditions of employment" and "measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the convention".[95]

Nevertheless, although the range of subjects which can be negotiated and their content is very broad, they are not absolute and need to be clearly related to conditions of work and

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89 Similar safeguards exist in other enactments, for example, the president is empowered by proclamation under section 1 (1) of the Trade Disputes (Essential Services) Act to proscribe such recalcitrant trade union. And what is more, the president pursuant to section 366 of the Criminal Code Act 1990 has similar power to proscribe any organisation under the Act, where the activities of such organisation constitute a danger to the security of the state or of its citizens.

90 Emiola (n 78) 415.

91 Okene, 'The Challenges of Collective Bargaining in Nigeria' (n 1) 88.

92 ibid 89.

93 ILO, 'General Survey Report' (n 76) para 250.

94 Gernigon and others (n 40) 39.

95 ILO, 'General Survey Report' (n 76) para 265.

employment or, in other words, matters which are primarily or essentially questions relating to conditions of employment.[96] Generally, the management representatives seek to define and limit the scope of collective bargaining in concrete terms".[97] They seek to establish a distinguishing line between management functions or management rights, otherwise conceptualized as "prerogatives", not subject to contractual rule-making and matters properly amenable to joint decision making.[98] The difficulty, however, lies in the general terms of these specific managerial issues which tend to overlap with the negotiable issues because they are ultimately two perspectives of a single set of interests which co-exist in the context of unity and variation. The common practice is to state as follows:

> The union undertakes not to interfere with the normal functions of management which give member companies of the Association the sole right and responsibility to conduct their business in such a manner as they consider fit and to engage, promote, demote, transfer, and terminate the service of any employee.[99]

The question must then be how do we balance the overlap against the agitations of union representatives that collective bargaining must remain a fluid and dynamic process? It is suggested that the determining factor be based on a 'proximity principle' in the sense that where these policies have important consequences on conditions of employment, that they should be the subject of collective bargaining. For analytical purposes, we can examine the nature of negotiable issues dealt with in collective bargaining under the following four[100] broad categories viz:

1. Wage Related issues – These include issues like how basic wage rates are determined, cost of living adjustments, wage differentials, overtime rates, wage adjustments and so on.
2. Supplementary Economic Benefits – These include issues as pension plans, paid vacations, paid holidays, health insurance plans, dismissal plans, supplementary unemployment benefits and so on.

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96 ILO, 'Digest of Decisions and Principles' 1996 (n 52) para 812.
97 Sylvia O Ebhoman, 'A Critical Examination of Collective Bargaining and its Role in Labour Relations in Nigeria' (LLM thesis Ahmadu Bello University 2016) 32.
98 ibid.
99 Tayo Fashoyin, *Industrial Relations in Nigeria* (Longman Nigeria Ltd 1992).
100 International Training Center of ILO: Bureau for Workers' Activities (Actrav) Course, 'Issues of Collective Bargaining' chp 3 <actrav-courses.itcilo.org> accessed 20 October 2021.

3. Institutional Issues – These consists of rights and duties of employers, employees and unions, including union security, check off procedures, hour of work, quality of work-life program and so on.
4. Administrative Issues – These include issues such as seniority, employee discipline and discharge procedure, employee health and safety, technological changes, work rules, job security and training, attendance, leave and so on.

In Nigeria, the position is that the scope of negotiable issues in collective bargaining is subject to certain restrictions. In the public sector, negotiable issues are spelt out in the National Public Service Negotiating Council (NPSNC). Many of the substantive issues which are within the scope of the NPSNC are made either by legislative or executive acts or through political commission periodically set up by government as employer of labour.[101] The issues as Agomo notes are threefold: namely, negotiation on all matters affecting the conditions of service of all civil servants; advising government when necessary on how to harness ideas and experience of civil servants for improved productivity; reviewing the general conditions of civil servants.[102] In practice, however, as Fashoyin has pointed out, many items of conditions of service such as salary, leave entitlements, minimum wage, pensions and car loan are excluded from negotiation.[103] On the other hand, negotiable issues in the private sector are contained in the procedural agreement which contains guidelines on the standards, methods and levels to be followed by the negotiating parties.[104] It contains the subjects for negotiation at each bargaining level and also clarifies issues of management prerogatives on which negotiation is not allowed.[105] Procedural agreements accord recognition to the unions and usually affirm principle of co-operation and peaceful relations between trade unions and the employers.[106] Additionally, the bargaining unit for the different categories of employment as well as the machinery for negotiations are included in the procedural agreement.[107] The custom of explicitly laying down in the procedural agreement definite terms and conditions which are subject to negotiation, to the exclusion of other matters for discussion and consultation, does not align with the standard

[101] Olulu and Udeorah (n 5) 66.
[102] Chioma K Agomo, *Nigeria in International Encyclopaedia of Comparative Labour Law and Industrial Relations* (Kluwer Law International 2000) 249.
[103] Fashoyin (n 99) 165.
[104] Okene,'The Challenges to Collective Bargaining in Nigeria' (n 1) 86.
[105] Olulu and Udeorah (n 5) 66.
[106] Agomo (n 102) 249.
[107] ibid.

prescriptions of ILO, as it permits management to claim prerogative power over certain matters relating to the promotion and discipline of employees.[108]

D. THE LEVELS OF COLLECTIVE BARGAINING

Collective bargaining takes place at several organisational levels. There is no generally accepted best level for collective bargaining.[109] The appropriate level or levels for bargaining depend on the strength, interests, objectives and priorities of the parties concerned, as well as the structure of the trade union movement, employers' organisation and traditional patterns of industrial relations.[110] The three basic levels at which collective bargaining are usually conducted are the enterprise level, the industry level and the plant or individual workplace level.[111] At the enterprise level, collective bargaining involves an employer on the one hand and the trade union that caters for the interest of his employees on the other. Collective bargaining at the industry level normally takes place between an industrial union and an industry-based employers association. The lowest level at which collective bargaining may take place is at the workplace itself.[112] In terms of ILO Law, the level at which collective bargaining between the employer and her/his employees or their respective representatives is to be effected is generally a matter to be decided upon by the parties themselves. The ILO Collective Bargaining Recommendation No 163 provides that:

> Measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch activity, the industry, or the regional or national levels.[113]

In Nigeria, collective bargaining in the private sector takes place at four levels such as: (1) the industry level, which is between an industrial union and an industrial employers' association: (2) the company level, which is between an industrial union and individual

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[108] Issues bordering on promotion, discipline and transfer amongst others have traditionally been regulated by the Civil Service Rules, and this undoubtedly whittles down the voluntariness of collective bargaining in the public sector.

[109] Okene, 'The Challenges of Collective Bargaining in Nigeria' (n 1) 86.

[110] Greg Bamber, *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* (Kluwer Law International 1998) 414.

[111] Okene, 'The Challenges of Collective Bargaining in Nigeria' (n 1) 86.

[112] ibid.

[113] Recommendation No 163 (n 37), para 4 (1).

employers: (3) the branch or enterprise level, which is usually between the branch of the industrial union and the company management, and (4) the plant level, between the plant unit of the branch union and the plant management.[114] In the public sector, the framework for collective bargaining is through the NPSNC. As Agomo pointed out, the NPSNC envisages collective bargaining in the public Sector to take place at three levels such as the Federal level, the State level and the Ministerial level. Bargaining at the Federal level is further split into three categories, those representing senior staff on grade levels 10-14, junior staff on grade levels 01-06, and technical staff.[115] In practice, successive governments have had to make use of *ad-hoc* commissions[116] in the determination of wages and conditions of service of public sector workers.[117]

Although the parties to collective bargaining in the private sector may voluntarily select the level at which to bargain, in the public sector the Nigerian government unilaterally decides for her workers, as they are subjected to decisions by the *ad-hoc* commissions. This means, in effect, that there is no level of bargaining to choose from[118] which is contrary to the CFA ruling that "the determination of bargaining level is essentially a matter to be left to the discretion of the parties and, consequently, the level of negotiation should not be imposed by law, by decision of the administrative authority."[119] In this wise also, the neutrality and independence of the NPSNC remains doubtful because many of the substantive issues which are within the domain of the NPSNC are decreed either by executive or legislative acts or via political body like commission periodically created by government as employer of labour. The role of NPSNC Nigeria is totally irrelevant because of the influence and role of other government agencies.[120] These developments have undermined the relevance of collective bargaining in the public sector.[121]

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114 Fashoyin (n 99) 119.

115 Agomo (n 102) 249.

116 Some of these commissions include: the Morgan Commission of 1963-64, the Wages and Salaries Review Commission (Adebo Commission) of 1970-71, Public Service Review Commission (Udoji Commission) of 1972-74, Pension Reform Commission of 2004, Wages and Salaries Review Commission (Shonekan Commission) of 2005-2006, Onosode Commission (for parastatals) of 1981, Adamolekun Commission (for Polytechnics) of 1981, Ukandi Damachi Commission of 1990, Minimum Wage Commission of 1999, Ufot Ekaette Presidential Committee on Monetization of Fringe Benefits in the Public Service of 2002, Onosode Commission (for universities) of 2009.

117 Agomo (n 102) 249.

118 Okene, 'The Challenges of Collective Bargaining in Nigeria' (n 1) 88.

119 ILO, 'Digest of Decisions and Principles' 2006 (n 56) para 988.

120 Ugbomhe Ugbomhe and NG Osagie, 'Collective Bargaining in Nigeria: Issues, Challenges and Hopes' (2019) 7 Journal of Human Resources Management and Labour Studies 20.

121 FC Anyim and others, 'Collective Bargaining Dynamics in the Nigerian Public and Private Sectors' (2011) 1 Australian Journal of Business and Management Research 63.

It is submitted that Nigeria is in breach of ILO standards for failing to allow workers in the public sector to bargain at an appropriate level.[122] This is despite the provision of three levels of bargaining in the public sector through the NPSNC as discussed above. In India, for example, the position is remarkably different. Collective bargaining takes place at various levels. The choice of level appears to vary according to the category of workers. In the private sector, collective bargaining takes place at plant level between the management of the plant and an enterprise-based union. In public sector enterprises, bargaining takes place between centralised trade union federations and the State (as employer) at industry and, or national level. Central and State government employees in the service sector bargain at national and or regional level through affiliated unions.[123] There is the need therefore to change the position in Nigeria so that both private and public sector workers can freely choose the level at which they wish to bargain. This will bring Nigerian law into conformity with international labour standards.[124]

III. Governing Principles of ILO standards

A. The principle of free and voluntary negotiation

The framework within which collective bargaining must take place if it is to be viable and effective is based on the principle of the independence and autonomy of the parties and the free and voluntary nature of the negotiations; it requires the minimum possible level of interference by the public authorities in bipartite negotiations and gives primacy to employers and their organisations and workers' organisations as the parties to the bargaining.[125] This principle is embodied in the Right to Organise and Collective Bargaining Convention No 98, which was adopted in 1949, and which since has achieved near-universal acceptance: as of September 2021 the number of member States having ratified it stood at 168,[126] which demonstrates the force of the principles involved in the majority of countries. Convention No

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122 Okene, 'The Challenges of Collective Bargaining in Nigeria' (n 1) 88.

123 Debashish Battercherjee, 'Organised Labour and Economic Liberalisation in India: Past, Present and Future' (1999) International Institute for Labour Studies Research Paper 105/1999, 1-62 <https://www.google.com/url?sa=t&source=web&rct=j&url=https://library.fes.de/pdf-files/gurn/00166.pdf&ved=2ahUKEwiC1Naz6eXzAhXeA2MBHTZSCEsQFnoECAQQAQ&usg=AOvVaw1HK5FXvVy0HQOxtlHF-NWs> accessed 25 October 2021.

124 Okene, 'The Challenges of Collective Bargaining in Nigeria' (n 1) 88.

125 Gernigon and others (n 40) 34.

126 'Ratifications of Right to Organise and Collective Bargaining Convention No 98' (*International Labour Organisations Normlex,* 21 September 2021) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::p11300_instrument_id:312243> accessed 21 September 2021.

98 does not contain a definition of collective agreements, but outlines their fundamental aspects in Article 4:

> Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

It is pertinent to emphasise that, for workers' organisations to be able to fulfil their purpose of "furthering and defending the interests of workers" through collective bargaining, they have to be independent[127] and must be able to organise their activities without any interference by the public authorities which would restrict this right or impede the lawful exercise thereof.[128] Moreover, they must not be "under the control of employers or employers' organisations".[129] Under "voluntarism", employers and unions have reasonable latitude to determine their own affairs within a framework established by the state.[130] As Fashoyin has pointed out, "this doctrine emphasises the freedom of labour and management to determine as much as possible the conditions under which workers will work, as well as other issues of labour relations".[131] It is often based on the theory that those closest to industry are in the best position to solve any problems arising from labour and management relations: in short it is a theory of industrial self-governance.[132] Furthermore, the principle of voluntary collective bargaining was pursued in the belief that it was better suited for the sustenance of industrial peace and harmony than the interventionist approach.[133]

Similarly, the principle of voluntarism in negotiation transcends to include machinery which supports bargaining such as the provision of information, consultation, mediation, arbitration. The CFA has established that the bodies appointed for the settlement of disputes between the parties to collective bargaining should be independent, and recourse to these bodies should be on a voluntary basis.[134] The supervisory bodies admit conciliation and mediation

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127 See Convention No 87 (n 23), art 3 (1).
128 ibid art 3(2).
129 See Convention No 98 (n 24), art 2(1) and (2).
130 AS Egbo, 'Contemporary Issues in Public Sector Collective Bargaining' in Tayo Fashoyin (eds), *Collective Bargaining in the Public Sector in Nigeria* (MacMillan1987) 24.
131 Fashoyin (n 96) 97.
132 ibid.
133 ibid.
134 ILO, 'Digest of Decisions and Principles' 1996 (n 52) paras 858–859.

which are voluntary or imposed by law, if they are within reasonable time limits[135] — as well as voluntary arbitration — in accordance with the provisions of Recommendation No 92 which indicates that "[p]rovision should be made to enable the procedure to be set in motion, either on the initiative of any of the parties to the dispute or ex officio by the voluntary conciliation authority".[136]

Drawing from the above, it follows that the obligation to promote collective bargaining excludes recourse to measures of compulsion. During the preparatory work for Convention No 154, the Committee on Collective Bargaining agreed upon an interpretation of the term "promotion" (of collective bargaining) in the sense that it "should not be capable of being interpreted in a manner suggesting an obligation for the State to intervene to impose collective bargaining", thereby allaying the fear expressed by the employer members that the text of the Convention could imply the obligation for the State to take compulsory measures.[137] The Committee on Freedom of Association, following this line of reasoning, has indicated that:

> Collective bargaining, if it is to be effective, must assume a voluntary quality and not entail recourse to measures of compulsion which would alter the voluntary nature of such bargaining.[138]

As a former British colonial territory, Nigeria's industrial relations system was fashioned in line with the British industrial relations system whose "main feature is the voluntary machinery which has grown over a wide area of employment for industry-wide collective bargaining between employers' associations and trade unions over terms and conditions of employment."[139] The policy was as an overt expression of the government's perception that it was better to leave both employers and employees free to determine and regulate their relations as best as they could.[140] Okotie -Eboh, Minister of Labour, stated this policy thus:

> We have followed in Nigeria the voluntary principles which are so important an element in industrial relations in the United Kingdom.... Compulsory methods

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135 ibid paras 502–504.
136 Recommendation No 92 (n 37), Para 3.
137 International Labour Organisation, *Record of Proceedings* (1981) ILC67, 22.
138 ILO, 'Digest of Decisions and Principles' 1996 (n 52) para 845.
139 See Royal Commission: 'Written Evidence of the Ministry of Labour' cited in H. Clegg, *The System of Industrial Relations in Great Britain* (Basil Blackwell 1976) 200.
140 AA Tajudeen and OK Kehinde, 'Government Public Policies and the Dynamics of Employment Relations in Developing Countries: The Experience of Nigeria' (2007) 4 Pakistan Journal of Social Science 761.

> might occasionally produce a better economic or political result, but labour-management must, I think, find greater possibilities of mutual harmony where results have been voluntarily arrived at by free discussion between the two parties. We in Nigeria, at any rate, are pinning our faith on voluntary methods.[141]

Over the years, the successive governments have been fully intervening in industrial relations. The interventionist role can be seen to be the result of the proliferated incidence of military usurpation and administration in Nigeria with several of its labour decrees being weighted heavily against labour. It would be apposite in the author's view that the protection via the collective bargaining mechanism accorded to both parties, unjustly tilts towards the management. For instance, the right to collective bargaining is restricted by the requirement for government approval. Although, in theory it is settled law that failure to accord recognition to trade union during collective bargaining is unlawful, however, it is the position of the law that every terms of collective agreement must be confirmed in an order of the minister of labour as a precondition for its enforceability on the employers and workers to whom they relate.[142] This interventionist approach as opposed to "voluntarism," whittles down the latitude of employers and unions to reasonably determine their own affairs within a framework established by the state.

Proceeding from a similar approach, the practice of routing disputes for settlement through the minister of labour is reminiscent of the government's interventionist policies. The Trade Disputes Act does not allow workers and trade unions to take their disputes directly to the arbitral bodies. Only the Minister of Labour alone is empowered to make such a decision.[143] For example, it is he who appoints a fit person as a conciliator for the purpose of effecting a settlement of a trade dispute.[144] The Industrial Arbitration Panel (IAP) can only act upon a case referred to it by the Minister.[145] Moreover, in the case of the lAP any award is communicated to the Minister alone and not the parties affected.[146] This discretionary investiture to refer disputes to the arbitral bodies vis-à-vis the statutory mandate to appoint the conciliator as well as members of the Board of Inquiry and the Arbitration Tribunal, raises fears over the neutrality and independence of this procedural arrangement and its susceptibility to extrinsic influence

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141 International Labour Organisation, *Record of Proceedings* (1958) ILC88, 33.
142 Trade Disputes Act, s 3(1).
143 ibid ss 8, 9, 17 and 33.
144 ibid s 8.
145 ibid s 9.
146 ibid s 13.

emanating from the political cadre of the economy. This undoubtedly defeats the objective of the machinery for the settlement of trade disputes, which is to temporarily suspend the right to strike and provide an adequate, impartial and speedy resolution of disputes.[147] This is part of the inbuilt bottlenecks which are capable of slowing down the process. The ILO does not support cumbersome and complicated dispute resolution processes which tend to frustrate the right to strike. In ILO's view, "such machinery must have the sole purpose of facilitating bargaining: it should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness".[148]

Going further, in the public sector, for instance, the government has arrogated to itself the role which both employers and employees supposed to perform in industrial relations.[149] As a state authority, government set up machinery i.e. councils to negotiate for salary increase and other conditions of service in the public sector.[150] Imafidon correlated the current position of government in wage fixing when he advanced the argument that collective bargaining has been relegated to the background in Nigeria because government resorted to creating wage tribunal as a mechanism of fixing and reviewing wage.[151] Lending credence to this view, several writers have opined that the use of ad-hoc commission in addressing workers' demand such as wage determination and other term and conditions of employment is unilateral and undemocratic as it violates good industrial democratic principles.[152] Nigeria determination of minimum wages has always been carried out without any effective tripartite collective bargaining, the latest being the new minimum wage effectuated by the current regime of Muhammadu Buhari in 2019. This development not only makes it antithetical to democratic value, but has also undermined the importance of collective bargaining in Nigeria public sector.[153]

Overall, although the government's policies on labour relations are anchored on what it called "limited intervention guided democracy", the evidence suggests otherwise.[154] Rather, as has been seen, government's policies and the dynamics of labour relations demonstrate that what obtains is unguided authoritarianism and reckless intervention in labour relations.[155]

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147 OVC Okene, 'Mechanisms for the Resolution of Labour Disputes in Nigeria: A Critique' (2010) 3 Kogi State University Bi-annual Journal of Public Law 151.
148 ILO, 'General Report Survey' 1994 (n 76) para 171.
149 Ugbomhe and Osagie (n 120) 30.
150 ibid.
151 Tongo Imafidon and Osabuohien Evans, 'Emergent and Recurrent Issues in Contemporary Industrial Relations: Pathways for Converging Employment Relationships' (2007) 4 Journal of Management and Enterprise Development 43.
152 Anyim and others (n 121) 63.
153 Ugbomhe and Osagie (n 120) 30.
154 OVC Okene, 'Nigeria's Labour and Industrial Relations Policy: From Voluntarism to Interventionism — Some Reflections' (2012) 4 Port Harcourt Law Journal 240.
155 Tajudeen and Kehinde (n 140) 761.

Through its policies and laws the government has seriously infringed the rights of Nigerian workers. In this wise, it is thus clear that the government interventionist policy indicated a systematic approach that was largely repressive of labour rights, and in particular pointed to the state's high-handedness as far as workers are concerned.[156]

B. THE PRINCIPLE OF BARGAINING IN GOOD FAITH

In order for collective bargaining to be workable, it should be conducted in good faith by the parties to the negotiation. Having been duly recognized, it follows that a trade union would expect the employer to be willing to enter into genuine negotiations with it.[157] Prospective as it may seem, the reality is that most employers shy away from negotiating voluntarily and faithfully.[158] Consequently, the need to foist on employers not only an obligation to bargain collectively, but also to do so in good faith becomes apposite. In the preparatory work for Convention No 154, it was recognized that collective bargaining could only function effectively if it was conducted in good faith by both parties; but as good faith cannot be imposed by law, it "could only be achieved as a result of the voluntary and persistent efforts of both parties".[159] The CFA, in addition to drawing attention to the importance that it attaches to the obligation to negotiate in good faith, has established four guiding principles about what good faith entails. According to the Committee, "good faith" implies:

1. Making every effort to reach an agreement (or settlement as the case may be);
2. Conducting genuine and constructive negotiations;
3. Avoiding unjustified delays; and
4. Complying with the agreements which are concluded and applying them in good faith.[160]

In Nigeria the "obligation to bargain in good faith" is not expressly provided for in any of the laws dealing with employment matters, and this appears to be one of the impediments to collective bargaining in Nigeria. In the public sector, for example, the lack of good faith bargaining is attributed to the limited authority of civil servants who represent government on the bargaining table, and as such, a practical implication of this is the unduly long process it

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156 S Okodudu and BK Girigiri, 'The State and Labour Militancy in Nigeria' (1998) 3 Pan-African Social Science Review 34.
157 Okene, 'The Challenges of Collective Bargaining in Nigeria' (n 1) 84.
158 ibid.
159 ILO, 'Record of Proceedings' 1981 (n 141) 22.
160 ILO, 'Digest of Decisions and Principles' 1996 (n 52) paras 814–818.

takes to give final approval to decisions reached at negotiations.[161] In this regard, Okene notes that there exists a chain of decision-making processes which may originate from the negotiating table but goes on to the various governmental agencies up to the highest level in the political authority.[162] Government officials lack the authority to firmly and in good faith commit the state at negotiations with the workers or their representative union.[163] A practical implication of this is the unduly long process it takes to give final approval to decisions reached at negotiations.[164]

This practice undoubtedly contravenes the process of conducting genuine and constructive negotiations and to conclude agreements in good faith as required by the ILO. As Fashoyin noted, "the dichotomy between those undertaking negotiation and the deciding authorities is such to make it appear to the workers that it is wilfully calculated to frustrate their demands".[165] It is therefore of utilitarian value that Nigeria should provide for the duty to bargain in good faith, both in the private and public sectors to effectively promote the practice of collective bargaining. Lending credence to this view, Okene rightly points out that "there is no point engaging in collective bargaining, if the parties cannot negotiate with an honest intention of reaching an agreement which they intend to bind them".[166]

C. PRINCIPLE OF ENFORCEMENT OF COLLECTIVE AGREEMENTS

In the ILO's instruments, collective bargaining is deemed to be the activity or process leading up to the conclusion of a collective agreement.[167] In Recommendation No 91, Paragraph 2, collective agreements are defined as:

> All agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other.

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161 Sola Fajana, *Industrial Relations in Nigeria: Theory and Practice* (Labofin and Company 2000) 274.
162 Okene, 'The Challenges of Collective Bargaining in Nigeria' (n 1) 85.
163 ibid.
164 Fajana (n 161) 274.
165 Tayo Fashoyin, 'Collective Bargaining in the Public Sector: Retrospect and Prospects' in Tayo Fashoyin (eds), *Collective Bargaining in the Public Sector* (Macmillan press1987) 11.
166 Okene, 'The Challenges of Collective Bargaining in Nigeria' (n 1) 86.
167 Gernigon and others (n 40) 35.

The Recommendation No. 91 goes on to state that collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded[168] and that stipulations in such contracts of employment which are contrary to a collective agreement should be regarded as null and void and automatically replaced by the corresponding stipulations of the collective agreement.[169] Stipulations in contracts of employment which are more favourable to the workers than those prescribed by a collective agreement should not be regarded as contrary to the collective agreement.[170] It set out the binding nature of collective agreements and their precedence over individual contracts of employment, although recognizing the stipulations of individual contracts of employment which are more favourable for workers.

Comparatively, under the Nigerian labour law, there is no presumption of intention about the binding force of a collective agreement between the parties thereto. The nearest it has gone in attaching legal enforceability to a collective agreement is in the provision of Section 3(1) of the Trade Disputes Act which stipulates expressly that parties to a collective agreement are expected to deposit with the minister of labour and productivity at least three copies of the agreement within 30 days of its execution, and when such deposit is made the minister may by order make the agreement or part thereof binding on the parties to whom it relates. The Nigerian Courts have taken the common law position that collective agreement is merely "a gentleman agreement and is binding only in honour and not enforceable". In *Union Bank of Nigeria v Edet,*[171] the employee's contention that her termination flouted the collective agreement was rejected. It was held that collective agreements, except where they have been adopted as forming part of the terms of employment, are not intended to give or capable of giving an individual employee the right to institute an action for breach of any collective agreement, nor is it intended to complement the employee's contract of service.[172] It was noted that:

> Collective agreements are not intended or capable of giving individual employee a right to litigate over an alleged breach of their terms as may be conceived by them to have affected their interest, nor are they meant to supplant or even supplement

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168 Recommendation No 91 (n 37), para 3(1).
169 ibid para 3(2).
170 ibid para 3(3).
171 *Union Bank of Nigeria v Edet* [1993] 4 NWLR (Pt 287) [298]–[299].
172 ibid [288] (Uwaifo JCA).

> their contract of service. In other words, failure to act in strict compliance with collective labour agreement is not justiciable.[173]

It may be argued that the courts' refusal to enforce collective agreements is based on the privity of contract,[174] as most collective agreements are usually between the employers on one part and trade unions on the other. An individual employee seeking to benefit from it is not party to it.[175] In *Afribank (Nig) Plc v Osisanya*[176] Amaizu JCA held that the dismissal procedure contained in the collective agreement was not binding on the employer as the agreement was not justiciable. In *ACB Plc v Nwodika,*[177] Ubaezonu JCA outlined factors which may determine whether a collective agreement is binding on individual employees and employers: namely: its incorporation in the contract of service, if any, the pleadings and evidence before the court or the parties' conduct.

From the above, it is clear that one of the challenges that plagues the practice of collective bargaining in Nigeria is that of non-observance of collective agreement which is the finished product of collective bargaining. Paradoxically, while it may be adduced that the issue of enforceability has statutory backing under section 3(2) of the Trade Disputes Act 2004, although not full-fledged in the true sense of ILO's standard prescriptions on "voluntarism" in negotiation, the issue of judicial recognition of such collective agreements has always become revolving challenge in Nigeria. It seems lamentable that agreements wrapped up through collective bargaining cannot be readily enforced. Perhaps, it may be possible to enforce collective agreements in Nigeria under the Constitution. A new provision – section 254C (2) – was introduced into the Constitution in 2010 empowering the National Industrial Court of Nigeria (NICN) exclusively to apply any ratified international treaty relating to labour and industrial relations. For clarity, section 254 C (2) provides thus:

> Notwithstanding anything to the contrary in the Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention,

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173 ibid [298].
174 ibid.
175 ibid.
176 *Afribank (Nig) Plc v Osisanya* [2000] 1NWLR (Pt. 642) 598.
177 *ACB Plc v Nwodika* [1996] 4 NWLR (Pt 443) 470, 485. See also *B.P.E. v Dangote Cement Plc* [2020] 5 NWLR (Pt. 1717) 322.

> treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.

It is important to note that Nigeria has ratified ILO Convention 98 (concerning collective bargaining). Thus the proviso in the section which states *"notwithstanding anything to the contrary in the Constitution"* now appears to vest the NIC with the right to apply international labour conventions ratified by Nigeria. This is clearly derogation from section 12(1) of the same Constitution and which is to the effect that a treaty shall not have the force of law in Nigeria except same has been enacted into law by the National Assembly. The implication is that the NICN could enforce that collective agreement through section 254C (2) since Nigeria has ratified Convention 98. Domestication is not Required before enforcement by the provision. This is buttressed by section 7(6) of the National Industrial Court Act further provides a legal ground for the contention that non domesticated conventions can be applied as examples of international best practices. The section provides that:

> The court shall, in exercising its jurisdiction or any of the powers conferred upon it by this Act or any other enactment or law, have due regard to good or international best practices in labour or industrial relations and what amounts to good or international best practice in labour or industrial relations shall be a question of fact.

Commenting on this position, Hon. Justice B.B Kanyip rightly opined that:

> Section 7(6) of the National Industrial Court provides an avenue for Nigeria, as a member of the international community, and as a member of International Labour Organisation, to take advantage of international labour jurisprudence in the resolution of domestic issues.[178]

Therefore, a restrictive interpretation of the Constitution should not be used to hinder the implementation of Nigeria's voluntary membership and ratification of international obligations, especially as regards the Conventions and Recommendations of the ILO.

There is no doubt that the interventionist policy under section 3 (2) of the Act wherein the Minister wields such wide discretionary powers is subject to abuse. The Minister may in

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[178] Benedict B Kanyip, 'Current Issues in Labour Dispute Resolution in Nigeria' (All Judges Conference, Abuja, November 20).

dereliction of his duty or in the exercise of the latitude of his discretionary investitures under the Act refuse to make an order confirming the terms of a duly concluded collective agreement. Indeed, as Okene rightly points out, "the Minister will never make such an order especially where the interests of the government whom he represents will be affected by the order".[179] Without the enforceability of collective agreements collective bargaining is but a mere vain exercise and cannot be effective. As aforementioned, the Committee on Freedom of Association has ruled that all collective bargaining agreement should be binding on the parties. The Committee on Freedom of Association has also ruled that making the validity of collective agreements signed by the parties subject to the approval of these agreements by the authorities is contrary to the principles of collective bargaining and of Convention No 98.

It is submitted therefore that Nigerian legal framework must expressly provide that once agreements are concluded by the parties thereto they become readily enforceable without further ado. Nigeria can take in tow the labour statutes in some African countries which contain comprehensive provisions regarding the enforceability of collective agreements. For instance, labour statutes in Ghana,[180] Kenya,[181] Zambia,[182] and South Africa[183] (which are of common law jurisdiction like Nigeria) expressly provide that collective agreements relating to employment and labour are binding and enforceable. The implication is that the courts in those countries will enforce any collective agreement concluded between an employer and his employees without considering the common law position as the provisions of a statute always prevail over the common law.[184]

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179 Okene, 'The Challenges of Collective Bargaining in Nigeria' (n 1) 97.

180 Section 105 (2) of the Ghanaian Labour Act (No. 651 of 2003) states that collective agreement between employees and an employer is viewed as terms of the employment contract between each employee and his employer.

181 In Kenya, s 59 (1) of the Labour Relations Act (No 14 of 2007) stipulates that every collective agreement relating to employment and labour binds all employees and their employers. Section 59 (3) also states that every collective agreement should be incorporated into the employment contract of an employee. Furthermore, section 59 (5) states that upon registration of the collective agreement, it becomes enforceable.

182 Section 71(3) (c) of the Zambian Industrial and Labour Relations Act (No. 27 of 1993, Cap 269 of the Laws of Zambia) states that once a collective agreement has been accepted by the Minister, it becomes binding between the employer and employee or between the parties.

183 Section 23 of the South African Labour Relations Act (No. 66 of 1995) stipulates that every collective agreement relating to employment and labour binds not only the parties to it, but other persons to which the collective agreement applies. Also, section 199 states that an employment contract entered into before or after a collective agreement may not allow an employer to pay his workers remuneration less than what is stipulated in the collective agreement. It further provides that any contract that purports to waive any collective agreement is invalid.

184 See s 1(3) of the 1999 Constitution.

IV. Comparative Analysis of Collective Bargaining in Other Jurisdictions: The United Kingdom And South Africa Example

A. United kingdom

It is rather safe to begin by stating that Nigeria was under the British colony and most of her laws were derived from the common law provisions. Indeed, a peep into collective bargaining as practiced in the UK becomes apposite. Perhaps no other country in recent years has witnessed greater change in its collective bargaining framework than the UK. The English Trade Union and Labour Relations (consolidation) Act, 1992 brought to light, amongst other things, the seamless operation of the collective bargaining mechanism in the UK. Although the Trade Union and Labour Relations (consolidation) Act does not provide for the obligation to bargain but merely facilitates collective bargaining, leaving the rest to the parties involved; It however imposes a duty on the employer to disclose to a representative trade union all relevant information that will enable effective collective bargaining thus indirectly adopting the duty to bargain into its framework.[185] Unlike in Nigeria where the scope of negotiable issues is subject in collective bargaining is subject to certain restrictions, the Trade Union and Labour Relations (consolidation) Act provides for a wide range of negotiable matters covered in the collective bargaining process.[186]

Furthermore, it appears that Nigeria have been left behind because, there have been a paradigm shift through legislation from the common law position on the doctrine of unenforceability of collective agreements. Today in the UK, the doctrine that a third party cannot enforce a contract has ceased to be the law. A third party can now enforce a contract in two situations; firstly, if the third party is mentioned in the contract as the person authorized to enforce it and secondly if the contract purports to confer a benefit on the third party. Presently, collective agreements are enforceable in the UK once the parties include in the agreement, a provision that it would be legally binding on the parties. Under the Trade Union and Labour Relations (consolidation) Act, a collective agreement is presumed enforceable where it is in writing and provides expressly that the agreement is legally binding on the parties thereto.[187] Thus, the doctrine of privity of contract no longer weighs down collective agreements in England and such agreements become automatically enforceable between the parties if they are

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185 Trade Union and Labour Relations (Consolidation) Act, s 181.
186 ibid s 178(2).
187 ibid s 179.

reduced into writing and are stipulated to be legally binding. Notwithstanding that the doctrine has been buried in the UK from where it came to Nigeria; the Nigerian law makers and surprisingly the court, rather than build on this progressive assertion that a collective agreement reduced into writing and agreed upon is absolutely, legally binding and enforceable, held in plethora of cases as discussed above at Section III. C., that whether or not a collective agreement is binding on individual employees is dependent on its incorporation in the contract of service. Although traces of progress and divergence can be seen under the Constitution (Third Alteration) Act, however, the judicial emancipation of Nigerian laws from these vestiges of common law has been sluggish, and their traces and influence are very much evident in the jurisprudence of labour and industrial relations.

B. SOUTH AFRICA

The South African legal frameworks, the Constitution and its labour relations frameworks are amongst the most progressive institutions in the world.[188] Its Constitution stands apart in Africa having expressly entrenched the right of workers[189] and employers[190] to form trade unions and employers' organisations, guaranteeing the right of trade unions, employers' organisations and employers to engage in collective bargaining.[191] In terms of its judicial approach, the countries labour frameworks seek to fulfil South Africa's obligations as Member State of the ILO.[192] In cognisance and furtherance of this purpose, judges in South Africa also establish jurisprudential principles based on both ratified and non–ratified international labour standards.[193] The reason seems not to be far-fetched. Unlike Nigeria which is a dualist state,[194] in South Africa, a dualist approach is used in dealing with treaties and a monist-like approach is used for international customary international law.[195] In this regard, section 233 of the Constitution of the Republic of South Africa, 1996, provides to the effect that "every court must prefer any reasonable interpretation of the legislation that is consistent with international law"

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188 Tavonga J Zvogbo, 'Collective Bargaining and Collective Agreements in Africa: Comparative Reflections on SADC' (2019) International Training Center of ILO Working Paper 11/2019, 21 <https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.itcilo.org/sites/default/files/inline-files/WP%252011_TJ%2520Zvobgo.pdf&ved=2ahUKEwiWxd_o64_2AhU2_7sIHcfaAWQQFnoECAQQAQ&usg=AOvVaw1m92tEhTpOlhuo85_4Qpuw> accessed 17 February 2022.

189 Constitution of the Republic of South Africa, Act 108 of 1996, s 23 (2).

190 ibid s 23 (3).

191 ibid s 23 (5).

192 See *National Union of Metal Workers of South Africa and Others v Bader Bop (Pty) Ltd and Another* [2003] 2 BCLR 182.

193 See *Modise and Others v Steve's Spar Blackhealth* [2000] 5 BLLR 496.

194 Constitution Federal Republic of Nigeria, 1999, s 12(1); See also Abacha and Others v Fawehinmi [2000] 6 NWLR 228.

195 Constitution of the Republic of South Africa, ss 231 (4) and 232.

when interpreting any legislation but must consider international law when interpreting the Constitution's Bill of Rights. No doubt, any derogation from this constitutional prerogative by any court within South Africa would constitute sufficient grounds for review and appeal.

Furthermore, its liberal Labour Relations Act[196] (LRA) was enacted with the purpose of creating conditions for workers to act collectively to bargain with their employers effectively. Just like in the UK, the LRA does not provide for the duty to bargain but merely facilitates collective bargaining. In that regard, it imposes a duty on the employer to disclose to a representative trade union all relevant information that will enable effective collective bargaining thus indirectly adopting the duty to bargain into its framework.[197] Additionally, the LRA gives effect to the freedom to bargain collectively by providing the institutional infrastructure for voluntary collective bargaining at sector level and for the binding nature of collective agreements. The concern that voluntarism may allow employers to refuse to bargain at all is met to some extent by the organisational rights accorded to trade unions in Chapter III of the LRA and the provision of a statutory dispute resolution procedure. The LRA's approach is to provide the organisational infrastructure for union organisation at the workplace and to provide a conciliation procedure to resolve interest disputes irrespective of whether the trade union is recognised.[198]

Collective bargaining in South Africa much like in Nigeria, takes places at several levels. A distinction in South Africa can however, be seen between single-employer bargaining (branch, company or corporate level) and multi-employer bargaining (more than one employer represented by employers' organisation),[199] with the latter taking place in the form of bargaining councils. One key feature of multi-employer bargaining arrangements is that the agreements reached will be extended to non–parties, that is, to employers and employees who are not members of the organisations that negotiated the agreement.[200]

In South Africa, the practice and procedures of enforcement of collective agreements are entirely different from that of Nigeria in the sense that collective agreements are enforced as a matter of course by the parties, provided that they are entered into or made in writing.[201] The collective agreement when decided upon, has the effect of altering the terms of any contract or

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196 No 66 of 1995.
197 Labour Relations Act, s 16 (3).
198 Halton Cheadle, 'Collective Bargaining and the LRA' (2005) 9 Law, Democracy and Development Journal 148.
199 Shane Godfrey, 'Multi-employer Collective Bargaining in South Africa' (2018) ILO Condition of Work and Employment Series Paper 97/2018, 1 <https://labordoc.ilo.org/permalink/41ILO_INST/8s7mv9/alma994995393302676> accessed 18 February 2022.
200 ibid.
201 Labour Relations Act, s 23 (1).

employment relationship between an employee and an employer who are both bound by the collective agreement.[202] The LRA generally allows collective agreements to take precedence over its own provisions when the agreement offers the worker (employee) better conditions of employment (i.e. favourability principle).[203] It even goes as far as allowing for collective agreements to be extended to other limitations on certain constitutionally guaranteed rights. For instance, section 64(1)(a) prohibits strike where a collective agreement determines that the issue in dispute should not be subject to strike actions. Furthermore, by a collective agreement between an employer and a majority union, such a limitation may also be extended to workers who do not belong to the union concerned, thereby also depriving them of the rights to strike over that particular issue.

V. Conclusion and Recommendation

There is no gainsaying the fact that collective bargaining is a rational process for the enhancement of workplace democracy, redistribution of power from employers to employee, a forum for ascertaining and reviewing the terms and conditions of employment, and a veritable tool for the promotion of economic efficiency by limiting industrial conflict in the workplace. In general, consensus is that collective bargaining must be the nucleus of any dynamic modern system of industrial relations.[204] Notwithstanding, from the appraisal provided specifically dealing with collective bargaining, one can readily determine the level of protection that is accorded to the parties thereto.

As revealed in this study, the ILO has established core labour standards which enshrine workers' right to free and voluntary collective bargaining. Unfortunately, by global standards, collective bargaining practice appears to be in a dire state in the Nigerian labour sphere. The reasons seem not to be far-fetched. All over the world, the practice of industrial relations and collective bargaining emanated from the private sector. In Nigeria, the reverse is the case.[205] The reality is that the government has continued to pay lip service to mechanism of collective bargaining.[206] Whilst Nigeria has ratified the ILO Conventions, many of its practices concerning collective bargaining do not meet the ILO standards. For instance, the vagueness about the requirement of a certain level of representativeness in the form of an "electoral college" poses as a challenge to the recognition of workers' organisations and their inherent

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202 ibid s 23 (3).
203 Basic Conditions of Employment Act, 75 of 1996, s 49.
204 Okene, 'The Challenges of Collective Bargaining in Nigeria' (n 1) 102.
205 Olulu and Udeorah (n 5) 65.
206 ibid.

right to negotiate; certain class of public officers are not covered by collective bargaining; the scope of negotiable issues and the subject matter for collective bargaining are unjustly confined; the level of collective bargaining appears fictitious and is constantly plagued specifically in the public sector with administrative intrusions; there is the preponderance of interventionist policies and legislative attitude of compulsion and collective agreement seems readily unenforceable. The implication of these incongruences manifests in the form of deadlock collective bargaining process which continues to eat deep into the fabrics of Nigeria's labour sector with the frequent side-lining of the process by recourse to strikes and lock-out by the organised labour and management respectively. In sum, Nigeria's labour legal regime constricts and does not allow for the practice of collective bargaining to flourish. As long as these impediments highlighted above subsist, one can only in futility hope for a better inclusive collective labour legal landscape in Nigeria.

It is submitted that Nigeria must therefore make deliberate efforts in progressively overturning the hurdles on its way to achieving an internationalised labour regulatory framework. In a bid to authenticate the right to freedom of association and utilize its machinery of collective bargaining, the Nigerian government must therefore amend its laws to readily capture the standard prescriptions of the ILO as it relates to the practice of collective bargaining. Put specifically, the legislative focus should be geared towards enacting limited intervention guided democratic policies to reflect its commitment to voluntarism, workplace democracy, industrial peace and harmony.